

TOWN COUNCIL
TOWN OF GYPSUM, STATE OF COLORADO

RESOLUTION NO. 07
(SERIES 2021)

A RESOLUTION APPROVING THE STRATTON FLATS SEVENTH AMENDMENT TO
THE SUBDIVISION IMPROVEMENT AGREEMENT

WHEREAS, the Town of Gypsum, Colorado (“Town”), is a home rule municipality of the State of Colorado, duly organized and existing under Article XX of the Colorado Constitution and the Gypsum Home Rule Charter effective October 21, 1982; and

WHEREAS, the members of the Town Council (“Council”) have been duly elected, chosen and qualified; and

WHEREAS, Spring Creek Apartments, LLC and Spring Creek Gypsum, LLLP and Stratton Flats Holdings, LLC (together as “Developer”) is owner of portions of the Stratton Flats property further described in Exhibit A; and

WHEREAS, Developer has requested an amendment of the Subdivision Improvements Agreement Stratton Flats Subdivision recorded at the County of Eagle at Reception Number 200806082, First Amendment to Subdivision Improvement Agreement Stratton Flats Subdivision recorded at the County of Eagle at Reception Number 201021876, Second Amendment to Subdivision Improvement Agreement Stratton Flats Subdivision recorded at the County of Eagle at Reception Number 201522175, Third Amendment to Subdivision Improvement Agreement Stratton Flats Subdivision recorded at the County of Eagle at Reception Number 201616244, Fourth Amendment to the Stratton Flats Subdivision Improvement Agreement recorded at the County of Eagle at Reception Number 201818365, Fifth Amendment to the Stratton Flats Subdivision Improvement Agreement recorded at the County of Eagle at Reception Number 201818366, and Sixth Amendment to the Stratton Flats Subdivision Improvement Agreement recorded at the County of Eagle at Reception Number 201917132;

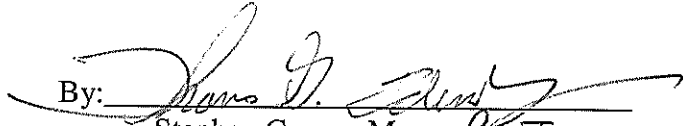
WHEREAS, the members of the Council wish to enter into a Seventh Amendment to the Subdivision Improvement Agreement attached as Exhibit B.

NOW, THEREFORE, be it resolved by the Town Council of the Town of Gypsum, Colorado, that the Seventh Amendment to the Stratton Flats Subdivision Improvement Agreement is hereby approved with no conditions.

Approved and Resolved this 26th day of January 2021 at a regular meeting of the Town Council of the Town of Gypsum, Colorado by a vote of ____ in favor and _____ against.

TOWN OF GYPSUM

By:



~~Stephen Carver, Mayor~~

Tom Edwards

ATTEST:

By:

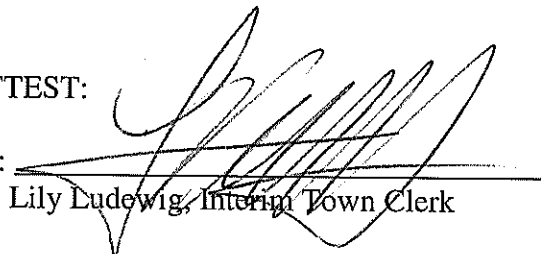

Lily Ludewig, Interim Town Clerk

EXHIBIT A

Legal Description

Parcels 12, 14A, 14B
And Tracts G1, G2, V-1, V-2,
Stratton Flats Planned Unit Development, County of Eagle, State of Colorado

EXHIBIT B

**SEVENTH AMENDMENT TO SUBDIVISION
IMPROVEMENTS AGREEMENT**

SEVENTH AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT

STRATTON FLATS SUBDIVISION

This Seventh Amendment to Subdivision Improvement Agreement, Stratton Flats Subdivision (“Seventh Amendment”) is entered into this 5th day of January, 2021 between the Town of Gypsum, a home-rule municipal corporation (the “Town” or “Gypsum”) and Spring Creek Apartments, LLC and Spring Creek Gypsum, LLLP (together as “Developer”) and amends the Subdivision Improvement Agreement, Stratton Flats Subdivision (“Agreement”) between the Town and Stratton Flats, LLC dated March 2008 and recorded in the offices of the Eagle County Clerk and Recorder at Reception No. 200806082, the First Amendment to Subdivision Improvement Agreement, Stratton Flats Subdivision (“First Amendment”), between the Town and Stratton Flats Homes, LLC, dated October 26, 2010 and recorded at Reception No. 201021876, the Third Amendment Subdivision Improvement Agreement Stratton Flats Subdivision (“Third Amendment”) between the Town and Stratton Flats Homes, LLC dated September 13, 2016 and recorded at Reception No. 201616244, the Fourth Amendment Subdivision Improvement Agreement Stratton Flats Subdivision (“Fourth Amendment”) between the Town and Stratton Flats Homes, LLC dated January 9, 2018 and recorded at Reception No. 201818365, the Fifth Amendment Subdivision Improvement Agreement Stratton Flats Subdivision (“Fifth Amendment”) between the Town and Stratton Flats Homes, LLC dated October 23, 2018 and recorded at Reception No. 201818366 and the Sixth Amendment Subdivision Improvement Agreement Stratton Flats Subdivision (“Sixth Amendment”) between the Town and Stratton Flats Homes, LLC dated October 8, 2019 and recorded at Reception No. 201917132.. The Town and Developer may each be referred to singularly as a “Party” and jointly as the “Parties.”

RECITALS

WHEREAS, the Agreement, First Amendment, Third Amendment, Fourth Amendment and Sixth Amendment obligate the Developer to provide certain infrastructure improvements and facilities to serve the Stratton Flats property and mitigate the impact of the project on the Town and requires certain improvements be constructed; and

WHEREAS, as a result of delays resulting from the COVID-19 Pandemic it is necessary to update the deadlines for completion of certain Required Improvements

WHEREAS, the Parties wish to amend and modify the Agreement, First Amendment, Third Amendment, Fourth Amendment and Sixth Amendment, as set forth herein;

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Required Improvements. Sections 3, Required Improvements, of the Sixth Amendment is deleted in its entirety and replaced with the following language:

3. Required Improvements.

- (a) In addition to the Required Improvement obligations set forth in the Agreement, First Amendment, Third Amendment, Fourth Amendment, and Fifth Amendment, Developer shall be responsible for construction of the following Required Improvements, as shown on **Exhibit B**, pursuant to the timeframes set forth herein:
- (i) The Center Park, to include a youth soccer field, playground, BBQ and picnic area, restroom, volleyball court, pickleball courts and public parking along the Center Park exterior, shall be constructed as part of Phase 1 of the Apartment Project and completed prior to the issuance of any temporary certificate of occupancy or certificate of occupancy for Phase 2 of the Apartment Project;
 - (ii) The East Park, to include a community garden, basketball court, and BBQ and picnic area as shown on the Sketch Plan, shall be constructed as part of Phase 2 of the Apartment Project and completed prior to the issuance of certificates of occupancy for any apartments in buildings I and J of Phase 2, as shown on Exhibit B;
 - (iii) The eastern overflow parking to accommodate recreational vehicles, shall be constructed as part of Phase 2 of the Apartment Project and completed prior to the issuance of certificates of occupancy for any apartments in buildings I and J of Phase 2;
 - (iv) The West Park, to include a community garden, dog park and public parking, shall be constructed as part of Phase 1 of the Apartment Project and completed prior to the issuance of any temporary certificates of occupancy or certificates of occupancy for Phase 2 of the Apartment Project;
 - (v) Within 4 months of Gypsum receiving approval of the conceptual design plan for the roundabout from CDOT, but in

no case later than issuance of the last certificate of occupancy for an apartment building located in Phase 2, , Developer shall submit to Gypsum design and engineering drawings for a roundabout on the northside of Interstate 70 Gypsum Interchange (the “I-70 Roundabout”) which meet the Colorado Department of Transportation’s (CDOT) requirements for preliminary design documents, for review by the Town, CDOT and the Federal Highway Administration (the “FHWA”). Prior to the issuance of the last certificate of occupancy for an apartment building located in Phase 2, Developer shall submit full engineering and design plans for the I-70 Roundabout to Gypsum for review by Gypsum, CDOT and the FHWA. Gypsum shall then be responsible for obtaining any required permits from the FHWA. Developer shall work in a timely manner with Gypsum to make any revisions to the engineering and design plans during this permitting process. Upon final approval of the full engineering and design plans, Developer shall provide a cost estimate produced and stamped by a licensed engineer which includes the full engineering and design costs together with construction costs for the I-70 Roundabout, which cost estimate shall be submitted to Gypsum for approval. Developer is responsible for paying seventeen (17%) of the total costs of the I-70 Roundabout as set forth in the cost estimate approved by Gypsum. Prior to issuance of the last certificate of occupancy for an apartment building located in Phase 2, Developer shall provide to Gypsum such amount minus the verifiable engineering and design costs already incurred by Developer in either cash or Construction Security in the form of cash equivalent that is easily convertible into cash.

2. ECO Regional Trail. Developer shall extend a 10-foot-wide asphalt trail across Tract G extending from Jules Drive to US Highway 6. The trail will be completed prior to the issuance of certificates of occupancy for any apartments in buildings I and J of Phase 2;

3. Second Amendment. The Seventh Amendment shall not be construed to amend the Second Amendment. Developer assumes no obligations contained in the Second Amendment.

3. Notices. All notices hereunder shall be in writing and shall be delivered in person or by registered mail addressed to the Party entitled to such notice as follows:

If to Town: Town of Gypsum
Attn: Town Manager
50 Lundgren Boulevard
P.O. Box 130
Gypsum, CO 81637

With a Copy to: Collins Cockrel & Cole
Attn: Robert G. Cole
390 Union Blvd, Suite 400
Denver, CO 80228

If to Developer: Spring Creek Apartments, LLC
Attn: Gerald Flynn
28 Second St, Suite 215
Edwards, CO 81632

With a Copy to: Karp, Neu, Hanlon
Attn: Michael J. Sawyer
201 14th Street, Suite 200
P.O. Drawer 2030
Glenwood Springs, CO 81602

4. Covenants Running with the Land. All provisions contained in this Seventh Amendment touch and concern the Property, constitute covenants running with the land, shall be binding upon Developers and their successors and assigns forever.

5. Successors and Assigns. The Agreement, First Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment as modified by this Seventh Amendment, shall be binding upon and shall benefit future owners of all or any portions of the Property.

6. Miscellaneous. In the event of a conflict between the Agreement, First Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, and Sixth Amendment this Seventh Amendment shall control. Except as expressly modified herein, Agreement and all Amendments shall remain in full force and affect. The Agreement as so amended, First Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, and Sixth Amendment shall constitute the complete and entire agreement among the parties with respect to the subject matter of this Seventh Amendment.

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EXHIBIT A

Legal Description of Property

Parcels 12, 14A, 14B
And Tracts G1, G2, V-1, V-2,
Stratton Flats Planned Unit Development, County of Eagle, State of Colorado