

**AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
STRAWBERRY ACRES SUBDIVISION**

This Amended and Restated Declaration of Covenants, Conditions and restrictions of Strawberry Acres Subdivision (Declaration) is made this 18th day of January, 2007 by Strawberry Acres Homeowners' Association, a Colorado non-profit corporation (Association).

RECITALS

A. Declaration of Covenants, Conditions and Restrictions of Strawberry Acres Subdivision, Filing One (Declaration One) was duly recorded with the Office of the Clerk and Recorder of Mesa County, Colorado, in May 1, 1976, at Reception No. 1108737, Book 1068, at Page 772.

B. Declaration of Covenants, Conditions and Restrictions of Strawberry Acres Subdivision, Filing Two (Declaration Two) was duly recorded with the Office of the Clerk and Recorder of Mesa County, Colorado, on November 15, 1976, at Reception No. 1120204, Book 1086, at Page 214.

C. Declaration of Covenants, Conditions and Restrictions of Strawberry Acres Subdivision, Filing Three (Declaration Three) was duly recorded with the Office of the Clerk and Recorder of Mesa County, Colorado, on March 3, 1977, at Reception No. 1605810, Book 1096, at Page 733.

D. Declaration of Covenants, Conditions and Restrictions of Strawberry Acres Subdivision, Filing M (Declaration Four) was duly recorded with the Office of the Clerk and Recorder of Mesa County, Colorado, on December 8, 1977, at Reception No. 1147777, Book 1129, at Page 25.

E. An Amendment of Declaration of Restrictive Covenants was duly recorded with the Office of the Clerk and Recorder of Mesa County, Colorado on April 5, 1978, at Reception No. 1156849, Book 1143, Page 576 (Amendment One).

F. A Declaration and Amendment was duly recorded with the Office of the Clerk and Recorder of Mesa County, Colorado on May 4, 1978, at Reception No. 1159593, Book 1147, Page 835 (Amendment Two), by which all the land in Strawberry Acres Filings 1, 2, 3 and 4 became subject to 'Declaration Four and Declarations One, Two and Three, along with all amendments thereto, became of no further force and effect.

G. Owners in Strawberry Acres, Filings 1, 2, 3 and 4, by agreement as provided in Article XIII, Section 3 of Declaration Four, amended Declaration Four and indicated their desire to restate it in its entirety, incorporating the amendments. Signatures of the Owners are on file with the Secretary of the Association memorializing their agreement.

H. By this Declaration, the Owners desire to amend and restate Declaration Four in its entirety including any amended language. This new document shall be recorded in the real property records of the Mesa County and shall run with and bind the real property that is subject to this Declaration to the same extent and in the same manner as Declaration Four.

WHEREFORE, pursuant to Article XXIII, Section 3 of Declaration Four, and Amendment Two, Declaration Four is amended and restated in its entirety to provide as follows:

THIS DECLARATION, made on the date hereinafter set forth by Charles D. Reicks, Charlotte A. Reicks and Systematics Corporation, hereinafter referred to as "Declarant."

WITNESSES:

WHEREAS, Declarant is the owner of certain property in Strawberry Acres Subdivision, County of Mesa, State of Colorado, which is more particularly described as:

Strawberry Acres Subdivision, Filing #4: Lots 4 through 10 inclusive, Block 4; Lots 1 through 18 inclusive, Block 8 Lots 1 through 19 inclusive, Block 7; Lots 8. through 14 inclusive, Block 6

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to Strawberry Acres Homeowners Association, its successor and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

LEGAL DESCRIPTION

A tract of land located in a part of the SW 1/4 NW 1/4 of Section 15, T.1S, R.1E, Ute Meridian, Mesa County, Colorado, being more particularly described as follows:

Commencing at the SW Corner of the SW 1/4 NW 1/4 of said Section 15 and considering the South line of the SW 1/4 NW 1/4 of said Section 15 to bear S. 89° 57'40" E. with all bearings contained herein relative thereto;

Thence S. 89° 57'40" E. along said South line of the SW 1/4 NW 1/4 of Section 15 a distance of 480.00 feet to the Southwest Corner of Strawberry Acres-Filing No. Two as filed and recorded in the office of the Mesa County Clerk and Recorder;

Thence N. 00° 02' 20" E. along the Westerly boundary of said Strawberry Acres Filing No. Two a distance of 130.00 feet to the Northwest Corner of said Strawberry Acres Filing No. Two and the TRUE POINT OF BEGINNING.

Thence continuing N. 00° 02' 20" E. 299.46 feet to the Northeast Corner of Lot 2, Block One of Strawberry Acres Filing No. One as filed and recorded in the office of the Mesa County Clerk and Recorder. Thence along the Southerly Boundary of Filings No. Three and No. Four as filed and recorded in the office of the Mesa County Clerk and Recorder by the following Eight (8) courses and distances:

(1) N 90° 00' 00"E 19.70 feet

(2) Thence along the arc of a curve to the right whose radius is 111.33 feet and whose long chord bears S. 81° 28' 08" E 33.03 feet

(3) Thence along the arc of a curve to the left whose radius is 161.33 feet and whose long chord bears S. 81 ° 28 ' 09" E 47.86 feet to the S.E. corner of said Strawberry Acres Filing No. Three

(4) N. 90° 00' 00" E 50.00 feet

(5) Thence along the arc of a curve to the left whose radius is 50.00 feet and whose long chord bears S. 67° 30' 00" E 92.39 feet

(6) S. 45° 00' 00" E 20.71 feet

(7) N. 90° 00' 00" E 100.00 feet to the SE Corner of Lot 1, Block Seven of said Strawberry Acres Filing No. Four

(8) S. 0° 00' 00" W 106.56 feet to the SW Corner of Lot 16, Block Seven of said Strawberry Acres Filing No. Four

Thence S. 86°47' 56" W 20.21 feet; thence S. 00° 02' 20" W 130.00 feet to the Northeast Corner of Lot 3, Block Nine of said Strawberry Acres Filing No. Two; Thence N. 89° 57' 40" W along the Northerly boundary of said Strawberry Acres Filing No. Two a distance of 329.64 feet to the TRUE POINT OF BEGINNING, Containing 2.053 Acres.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Charles D, Reicks, Charlotte A. Reicks and Systematics Corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to

the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one-person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on January 1, 1979.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred Twenty Dollars (\$120.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds ($2/3$) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds ($2/3$) of the votes for each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members at such time and in such manner as is required by policies, procedures, rules or regulations promulgated by the Board of Directors of the Association provided that such policies, procedures, rules or regulations shall be construed to be consistent with applicable Colorado law. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present," another" meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($1/2$) of the

required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments. Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. •Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight percent (8%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the Lien thereof,

ARTICLE V

LAND USE AND BUILDING TYPE

No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two stories in height and a private garage for not more than two cars.

ARTICLE VI

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have

been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with:

ARTICLE VII

DWELLING COSTS, QUALITY AND SIZE

No dwelling shall be permitted on any lot at a cost of less than \$15,000.00 based upon cost levels prevailing on the date these covenants are recorded, it being the intention and purpose of the covenants to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size. The ground floor area of the main structure exclusive of one-story open porches and garages shall not be less than 680 square feet for a dwelling of more than one story.

ARTICLE VIII

BUILDING LOCATION

No building shall be located on any lot nearer to the front lot line or nearer to the side street line than any minimum building set back lines which may be shown on the recorded plat. In any event no building shall be located on any lot nearer than twenty-five feet to the front lot line, nor nearer than ten feet to any side street line. No building shall be located nearer than five feet to an interior lot line. No dwelling shall be located on any interior lot nearer than twenty-five feet to the rear lot line. For the purpose of the covenant, eaves, steps and open porches shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot

ARTICLE IX
LOT AREA AND WIDTH

No dwelling shall be erected or placed on any lot having a width of less than 75 feet at the minimum building set back line nor shall any dwelling be erected or placed on any lot having an area of less than 9,000 square feet.

ARTICLE X
EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

ARTICLE XI
NUISANCES

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

ARTICLE XII
NEIGHBORHOOD

No unlicensed automobile shall be parked or stored on any lot and open to public view. Where an unlicensed auto is kept on its premises it shall be stored in an enclosed garage.

ARTICLE XIII
TEMPORARY STRUCTURES

No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any lot at any time as a residence either temporarily or permanently.

ARTICLE XIV

SIGNS

Political campaign signs shall be permitted to be displayed on Lots only to the extent provided by policies, procedures, rules or regulations promulgated by the Board of Directors of the Association provided that such policies, procedures, rules or regulations shall be construed to be consistent with applicable local ordinance or other governing law. No sign of any other kind, type, or nature shall be displayed to the public view on any Lot or Common Element except one sign of not more than five (5) square feet advertising the Lot for sale or rent, or signs used and erected by a builder to advertise the Property during the period when construction and sales of any dwelling occur. Signs on the Common Elements are governed by the Association.

ARTICLE XV

DRILLING, OIL AND MINING OPERATIONS

No oil or water well drilling, oil or water development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

ARTICLE XVI

LIVESTOCK AND POULTRY

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purposes.

ARTICLE XVII

GARBAGE AND REFUSE DISPOSAL

No lot shall be used or maintained as a dumping ground for rubbish- Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or their equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

ARTICLE XVIII

DUST CONTROL

It shall be the responsibility of each lot owner to provide within six (6) months of occupancy of the dwelling a ground control to prevent the blowing of dirt that may be offensive to the other occupants. Ground control shall be the planting of grass or other suitable ground cover which covers the entire lot except for an area so designated for the use of a garden.

ARTICLE XIX

SIGHT DISTANCE AT INTERSECTIONS

No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or as in the case of a rounded property corner from the intersection, of the street property lines extended. The

same sight line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

ARTICLE XX

STREET LIGHTING

Present and subsequent owners of property in the area proposed to be served are subject to and bound by present and future Public Service Company of Colorado tariffs applicable to street lighting filed with the Public Utilities Commission of the State of Colorado.

ARTICLE XXI

ARCHITECTURAL CONTROL COMMITTEE MEMBERSHIP

The architectural control committee is composed of Charles D. Reicks, Thomas E, Folkestad and John Folkestad, all of Grand Junction, Colorado. A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At any time, the then record owners of the lots shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee or restore to it any of its powers and duties.

ARTICLE XXII

PROCEDURE

The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within thirty days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

ARTICLE XXIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by the affirmative vote or agreement of not less than sixty-seven percent (67%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 5. FHA/VA Approval. As long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

The Association agrees that the Declaration is amended to include the above-referenced amendments. This Amended and Restated Declaration will be recorded with the Office of the Clerk and Recorder of Mesa County, Colorado in order to memorialize the amendment of the Declaration.