

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COMSTOCK WEST SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COMSTOCK WEST SUBDIVISION ("Declaration") is made this 8th day of December 2003, by Comstock West, LLC, a Colorado limited liability company ("Declarant");

RECITALS

A. Declarant is the owner of real property ("Property") in the City of Fruita, County of Mesa, State of Colorado, legally described as:

Tax Schedule 2697 074-00-018

The NW ¼ of SE ¼ of section 7, Township 1 North, Range 2 West of the Ute Meridian, being Lot Four (4) of the Orchard Subdivision to Fruita, according to the official Plat thereof recorded in Plat Book No. 1 at Page 7, Official Records of Mesa County, Colorado. Together with an easement for ingress and egress and utility lines as described in Warranty Deed recorded September 17, 1987 in Book 1333 at Page 890, Official Records, Mesa County, Colorado. 40 acres m/l.

B. Declarant desires to impose a general plan for the improvement, development and maintenance of the Property, and to adopt and establish covenants, conditions and restrictions upon the Property for the purpose of enhancing, maintaining and protecting the value and desirability of the Property.

C. Declarant deems it desirable to set aside a portion of the Property as common areas for the use of the owners of the Property, and to establish a Colorado nonprofit corporation, Comstock West Subdivision Homeowners Association (the "Association"), to which such common areas from time to time shall be conveyed.

THEREFORE, Declarant covenants, agrees and declares that the Property shall be held, sold, conveyed, encumbered, leased, used, occupied and improved, subject to the following limitations, restrictions, easements, covenants, conditions, reservations, liens and charges, all of which are declared and agreed to be in furtherance of a general plan for the improvement and development of the Property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall bind and benefit all parties having or acquiring any right, title or interest in the Property or any part of it and the successors in interest of such parties, and are imposed upon the Property and every part of it as equitable servitudes which may be enforced by the Declarant, its successors and assigns, each Owner, his or her successors and assigns, or by the Association, its successors and assigns.

**ARTICLE I
DEFINITIONS**

Section 1.01. "Articles" shall mean the Articles of Incorporation of the Association, as they may be amended from time to time.

Section 1.02. "Association" shall mean and refer to Comstock West Subdivision Homeowners Association, a nonprofit corporation, incorporated under Colorado law.

Section 1.03. "Association Water" shall mean and refer to all shares of the capital stock of Elmwood Lateral Irrigation Company and any other water or water rights, ditch or ditch rights, reservoir or water storage rights appurtenant to any portion of the Property or used in connection with any portion of the Property and owned or controlled by the Association.

Section 1.04. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 1.05. "Bylaws" shall mean the Bylaws of the Association as they may be amended from time to time.

Section 1.06. "CCIOA" means the Colorado Common Interest Ownership Act presently codified at 38-33.3-101, *et seq.*, as it may subsequently be amended from time to time.

Section 1.07. "Common Area" shall mean any and all real property, and the improvements and fixtures on it owned or leased by the Association for the common use and enjoyment of the Members, including any street or other lighting fixtures owned or controlled by the Association and signage on any Common Area or for the general benefit of the Subdivision or Owners, whether or not located on the Common Area. The Common Area shall be as shown on the recorded plat of the Property and described in the Map.

Section 1.08. "Limited Common Area" means those parts of the common areas which are either limited or reserved in this Declaration, on a Map, or by action of the Association, for the common use of more than one (1) but fewer than all Owners.

Section 1.09. "Common Expenses" shall mean and include expenditures made and liabilities incurred by or on behalf of the Association.

Section 1.10. "Conveyance" shall mean and refer to conveyance of a fee simple title, or lease of any part of the Property.

Section 1.11. "Declarant" shall mean and refer to Comstock West, LLC, a Colorado limited liability company, its successors and assigns designated in writing to be the successor of Declarant, subject to any limitation on transfer of special declarant rights contained in this Declaration or CCIOA.

Section 1.12. "Lot" shall mean and refer to each numbered lot of the Property described in the Map. Boundaries of a Lot shall be as shown and defined on the Plat Map of the Subdivision as recorded and amended.

Section 1.13. "Unimproved Lot" shall be a Lot upon which no improvements have been constructed.

Section 1.14. "Improved Lot" shall be a Lot upon which improvements have been constructed.

Section 1.15. "Member" shall mean and refer to every person or entity who holds a membership in the Association as provided in Section 2.01.

Section 1.16. "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a Lot, or any interest in it, including, but not limited to, the improvements on it, to secure the performances of an obligation.

Section 1.17. "Mortgagee" shall mean and include mortgagees, trustees, beneficiaries and holders of a Mortgage, and the holders of any indebtedness secured by Mortgage.

Section 1.18. "Mortgagor" shall mean and include mortgagors and trustors under deeds of trust which are Mortgages.

Section 1.19. "Owner" shall mean and refer to Declarant and to any person or entity holding a record fee simple ownership interest in any Lot which is a part of the Property, including contract purchasers, but excluding Mortgagees (unless and until a Mortgagee acquires record fee ownership) and those having such interest merely as security for the performance of an obligation.

Section 1.20. "Subdivision" shall mean all of the Property, and improvements thereon, subject to this Declaration or any amendment to this Declaration.

Section 1.21. "Assessment" shall mean and refer to any or all of the following:

- (a) "Regular Assessment" shall mean and refer to a charge against each Lot representing that portion of the Common Expenses attributable to such Lot as provided for in Section 4.05.
- (b) "Special Assessment" shall mean and refer to a charge against any Lot for certain costs incurred by the Association or Declarant for materials or services furnished to the Owner or his or her Lot at the request of or on behalf of such Owner, or as a result of any Owner failing to maintain any portion of his or her Lot in accordance with the provisions of this Declaration, or as a result of the negligence, recklessness, or willful misconduct of any Owner, his or her employees, guests or invitees, or for excessive use or special use of the services or facilities provided by the Association, including but not limited to parking, trash removal and maintenance of improvements, or for any other purpose for which this Declaration specifies the imposition of a special assessment.
- (c) "Capital Improvement Assessment" shall mean and refer to a charge against any Lot representing a portion of the cost of the Association for the installation, construction, expected or unexpected repair or replacement of any capital improvements (including the necessary fixtures and personal property related to

it) on the Common Area or any other portion of the Property upon which the Association may be required to install, maintain, repair or replace any capital improvements as provided in this Declaration, including without limitation reserves for repair or replacement of existing capital items, and acquisition, construction and installation of new improvements.

Section 1.22. "Residence" means the single family dwelling unit located on a Lot.

Section 1.23. "Irrigation Facilities" shall mean and refer to all improvements, equipment, facilities, and other real and personal property owned, operated, or maintained by the Association for the purpose of delivering water to the Lots and Common Area for irrigation purposes, and shall include, but not be limited to, all pumps, pipes, pipelines, risers, connectors, controls, siphons, filters, valves, and related parts and materials located in, under, or upon easements within the Subdivision, or elsewhere outside of the Subdivision.

Section 1.24. "Map" or "Plat Map" means the plan map of the Property attached to this Declaration pursuant to the requirements of CCIOA and includes the plat of the Property if a separate plat is attached to this Declaration. THIS MAP MAY BE CHANGED IN THE FUTURE AND DOES NOT MEAN THE SUBDIVISION OF LOTS SHOWN HAS BEEN APPROVED BY ANY GOVERNMENTAL AUTHORITY.

Section 1.25. "Property Manager" shall mean a person or entity hired by the Association as an independent contractor to oversee such tasks as may be delegated to the Property Manger by the Board of Directors from time to time.

ARTICLE II
THE ASSOCIATION
MEMBERSHIP; VOTING RIGHTS; DECLARANT CONTROLS

Section 2.01. Membership. Every Owner of one (1) or more Lots in the Property shall be entitled and required to be a Member of the Association, subject to the voting rights provisions of this Article II. No person or entity other than an Owner of one (1) or more Lots in the Property may be a Member of the Association. No Owner shall be entitled to sever his or her ownership interest in a Lot from membership in the Association; provided, that this shall not be construed as precluding the Owner of a Lot from creating or severing a co-tenancy, joint tenancy or any other form of co-ownership with any other person or persons.

Section 2.02. Allocation of Votes. Each Lot shall be allocated one (1) vote in the Association, subject to Section 2.04.

Section 2.03. No Cumulative Voting. In the election of directors, cumulative voting shall not be allowed.

Section 2.04. Membership Appurtenant. Membership in the Association shall be appurtenant to and inseparable from a Lot. Membership in the Association may not be transferred except in connection with the transfer of ownership of a Lot and shall be automatically transferred by conveyance of a Lot without additional action or documentation.

Section 2.05. Directors of the Association. The affairs of the Association shall be managed by a board of three (3) directors initially. When Declarant relinquishes control of the Board to the Owners pursuant to subsection 2.06(a), the Board shall be managed by at least five (5) directors. Directors shall meet the qualifications described in the Articles and Bylaws.

Section 2.06. Management of the Association.

- (a) Notwithstanding anything stated elsewhere in this Declaration, until the earliest of: (a) ten (10) years after the date of recording of this Declaration in the offices of the Mesa County, Colorado Clerk and Recorder; (b) sixty (60) days after conveyance of 75% of the Lots which may be created to Owners other than Declarant; or, (c) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business, Declarant may appoint and remove all Association officers and all members of the Board of Directors, subject to the limitations stated in this Section 2.06.
- (b) Not later than sixty (60) days after conveyance of 25% of the Lots which may be created by the terms of this Declaration to Owners other than Declarant, at least one member, and not fewer than 25% of the members, of the Board of Directors must be elected by the Owners of Lots other than Declarant.
- (c) Not later than sixty (60) days after conveyance of 50% of the Lots which may be created by the terms of this Declaration to Owners other than Declarant, not fewer than 33-1/3% of the members of the Board of Directors must be elected by Owners other than Declarant.
- (d) Upon the termination of the period of Declarant control specified in subsection 2.06(a), the Owners shall elect a Board of Directors of at least five (5) members, who must be Owners other than Declarant or designated representatives of Owners other than Declarant. The Board of Directors so elected and officers shall take office upon termination of the period of Declarant control specified above.
- (e) Notwithstanding anything to the contrary stated elsewhere in this Section 2.06, by a vote of 67% of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, any member of the Board of Directors may be removed with or without cause, other than a member appointed by Declarant.

ARTICLE III
PROPERTY RIGHTS IN THE LOTS AND COMMON AREA

Section 3.01. Title to the Common Area. Prior to the sale of any Lot to Owners other than Declarant, Declarant shall convey fee simple title to the Common Area to the Association free and clear of all liens and encumbrances, except this Declaration, then current real property taxes (prorated to the date of conveyance), and liens and encumbrances and other title exceptions of record on the date of recording of this Declaration.

Section 3.02. Members' Easements of Enjoyment. Every Member shall have a non-exclusive right and easement in and to the Common Area, including, but not limited to, an easement for ingress and egress over and through the Common Area. Each such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The Association shall have the right to adopt uniform rules and regulations pertaining to the use and enjoyment of the Common Area;
- (b) The Association may borrow money and encumber (by mortgage, deed of trust or otherwise) the Common Area or any part of it for the purpose of improving the Common Area, provided any such encumbrance shall be expressly subordinate to the rights of the Members;
- (c) The right of the Association to suspend a Member's voting rights and Common Area use for any period during which any Assessment against his Lot remains unpaid and delinquent, and for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Association; provided that any suspension of such voting rights, except for failure to pay Assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws;
- (d) The right of Declarant or its designees to enter upon the Common Area for purposes of construction and development of the Subdivision and for purposes of making repairs and remedying construction defects; provided such entry shall not interfere with the use of any Improved Lot unless authorized by the Lot Owner; and

Section 3.03. Delegation of Use. Any Member may delegate in accordance with the Bylaws, his right of enjoyment to the Common Area to the members of his family, his licensees and invitees, or to his tenants or contract purchasers who are in possession of such Member's Lot.

Section 3.04. Waiver of Use. No Member may exempt himself from personal liability for Assessments duly levied by the Association nor release the Lot owned by him from the liens and charges created by CCIOA and this Declaration, by waiver of the use and enjoyment of the Common Area or the facilities on it or by abandonment of his Lot.

Section 3.05. General Restrictions. All Owners of Lots, by their acceptance of their respective deeds, covenant and agree that the Common Area shall remain undivided, and no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of Owners with respect to the operation and management of the Property.

ARTICLE IV
COVENANT FOR ASSESSMENTS

Section 4.01. Creation of the Lien and Personal Obligation of Assessments. The undersigned, for each Lot within the Property, covenants (and each Owner of any Lot by acceptance of a deed for that Lot, whether or not it shall be so expressed in that deed, is deemed to covenant and agree) to pay to the Association: (a) all Assessments and charges levied against that Lot; (b) all fees, charges, late charges, attorneys fees, fines, collection costs, interest and other sums charged pursuant to this Declaration or as allowed by CCIOA or any other applicable law.

All items set forth in this Section 4.01, from the time such items become due, shall be a charge on and covenant running with the land and shall be a continuing lien on the Lot against which each such item is charged. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations. A valid acceleration of installment Assessment obligations may be made by the Board at any time any Assessment installment is at least thirty (30) days overdue.

Each such item, together with interest, costs, and reasonable attorneys fees, shall also be the joint and several personal obligation of each person and entity who was the Owner of the Lot at the time when the item became due; provided that, this personal obligation shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner may be exempt from liability for Assessments by waiver of use or enjoyment of Common Area, Association Water, or other assets or benefits of the Association, or by abandonment of any Lot.

The Association's lien on a Lot for Assessments shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other such exemption as against such Assessment lien.

Section 4.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for: Common Expenses: to promote the health, safety, or welfare of the residents in the Property; or for the benefit of the Common Area or Association Water; or for any other purpose of the Association, as those purposes are specified by this Declaration or as otherwise authorized by CCIOA or other applicable law.

Section 4.03. Initial Assessment.

- (a) The initial Regular Assessment for Common Expenses shall be fixed in an amount set by, and made upon the resolution of, the Board of Directors.
- (b) After any Assessment has been made by the Association, Regular Assessments shall be made no less frequently than annually based on a budget adopted by the Association as described elsewhere in this Declaration. Assessments may include, without limitation, Capital Improvement Assessments and allocations for reserves for repair or replacement of existing capital items and acquisition, construction, and existing capital items and acquisition, construction, and

installation of new improvements, all to the extent set forth in the approved budget upon which such Assessment is based.

- (c) Until the Board of Directors makes an Assessment, all expenses of the Association shall be paid by Declarant.

Section 4.04. Date of Commencement of Assessments; Due Dates. The first Regular Assessment for Common Expenses shall be adjusted according to the number of months remaining in the calendar year for which the Assessment is made, if less than a full year. Thereafter, the Board shall fix the amount of the annual Regular Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period. Written notice of the annual Regular Assessment shall be sent to every Owner subject to the Assessment. The due date(s) 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. Special Assessments and Capital Improvement Assessments may be made by the Board at any time, except as limited by this Declaration, CCIOA or other applicable law.

Section 4.05. Expense Allocation. Except as otherwise stated in this Section 4.05, or as otherwise provided by CCIOA or other applicable law, each Lot shall be allocated a fraction of the Common Expenses of the Association in which the numerator is one and the denominator is the number of Lots then in the Subdivision. If permitted by CCIOA or other applicable law, any Common Expense or portion of any Common Expense benefiting or caused by fewer than all Lots shall be assessed exclusively against the Lots benefited by or causing the Common Expense or other cost or expense.

Section 4.06. Priority of Lien. The lien for Assessments, which includes without limitation all those items specified in Section 4.01, shall have the priority specified in CCIOA or any other applicable law.

ARTICLE V BUDGET AND RECORDS

Section 5.01. Books and Records. The Board of Directors shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association in a manner consistent with generally accepted accounting principles. All books, records, and papers of the Association shall be available for inspection and copying by any Member or his or her representative during regular business hours at the principal office of the Association. The Board of Directors may establish reasonable rules concerning notice to be given the custodian of the records by anyone desiring to inspect them, and payment of reproduction costs by the requesting Member.

Section 5.02. Annual Budget. The Board of Directors shall cause to be prepared no less than annually an operating budget, balance sheet, and cash flow statement for the Association.

Section 5.03. Delivery of Budget. Within thirty (30) days after adoption of any proposed budget, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget within a reasonable time after mailing or other delivery of the summary.

Section 5.04. Ratification of Budget. Unless at the meeting Owners representing a majority of all Lots reject the budget, the budget is ratified, whether or not a quorum is present.

Section 5.05. Rejection of Budget. In the event that the proposed budget is rejected, the budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

Section 5.06. Reserve Fund. As part of each annual budget, the Board of Directors shall include an amount which, in its reasonable business judgment, will at least establish and maintain an adequate reserve fund for the placement of any personal property, fixtures, and improvements required to be operated or maintained by the Association based upon age, remaining life, replacement cost, and any other relevant factors.

ARTICLE VI
NONPAYMENT OF ASSESSMENTS

Section 6.01. Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent. If any such Assessment is not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest from the date of delinquency at a rate not to exceed the maximum rate of interest (presently 21% per annum) permitted by CCIOA or other applicable law. The Association may, at its option, bring an action at law against the Owner personally obligated to pay the same or, upon compliance with the notice provisions set forth in Section 6.02, foreclose the lien provided for in Section 4.01 against the Lot(s) as to which the Assessment has not been paid, and in either case there shall be added to the amount of such Assessment and interest thereon, all costs which may be incurred by the Association in its collection thereof, including reasonable attorney's fees. Each Owner vests in the Association or its assigns the right and power to bring all actions at law or institute judicial foreclosure proceedings against such Owner or other Owners for the collection of such delinquent Assessments.

Section 6.02. Foreclosure Sale. Any foreclosure sale related to an Assessment lien is to be conducted in accordance with those provisions of the laws and rules of the courts of the State of Colorado applicable to the foreclosure of mortgages, or in any other manner then permitted or provided by applicable law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same in the name of the Association.

Section 6.03. Curing of Default. Upon the timely curing of any Assessment delinquency the Association is authorized to file or record, as the case may be, a certificate setting forth the satisfaction of such claim and release of such lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release, and other expenses incurred.

Section 6.04 Cumulative Remedies The Assessment lien and the rights of foreclosure and sale under it shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have under this Declaration and then applicable law, including without limitation a suit to recover a money judgment for unpaid Assessments, as above provided.

ARTICLE VII
ARCHITECTURAL CONTROL

Section 7.01. Special Requirements for Lot Nos. 8 - 22 No part of the footprint of a Residence on Lot numbers 8 through 22, including all attached porches, garages, enclosed patios, all detached structures including garages and garden sheds constructed on permanent slabs or foundations, shall be within a minimum of 20 feet (20) of "Rear Lot Line" running through those Lots as depicted on the Plat Map. *Landscape & Irrigation Restrictions also apply to Lots 8 through 22 as listed in section 10.23, and fence restrictions per section 10.19.* This section 7.01 may be amended only by approval of such amendment both in accordance with this Declaration and with written consent of the City of Fruita.

Section 7.02. Architectural Approval. All improvements on any Lot shall be in compliance with the zoning approved by the City of Fruita. No building, fence, wall, sign or other structure shall be commenced, erected or maintained upon the Property (including the Common Area), nor shall any exterior addition to or change or alteration (including without limitation painting, landscaping, irrigation systems, fences, trash receptacles) be made until plans and specifications showing the nature, kind, shape, height, materials, location and other relevant information of the same have been submitted to and approved in writing by the Architectural Control Committee (the "Committee") as to harmony of external design and location in relation to surrounding structures, topography and other matters specified in this Article VII. Plans submitted to the Committee need not include evidence of compliance with zoning or other requirements of the City of Fruita. In the event such Committee, or its designated representative, fails to approve or disapprove such plans in writing within fifteen (15) days after a plan has been submitted to it, the plans will be deemed to have been approved, however, this provision does not apply to foundations and other restrictions that apply specifically to Lots 8 - 22. See Section 7.01 above.

Section 7.03. Plan Submittal Procedure. All plans and specifications required to be submitted to the Committee under Section 7.01 must be submitted in the form of a complete application. A complete application shall mean submission by the Owner of one copy of finished working drawings and specifications complying with provisions outlined in this Article VII.

Section 7.04. Plan Requirements. Residence plans must consist of: exterior elevations; a plot plan including property lines, setbacks, easements, structures, driveways, any accessory structures, fences, and proposed grading; and floor plans indicating square footage. Exterior colors shall also be submitted.

Section 7.05. Permits and Fees. The Owner shall apply for and pay all fees for all permits and inspections required by the governing authorities and codes for any improvements covered by this Article VII.

Section 7.06. Completion. Approved projects must be completed within the later of six (6) months after issuance of a building permit or within six (6) months after approval by the Committee if no building permit is required. Failure to complete work within the prescribed time may cause the approval to be rescinded and resubmittal will be required. The Committee may grant an extension under extenuating circumstances brought to its attention.

Section 7.07. Building Size. In considering the design of proposed improvements, the Committee shall consider, without limitation, maintaining compatibility with the natural setting of the Property and not permitting any proposed Residence or other improvement to dominate the surrounding Residences and area. A Residence shall be no more than one (1) level. Minimum square footage of heated living area for a Residence (excluding garage, enclosed patios and decks, attics and unheated storage areas) in the Subdivision shall be 1400 square feet for all Lots.

Section 7.08. Repetition of Residence Design. The exterior design of a Residence shall not be repeated within three (3) adjacent lots (Lots separated by a street are not considered adjacent). A design can be used within the three adjacent lots if the exterior design is substantially changed. Such substantial change shall include, but does not need to be limited to: roof configuration, siding window location, window sizes, garage door and front entrance. The Committee will have the right to decide if the design meets these requirements.

Section 7.09. Exterior Colors. Semi-transparent or solid colors in moderate hues only are acceptable, and must be approved by the Committee. The color combination for the body and trim of a Residence may not be repeated by any other adjacent Living Unit within two (2) Lots (Lots separated by a street are not considered adjacent).

Section 7.10. Roofs. Roofs must be architectural asphalt shingle with at least a thirty (30) year life, unless otherwise approved by the Committee. A minimum four (4) in twelve (12) pitch shall be maintained on all roofs. All roof colors must be of a moderate hue as approved by the Committee.

Section 7.11. Exterior Walls. All elevations of each Residence shall be of cedar, redwood, oriented stranded board or other approved wood in a tongue and groove, lap siding, or board and bat pattern, or of a masonry or stucco veneer. All Residences shall have at least 20% brick, rock, stone or comparable material approved by the Committee on any surface that faces a street. A Residence of which the walls are primarily composed of stucco shall be exempt from the foregoing 20% requirement.

Section 7.12. Windows. Windows shall be of a design and color complementary to the exterior of the Residence. Window frames of mill finished aluminum will not be allowed.

Section 7.13. Driveways. All driveways shall be composed of concrete unless otherwise approved by the Committee.

Section 7.14. Structures. Only new construction shall be permitted in the Subdivision. No home or garage shall be of the type known as "prebuilt, precut, modular, manufactured or mobile homes," regardless of its quality. No structure shall be built or placed on the Property without submittal to, and approval by, the Committee in accordance with this Article VII.

Section 7.15. Soils Report and Engineered Foundations. All Owners are hereby notified that a soils report for the Property dated June 7, 2002, by Grand Junction Lincoln DeVore, Inc. is recorded in the Mesa County real property records at Book 3405, beginning at Page 693. This report should be reviewed by an engineer prior to the construction of any improvements. It is required that Lots 8 through 22 and Lots within the Subdivision having a basement utilize engineered foundations.

Definition of Engineered Foundation: A foundation designed by a Professional Engineer registered and within the State of Colorado, and certified by said Engineer via seal or signature that the foundation is consistent with the Geotechnical Report for the Subdivision.

Section 7.16. Time of Construction. Subject to the time limits stated in Section 7.05, all projects approved by the Committee shall be diligently commenced and completed in compliance with this Declaration and all applicable laws, ordinances and codes. In addition, each Owner acquiring from Declarant any Lot(s) on which a Residence is not located at the time of purchase shall commence construction of a Residence within one (1) year after the date of purchase, unless an extension is granted by the Committee prior to the expiration of that one (1) year period.

ARTICLE VIII
ARCHITECTURAL CONTROL COMMITTEE

Section 8.01. Composition of the Committee. The Committee shall consist of three (3) or more persons appointed by the Board of Directors; provided, however, that until Declarant has conveyed all Lots to Owners other than the Declarant, or until ten (10) years after the date of the recording of this Declaration in the office of the Clerk and Recorder of Mesa County, Colorado, whichever occurs earlier, Declarant shall appoint the Committee. Reasonable effort shall be made to have a licensed architect as a Committee member. The power of the Declarant to "appoint," as provided herein, shall include without limitation the power to: initially constitute the membership of the Committee, appoint member(s) to the Committee upon the occurrence of any vacancy, and for whatever reason to remove any member of the Committee, with or without cause, at any time, and appoint a successor; and each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the Declarant. All improvements within the Property constructed by Declarant during the period in which it appoints the Committee, with the exception of any Residence constructed by Declarant, shall be deemed approved by the Committee without the issuance of any writing evidencing such approval.

Section 8.02. No Liability. Neither Declarant or the Association, nor the Committee or its members, shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any owner of property affected by these restrictions, by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Any Owner submitting, or causing to be submitted, any plans or specifications, agrees and covenants on behalf of himself or herself and his or her heirs, successors, legal representatives, and assigns that he or she will not bring any action or suit at law or in equity against the Declarant, the Association, the Committee, or any of the Members thereof to recover any such damage.

Section 8.03. Notice of Noncompliance or Noncompletion. Notwithstanding anything to the contrary contained in this Declaration, after the expiration of one (1) year from the date of completion of construction of any improvements within the Property, such improvements shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all the provisions in this Article VIII, unless actual notice of such noncompliance and noncompletion, executed by the Committee or its designated representatives, shall appear of record in the office of the County Recorder of Mesa County, Colorado, or unless legal proceedings shall have been instituted to enforce compliance or completion.

Section 8.04. Rules and Regulations. The Committee may from time to time, in its sole discretion, adopt, amend and repeal rules and regulations interpreting and implementing the provisions of this Article VIII.

Section 8.05. Variances. Where circumstances (such as topography, location of property lines, location of trees, or other matters) require, the Committee, by the vote or written consent of a majority of the Members thereof, may allow reasonable variances evidenced in writing as to any of the covenants, conditions or restrictions contained in the Declaration under the jurisdiction of the Committee, on such terms and conditions as it shall require. The granting of a variance shall not operate to waive on any other occasion any of the terms and provisions hereof covered by the variance and shall not necessarily serve as a basis for subsequent variances with respect to any other request. The granting of any variance shall in no way affect the Association's or Owner's obligation to comply with the ordinances of the City of Fruita and other applicable governmental laws or regulations. The Committee shall have no authority to allow variances as to the covenants, conditions and restrictions in Section 7.14 and Section 10.23. The restrictions in the previous sentence may be amended only by approval of such amendment both in accordance with this Declaration and with the written consent of the City of Fruita.

Section 8.06. Appointment and Designation. The Committee may from time to time, by the vote or written consent of a majority of its members, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified persons who shall have full authority to act on behalf of the Committee in all matters delegated.

Section 8.07. Review Fee and Address. Any plans and specifications shall be submitted in writing for approval together with a reasonable processing fee determined by the Board. The address of the Committee shall be the principal place of business of the Association or such other place as the Committee may from time to time designate in writing to the Board of Directors. The address shall be the place for the submittal of any plans or specifications and the place where the current rules and regulations, if any, of the Committee shall be kept.

Section 8.08. Inspection. Any member or agent of the Committee may from time to time at any reasonable hour or hours and upon reasonable prior notice enter and inspect any property subject to the jurisdiction of the Committee as to its improvement or maintenance in compliance with the provisions thereof.

Section 8.09. General Provisions. The members of the Committee shall not be entitled to any compensation for services performed under this Article VIII. The powers and duties of the Committee shall cease and terminate on the earlier of termination of this Declaration or a date forty (40) years after the date of the recording of this Declaration. Thereafter, the approval described in this Article VIII shall not be required unless, prior to that date a written instrument is executed and duly recorded by the then record Owners of a majority of the Lots appointing a representative or representatives who shall thereafter exercise the same powers previously exercised by the Committee.

Section 8.10. Compliance with Governmental Laws. The Declarant, its successors and assigns, all Owners of any Lot and their successors and assigns by their acceptance of their respective deeds, and the Association, shall be bound by and subject to the laws of the State of Colorado and ordinances of the City of Fruita and all other applicable governmental laws or regulations. No building or other structure

or addition or change or alteration thereof shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on any of the real property within the Property, including the Common Area, which is in violation with any of the laws or ordinances of the City of Fruita or any other applicable governmental laws or regulations.

ARTICLE IX
ASSOCIATION POWERS

Section 9.01. Authority. The Association shall have all rights, powers, and authority specified or permitted by: (a) CCIOA; (b) any other applicable law; (c) this Declaration; and (d) the Articles and Bylaws, to the extent not inconsistent with (a), (b) or (c).

Section 9.02. Actions Against Owners. The Association may take judicial action against any Owner to enforce compliance with any provisions of this Declaration, obtain mandatory or injunctive relief, or obtain damages for noncompliance and exercise any other right or remedy for enforcement of this Declaration permitted by law. All of such rights and remedies of the Association shall be cumulative and nonexclusive.

Section 9.03. Conveyance or Encumbrance. The Association shall have the right to encumber, dedicate, or convey all or any part of the Common Area or the Association interest in Association Water or any other Association asset. However, no such encumbrance, dedication, or conveyance shall be effective unless and until a written instrument agreeing to such encumbrance, dedication, or conveyance is approved by the City of Fruita, signed by 75% of all Owners (including 75% of all Owners other than Declarant), and recorded in the Mesa County records. Such instrument may be signed in counterparts which shall together constitute a single agreement. This Section 9.03 may be amended only by approval of such amendment both in accordance with this Declaration and with the written consent of the City of Fruita.

Section 9.04. Management Agreement and Other Contracts.

- (a) The Association may utilize professional management in performing its duties. Any agreement for professional management of the Association's business or any contract providing for the services of Declarant shall have a maximum term of three (3) years and shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon thirty (30) days prior written notice.
- (b) Any contracts, licenses or leases entered into by the Association while the Declarant controls the Association shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, at any time after termination of the Declarant's control or the Association, upon thirty (30) days prior written notice.
- (c) Notwithstanding anything to the contrary contained in this Section 9.04, the Association may enter into contracts, licenses and leases in violation of this Article IX upon a waiver of any requirements contained herein by the Federal National Mortgage Association.

Section 9.05. Owner's Negligence. In the event that the need for maintenance or repair of the Common Area is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair or maintenance shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to and become part of the Assessment as a Special Assessment or part of a Regular Assessment to which such Owner's Lot is subject and shall become a lien against such Owner's Lot. A determination of the negligence or willful act or omission of any Owner or any member of the Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section 9.05 may be appealed by such Owner to a court of law.

- (a) No Owner shall engage in any activity which will temporarily or permanently deny free access to any part of the Common Area to all Members, nor shall any Owner place any structure or fence, except those installed by Declarant, upon the Common Area.
- (b) The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors.

ARTICLE X
USE RESTRICTIONS

Section 10.01. Delegation of Use. Any Owner may delegate his or her right of enjoyment to the Common Area and use of Association Water to the members of his or her family residing with such Owner, his or her tenants, or contract purchasers who reside on the Lot owned by that Owner.

Section 10.02. Declarant's Use. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, its successors and assigns, or any agent, contractor, subcontractor or employee of the Declarant to maintain during the period of construction and sale upon such portion of the properties as Declarant deems necessary such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to such construction and sale, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 10.03. Use of Property. In addition to the duties stated elsewhere in this Declaration, each Owner shall have the duty and obligation to perform and comply with the following restrictions to preserve the overall value of the entire Property.

- (a) Only one (1) single family dwelling may be constructed on each Lot. Each single family dwelling may only be occupied by a single family. A "single family" is any number of persons living together as a single dwelling unit who are related by blood, marriage, or adoption, but excludes any group of more than four individuals who are not all related by blood, marriage, or adoption.

- (b) No portion of any Lot shall be used other than for residential purposes, except as expressly permitted by this subsection 10.03(b). No commercial activities of any kind shall be carried on in any portion of the Property except activities relating to the sale or rental of Lots, nor shall any goods, equipment, vehicles, materials, or supplies used in connection with any trade, service, or business be kept or stored on any such Lot. This subsection 10.03(b), however, shall not be construed so as to prevent or prohibit an Owner from maintaining his professional records or accounts, handling his personal or professional business or professional telephone calls, or occasionally conferring with business or professional associates on his Lot.
- (c) Maintenance, upkeep and repairs of any residence or other improvements on each Lot shall be the sole responsibility of the Owner thereof.
- (d) All utilities lines, fixtures and equipment exclusively serving a Lot (excluding, for example, utilities trunk lines) installed within the perimeter of that Lot, shall be maintained and kept in repair by the Owner thereof. An Owner shall not impair any easement or allow any condition to exist which will adversely affect the other Lots or their Owners.

Section 10.04. Household Pets. No animals, livestock, reptiles, poultry or insects, of any kind, shall be raised, bred, kept or boarded in or on the Property; provided, however, that the Owners of each Lot may keep a reasonable number of dogs, cats, fish or other domestic animals which are bona fide household pets, so long as such pet(s) are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident(s) of the Property. An Owner's right to keep household pet(s) shall be coupled with the responsibility to pay for any costs to the Association for any damages caused by such Owner's pet(s).

Section 10.05. Lots to be Maintained. The Owners shall keep, maintain, and repair their Lots and improvements on their Lots (including, for example, landscaping) in a neat, clean, cultivated, attractive, and well maintained condition, free from the accumulation of trash or debris. If any Owner fails to keep and maintain that Owner's Lot(s) or improvements in accordance with this provision, the Association may (but shall not have the obligation to) conduct such maintenance, repairs, or restoration and assess its cost as a Special Assessment to the Owner on whose Lot or improvement such maintenance or repairs were conducted.

Section 10.06. Temporary Structures, Time Limits For Construction. Except as expressly permitted by this Declaration, no structure of a temporary character, including but not limited to a house trailer, tent, shack, or outbuilding shall be placed or erected upon any Lot, and no Residence shall be occupied in any manner at any time prior to its being fully completed, nor shall any Residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions herein set forth; provided, however, that during the actual construction, alteration, repair or remodeling of a Residence, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work.

Section 10.07. Signs. No sign, graphic, or advertising device shall be placed on the Property except (a) one (1) sign of not more than four (4) square feet advertising a Lot for sale, and (b) political

signs in support of candidates or ballot issues limited to the ninety-day period including and immediately preceding the election date on which the candidates or issues will be voted upon. This provision shall not limit or preclude street, road, or residence identification signs or traffic control signs or devices.

Section 10.08. Antennas. Except to the extent expressly limited or prohibited by applicable federal or state law or regulation, no antenna for transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used, or maintained on any Lot outside of the residence on that Lot, except (a) a satellite dish not more than twenty-four (24) inches in diameter or completely screened from view by solid fencing complying with the requirements of this Declaration, or (b) as otherwise permitted by the Association.

Section 10.09. Yard Ornamentation. All ornamentation in yards, such as figurines, plastic flowers, colored lights, windmills, bird baths or feeders, shall either be screened from public view or approved by the Architectural Control Committee. This Section 10.09 shall not apply to seasonal holiday decorations which are promptly removed after the holiday or to the display of the flag of the United States of America on national holidays.

No clotheslines, dog runs, drying yards, service yards, wood piles or storage areas shall be so located on any Lot as to be visible from a street. Any accessory building shall be a maximum of eight (8) feet in height and shall be subject to the review and approval of the Architectural Control Committee.

Section 10.10. Vehicular Parking, Storage and Repairs.

- (a) No house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, snowmobile, ATV, motor-driven cycle, truck (larger than one ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, or accessories thereto, may be parked or stored on or within the Property unless such parking or storage is done wholly within the enclosed garage located on a Lot or is otherwise screened by a solid fence six (6) feet in height (even if the vehicle exceeds that height) which complies with Section 10.19. Any such vehicle may be parked as a temporary expedience for loading, deliveries, or emergencies. This restriction, however, shall not restrict trucks or other commercial vehicles within the Property which are necessary for construction or for the maintenance of the Common Area, Lots, or any improvements located thereon.
- (b) Except as provided in this Section 10.10, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on or within the Property. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, snowmobile, ATV, camper, house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which has not been driven under its own propulsion for a period of two (2) weeks or longer, or which does not have an operable propulsion system installed therein; provided, however, that otherwise permitted vehicles parked by Owners while on vacation or during a period of illness shall not constitute

abandoned or inoperable vehicles. In the event the Association determines that a vehicle is an abandoned or inoperable vehicle, then a written notice describing such vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the abandoned or inoperable vehicle is not removed within seventy-two (72) hours thereafter, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

- (c) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers or boats, may be performed or conducted on or within the Property, unless it is done within a 24-hour time period or within completely enclosed structure(s) which screen the sight and sound of the activity from the street, from adjoining Lots and other property, and the Common Area. The foregoing restrictions shall not be deemed to prevent the washing or polishing of any motor vehicle, boat, trailer, or motor-driven cycle, together with those activities normally incident and necessary to such washing or polishing.
- (d) Each residence shall have a minimum of a two (2) car attached garage and a maximum of a three (3) car attached garage.

Section 10.11. Nuisances. No nuisance shall be permitted on or within the Property, nor any use, activity or practice which is the source of annoyance or embarrassment to, or which offends or disturbs any residents of the Property, or which interferes with the peaceful enjoyment or possession and proper use of the Property, or any portion thereof by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant or its designees which are reasonably necessary to the development of and construction on the Property; provided, however, that such activities of the Declarant or its designees shall not unreasonably interfere with any Owner's use and enjoyment of his Lot or the Common Area, or with any Owner's ingress and egress to or from his Lot and a public way.

Section 10.12. Lots Not to be Subdivided. No Lot shall be subdivided, except for the purpose of combining all or portions with one or more adjoining Lots, provided that no additional building site is created thereby. Not less than one (1) entire Lot, as conveyed, shall be used as a building site.

Section 10.13. Underground Utility Lines. All electric, television, radio, and telephone line installations shall be placed underground, except that during the construction of any residence the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of the construction.

Section 10.14. No Hazardous Activities. No activities shall be conducted on the Property or within the improvements constructed on or within the Property which are or might be unsafe or hazardous to any person or property.

Section 10.15. No Annoying Lights, Sounds or Odors. No light shall be permitted from any Lot which is unreasonably bright or causes unreasonable glare when viewed from the street, adjacent Lots or property or Common Area. No sound shall be emitted from any Lot which is unreasonably loud or annoying and no odor shall be permitted from any Lot which is noxious or offensive to others. No

firearms, explosives, air rifles, BB guns, crossbows or similar devises shall be discharged on the Property.

Section 10.16. Garbage and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, Common Area, or Lot, unless placed in a suitable container suitably located, solely for the purpose of garbage pickup. All containers shall be removed from the street the same day and returned to their screened area. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. All trash receptacles shall be screened from view of the street, neighboring Lots and the Common Area. No elevated tanks of any kind (oil, gas, water, etc.) shall be constructed on any Lot.

Section 10.17. Leases. The term "lease" shall include any agreement for the leasing or rental of a Lot or any portion thereof, and shall specifically include, without limitation, a month-to-month rental. Any Owner shall have the right to lease his or her Lot under the following conditions:

- (a) All leases shall be in writing;
- (b) All leases and a lessee's occupancy of a Lot shall be subject in all respects to the provisions of this Declaration, the Articles, Bylaws and rules and regulations of the Association, and failure by a lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease;
- (c) No lease shall be for less than thirty (30) days;
- (d) A copy of all leases must be kept on file with the Property Manager; and
- (e) The permanent address and phone number of the Lot Owner must be kept on file with the Property Manager.

The provisions of (b) and (c) above shall be contained in each lease, but shall also be deemed to be implied terms of each such lease, whether or not actually contained in the lease.

Section 10.18. No Mineral Exploration or Development. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted or undertaken on any portion of the Property nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted on any portion of the Property. No derrick or other structure designed for exploration for oil or natural gas shall be erected, maintained, or permitted on any portion of the Property.

Section 10.19. Fences. No fencing, privacy walls or hedges exceeding three (3) feet in height shall be constructed or permitted closer to any street than the nearest point of the residence on that Lot to that street. All fences shall not exceed six (6) feet in height and be constructed of wood or, if approved by the Architectural Control Committee in its sole discretion, vinyl or plastic to maintain the aesthetic quality of the Property. Chain link, cyclone or wire type fencing will not be permitted on the Lot, unless the cyclone fence is not on a property line of the Lot and fully screened from view of adjacent properties and the street. **Rear lot fencing for Lots 8 through 22 shall be no higher than four (4) feet in height and in compliance with above stated requirements.**

Section 10.20. Service Area. Storage or accessory buildings (such as dog houses, tool sheds, firewood, garbage, barbeque type buildings or enclosures), nonportable or affixed outdoor furniture such as picnic tables, barbecues, hot tubs, etc., shall be reasonably screened from public and neighboring view.

Section 10.21. Climate Control. Placement of heat pump and condenser units shall provide visual screening and noise attenuation to the neighboring Lots and Common Areas. Use of solar heating systems is acceptable provided that the panels or collectors are integrated into the structure with regard to the overall appearance and design, subject to approval by the Committee. Window mounted and through the wall units are not allowed unless screened from the street, neighboring Lots and the Common Area.

Section 10.22. Landscaping. Except as otherwise provided in this Declaration, the maintenance and repair of each Lot, including but not limited to landscaping, the interior and exterior of the residence, improvements constructed thereon, and the interior of any fence on the boundary line of a Common Area and a Lot shall be the responsibility of the Owner(s) thereof. It shall be the duty and obligation of each Owner to landscape the front yard of his or her Lot within 120 days from issuance of a Certificate of Occupancy and the backyard of his or her Lot within one (1) year from the issuance of a Certificate of Occupancy. The landscaping shall include at least two (2) trees, and five (5) shrubs. For good cause shown, the Architectural Control Committee may grant a onetime, written extension to the time limits contained in this Section 24 for an additional 120 days, in its sole and absolute discretion.

All Owners are encouraged to landscape each Lot utilizing xeriscape landscaping methods and techniques to minimize water usage for landscaping purposes. Yard areas not covered by lawn or other landscaping will be covered with rock (preferably river rock) or bark mulch.

Mounding of planting beds and lawn areas will be permitted if graded so as to blend with adjacent property and/or landscaping. Special care shall be taken to insure proper surface drainage to eliminate casual water pockets, so as to not infringe on neighboring property.

In the event any Owner maintains and keeps his or her yard or home in a condition which violates any of the use restrictions in this Section 10.22, the Board of Directors of the Association shall have the power to contract with an independent third party to remedy the violation. Such right to remedy shall arise after seven (7) days written notice of the nature of the violation is given to the Owner of the Lot, and the Owner has failed to remedy the violation within the seven (7) day period. The cost of correcting the violation shall be paid as a Special Assessment and is enforceable by the Association against the Owner of the Lot in violation. This remedy shall be in addition to other remedies provided herein for enforcement of the provisions of this Declaration.

Section 10.23. Restricted Landscape & Irrigation Area. Despite the provisions of Section 10.22, all land in Lots 8 through 22 lying westerly of the "Building Setback Line" running through those Lots as depicted on the Plat Map shall be a "Restricted Landscape Area," as shown on the "**Building Setback, Landscape and Irrigation Guidelines for Salt Wash Lots 8 through 22**", which is attached as Attachment "A" and incorporated by this reference. Only the native grass seed mixes listed in Attachment "A" for clay or sandy soils, and the trees and shrubs on the suggested plant list in Attachment "A," may be planted in the Restricted Landscape Area. Irrigation for the grasses is limited

to initial irrigation for establishment, and one (1) time per week thereafter by using only above ground sprinklers and hoses. No buried and / or automatic irrigation systems are allowed within the Restricted Landscape & Irrigation Zone. Trees and shrubs may only be irrigated by a domestic water drip irrigation system. No landscaping or irrigation other than that specified in this Section 10.23 shall be allowed in a Restricted Landscape Area. This Section 10.23 may be amended only by approval of such amendment both in accordance with this Declaration and with the written consent of the City of Fruita.

Section 10.24. Maintenance of Common Area. To the extent not performed by the applicable governmental entity or Owner, the Association shall be responsible for the landscaping and maintenance of the Common Area, including but not limited to repair of signage, fencing, stone columns, irrigation equipment, lighting and electrical fixtures and equipment, and plantings. No Owner shall, in whole or in part, change the landscaping, grade or fencing or in any way change the retaining wall on any portion of the Common Area.

ARTICLE XI ASSOCIATION WATER

Section 11.01. Management of Association Water. Due to concerns regarding water conservation, the Association shall have the exclusive authority to allocate, deliver, manage, and control the use of the Association Water. The Association shall own sixteen (16) shares of the capital stock of the Elmwood Lateral Irrigation Company. Further, the Association shall have the exclusive authority to own, operate, repair, and maintain the Irrigation Facilities. The Association's authority shall include (without limitation) the promulgation of rules, regulations, policies, and procedures not inconsistent with this Declaration, concerning the application and use of Association Water, including conservation measures and measures to reduce peak demand. The Association shall pay all fees and assessments to the irrigation company when due as necessary to prevent the loss of such water shares. This Section 11.01 may be amended only by approval of such amendment both in accordance with this Declaration and with the written consent of the City of Fruita.

Section 11.02. Easements for Ingress and Egress. All Irrigation Facilities shall be owned, operated, and maintained by the Association. Each Owner grants to the Association reasonable ingress and egress over, under, and across all easements shown on the Map or any recorded plat of any portion of the Subdivision for the purpose of operating, repairing, or maintaining Irrigation Facilities. No Owner shall construct, erect, or maintain any improvement or structure which shall interfere with the Association's ownership, operation, and maintenance of Irrigation Facilities. The Association shall have the authority to remove or alter any structure or improvement which shall interfere with the ownership, operation, and maintenance of the Irrigation Facilities, the costs of such removal to be borne by the Owner of the interfering improvement or structure. Despite anything to the contrary stated elsewhere in this Article XI, Declarant shall have the right to utilize the Irrigation Facilities to provide irrigation water to land added to the Property under Section 14.04; provided that:

- (a) The irrigation water utilized with Irrigation Facilities becomes Association Water when the land is added to the Property, and
- (b) This added use of the Irrigation Facilities does not interfere with delivery of Association Water then being delivered to Lots through the Irrigation Facilities.

Section 11.03. Irrigation Assessments. All billings by Elmwood Lateral Irrigation Company associated with Association Water shall be Common Expenses.

Section 11.04. Flow Restriction; Water Availability. The Association has the right to install and maintain flow restrictor valves on the irrigation pipelines delivering irrigation water to each Lot. Declarant, the Association, and each subsequent Owner understand and agree that the general area of the Property is desert-like in nature, that Irrigation Water availability varies and that such water is sometimes not available at all for extended periods and that use of Irrigation Water may be limited by the Association utilizing any reasonable means, including without limitation water schedules, water use plans, together with rules and regulations and other limitations on the availability and the nature, amount and area of Irrigation Water usage upon the Lots, Common Area and Property.

Section 11.05. Maintenance and Water Assessments. The Declarant, its successors and assigns shall maintain the Irrigation Facilities and pay all water assessments on Association Water until transfer to the Association; provided, however, that Declarant shall be reimbursed by the Association for all payments of water assessments paid by Declarant under this Section 11.05. Upon the transfer to the Association, full responsibility for the Irrigation Facilities and Association Water shall be borne by the Association.

Section 11.06. Transfer to Association. Prior to the sale of any Lot to Owners other than Declarant, fee simple title to the Irrigation Facilities and the sixteen (16) shares of capital stock of the Elmwood Lateral Irrigation Company shall be transferred from Declarant to the Association, free and clear of all liens and encumbrances, except this Declaration, then current real property taxes (prorated to the date of conveyance), and title exceptions of record on the date of recording this Declaration. After such transfer by Declarant, the Irrigation Facilities and the sixteen (16) shares of capital stock of the Elmwood Lateral Irrigation Company shall not be encumbered, dedicated or conveyed in all or in part without the express written consent of the City of Fruita. This Section 11.06 may be amended only by approval of such amendment both in accordance with this Declaration and with the written consent of the City of Fruita.

ARTICLE XII
INSURANCE

The Association shall obtain and maintain insurance as required by the Bylaws and CCIOA. Premiums for such insurance shall be Common Expenses.

ARTICLE XIII
DAMAGE OR DESTRUCTION OF COMMON AREA

In the event of damage or destruction to any improvement installed by the Association within the Common Area due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Area, the Association may levy a reconstruction assessment in the aggregate amount of such deficiency and shall proceed to make such repairs or reconstruction, unless:

- (i) the planned community is terminated;
- (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (iii) 80% of the Owners, including every Owner of a Lot that will not be rebuilt, vote not to rebuild; or
- (iv) prior to the conveyance of any Lot to a person other than Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Common Area rightfully demands all or a substantial part of the insurance proceeds;

provided that distributions of insurance proceeds shall be made unless made jointly payable to the Owners and First Mortgagees of their respective Lots, if any. The reconstruction Assessment provided for herein shall be a debt of each Owner and a lien on his or her Lot and the improvements thereon, and may be enforced and collected in the same manner as any Assessment lien provided for in this Declaration.

ARTICLE XIV
GENERAL PROVISIONS

Section 14.01. Easements. Easements for the installation and maintenance of utilities, irrigation and drainage facilities are reserved as shown on the recorded Plat of the Property, or any portion thereof, or other duly recorded instrument(s). Within these easements no improvement, structure, planting or other material (excluding fences capable of being readily removed for the purposes of the easement and the fences described in Section 10.19) shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of such utilities or facilities, or which may change the direction of flow or drainage channels in the easements. Declarant hereby reserves the right to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels.

Section 14.02. Conflict of Provisions. In case of any conflict between this Declaration, the Articles or Bylaws, this Declaration shall control. In case of any conflict between the Articles and the Bylaws, the Articles shall control.

Section 14.03. Street Lighting. Unless street lighting and the cost thereof is provided by the community in which jurisdiction this subdivision is situated, all Lots shall be subject to and bound to tariffs or other charges which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado or contracted for by the Association relating to street lighting in this Subdivision, together with rates, rules, regulations and terms therein provided and subject to all future amendments and changes on file with the Public Utilities Commission of the State of Colorado applicable to such facilities.

Section 14.04. Expansion.

- (a) **Reservation of Right to Expand.** The maximum number of Lots that Declarant reserves the right to create is 900. Declarant reserves the development right to expand the Property to include additional Lots and additional Common Areas at any time or times without approval by the Lot Owners so long as the total number of Lots does not exceed the maximum number provided in this subsection 14.04(a). The area of potential expansion is south and east of the Property.
- (b) **Supplemental Declarations and Supplemental Plats.** Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder of Mesa County, Colorado, one or more Supplemental Declarations and supplement Maps setting forth the Lots and other real property, if any, to be included in the expansion, or a statement that this Declaration shall govern and apply to that property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.
- (c) **Expansion of Definitions.** In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. All conveyances of Lots shall be effective to transfer rights in the Property as expanded. The recordation in the records of Mesa County, Colorado, of supplemental Map(s) or Plat Map(s) incident to any expansion shall operate automatically to grant, transfer, and convey to the Association any new Common Area added to the Property as the result of such expansion. The allocation for Assessments shall be amended pro rata to reflect the increase in the number of Lots added to the Declaration.
- (d) **Declaration Operative to New Lots.** The new Lots shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declaration, upon placing the supplemental parcel Map(s) depicting the expansion Property and Supplemental Declaration(s) of public record in the real estate records of Mesa County, Colorado.
- (e) **No Objection to Expansion.** No Owner Member of the Association shall have any right of objection to the exercise of the developmental right set forth above including any permitted expansion by Declarant.
- (f) **Declarant's rights under this Section 14.04 will expire twenty years after the date of recording of this Declaration in the Mesa County real estate records.**

Section 14.05. Term. The provisions of this Declaration shall each constitute covenants, running with the land applicable to all of the Lots, binding Declarant and all persons and entities claiming by, through, or under it for a period of twenty (20) years from the date of recording in the Mesa County real estate records of the Declaration, which shall be automatically extended for successive periods of twenty (20) years each, without action by or notice to any person or entity unless amended or terminated as provided below.

Section 14.06. Amendment and Termination. Subject to the provisions of Section 38-33.3-217(1), (5), (6) and (7), C.R.S., all or any portion of this Declaration may be supplemented, changed or canceled in whole or in part at any time by the vote or agreement of the Owners of 67% of the Lots. Such agreement may be in any number of counterparts. Such amendment shall be effective when duly recorded in the Mesa County, Colorado real estate records.

Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, the Articles or Bylaws at any time prior to the termination of Declarant's control of the Association, for the purposes of correcting spelling, grammar, dates, typographical errors, or as may otherwise be necessary to clarify the meaning of any provisions of any such document.

Section 14.07. Rights of Declarant Incident to Construction. An easement is hereby retained by and granted to Declarant, its successors and assigns, for access, ingress and egress over, in, upon, under, and across the Common Area and any easements shown on the Map, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's or its designees' construction on the Property, including without limitation construction of improvements indicated on the Map; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his family members, guests, or invitees, to or of that Owner's Lot. Declarant, for itself and its successors and assigns, hereby retains a right to store construction materials on Lots owned by Declarant and to make such other use thereof as may be reasonably necessary or incidental for the purpose of the completion or improvement of the Property, the performance of Declarant's obligations hereunder, and the sale of the Lots. Any special declarant rights created or reserved under this Section 14.07 or elsewhere in this Declaration for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the office of the Clerk and Recorder for the County of Mesa. The rights of Declarant reserved in this Section 14.07 shall expire ten (10) years after the recording of this Declaration, except as to land added to the Property under Section 14.04 as to which those reserved rights will expire ten (10) years after the date of the recording in the Mesa County real estate records of the document adding that land to the Property. Such instrument shall be executed by Declarant and its transferee. Any rights granted to Declarant under this Declaration shall expire on the date which is ten (10) years from the recording date of this Declaration, unless otherwise provided herein.

Section 14.08. Sales Office and Models. Despite anything to the contrary stated elsewhere in this Declaration, the Declarant may maintain a sales and/or management office and model homes on the Property. The office may be located on any Lot owned by Declarant and may be relocated to any other Lot owned by Declarant from time to time, at Declarant's sole discretion. If Declarant ceases to own any Lot, Declarant shall have a period of sixty (60) days in which to remove the office described above from the Property. The Declarant may maintain one or more signs on the Common Area for the purpose of advertising the Property and the sales of Lots. The provisions of this Section 14.08 shall control in the event of any conflict with any other provision contained in this Declaration. Declarant shall have the rights stated in this Section 14.08 for the same time period as the rights reserved in Section 14.07.

Section 14.09. CCIOA Controls. Any provision of this Declaration in conflict with the provisions of CCIOA shall be void and of no effect.

Section 14.10. Notice. Any notice or demand required or permitted by this Declaration shall be in writing and shall be sent by United States first class mail, postage prepaid, to the address of the Owner of the Lot(s) to receive notice at the address provided by the Owner for that purpose to the secretary of the Association. If the Owner fails to provide an address to the secretary, notice shall be sent to the address of the Owner specified in the deed recorded in the Mesa County, Colorado real estate records by which that Owner took title and to the street address of that Lot, if any.

Section 14.11. Section Headings. The section titles and headings used in this Declaration are for identification purposes only and shall not be utilized to interpret or construe the provisions of this Declaration, which shall remain in full force and effect.

Section 14.12. Severability. Invalidation of all or any part of any one of these covenants or restrictions by judgment or court order shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

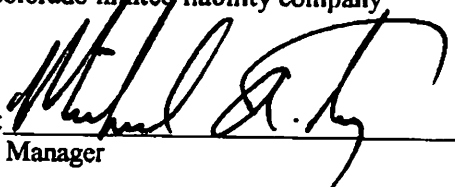
Section 14.13. Binding Effect. The provisions of this Declaration shall be binding upon and for the benefit of Declarant, each Owner, and each and all of their heirs, personal representatives, successors in interest, and assigns.

Section 14.14. No Rights Given to the Public. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose.

Section 14.15. Applicability of Governmental Regulations. The covenants, conditions and restrictions in this Declaration are separate and distinct from any zoning, building or other law or ordinance, rule or regulation of the City of Fruita or of any governmental authority having jurisdiction over the Property which now or in the future may contain different requirements from or in addition to those contained herein or which may prohibit uses permitted herein or permit use prohibited herein. In the event of any conflict between the provisions in this Declaration and the provisions of any such law, ordinance, rule or regulation, the Owner must first comply with all governmental laws, ordinances, rules or regulations and then to the extent possible, the Owner must comply with these covenants, conditions and restrictions unless such compliance would result in a violation of such law, ordinance, rule or regulation, in which case, upon a finding that compliance herewith would result in such a violation, the Architectural Control Committee shall waive any such covenants, conditions or restrictions to the extent it results in such a violation, and in connection therewith, the Architectural Control Committee may impose such conditional covenants, conditions and restrictions as may be necessary to carry out the intent of this Declaration.

DECLARANT:

COMSTOCK WEST, LLC
a Colorado limited liability company

By: 
Manager

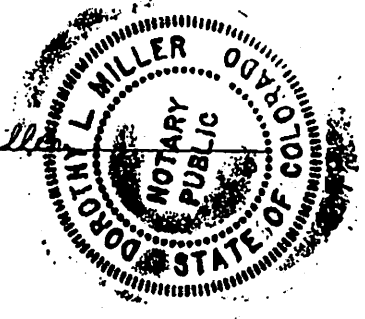
STATE OF COLORADO)
) ss.
COUNTY OF MESA)

Subscribed and sworn to before me this 8th day of December, 2003,
by Michael A. Tracy, Manager of Comstock West, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: 03/26/05

Donna J. Miller
Notary Public



**BYLAWS
OF
COMSTOCK WEST SUBDIVISION HOMEOWNERS ASSOCIATION**

THESE BYLAWS of COMSTOCK WEST SUBDIVISION HOMEOWNERS ASSOCIATION, a Colorado nonprofit corporation (the "Corporation"), are effective this 12th day of December, 2003, and are adopted pursuant to the Colorado Revised Nonprofit Corporation Act (the "Act") and the Colorado Common Interest Ownership Act ("CCIOA"). In the event of a conflict between these Bylaws, the Articles of Incorporation of Comstock West Homeowners Association (the "Articles of Incorporation") or the Declaration of Covenants, Conditions and Restrictions for Comstock West Subdivision (the "Declaration"), the Articles of Incorporation and the Declaration shall control over the Bylaws, and the Declaration shall control over the Articles of Incorporation.

**ARTICLE I
Members**

Section 1.1. Membership. Eligibility and requirements for membership are specified in the Declaration.

Section 1.2. Annual Meeting. The annual meeting shall be held on the second Tuesday in January in each year, at the hour of 7:00 p.m., for the purpose of the election of directors and for the transaction of such other business as may lawfully come before the meeting.

Section 1.3. Special Meetings. Special meetings may be called by the president, by a majority of the board of directors, or by members holding at least 20% of the votes of the Corporation upon delivery of a written request for such meeting to the president. Notice of the meeting shall be given in accordance with Section 1.5.

Section 1.4. Location of Meeting. The board of directors shall designate any place, within Mesa County, as the location of any meeting. One or more members may participate in any members meeting by any means of communication by which all persons participating in the meeting can hear one another simultaneously. Such participation shall constitute presence in person at the meeting.

Section 1.5. Notice of Meetings; Waiver of Notice.

1.5.1. Not less than ten (10) nor more than fifty (50) days in advance of any members meeting, the secretary shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each member or to any other mailing address designated in writing by the member.

1.5.2. Notice of any meeting must state the date, time and place of the meeting and any matters that require membership approval, including the general nature of any proposed amendment to the Bylaws (if the members, rather than the directors, are voting to amend) or Declaration, any budget changes, any proposal to remove an officer or director, and any proposal to dissolve.

1.5.3. A member may waive notice of any meeting, or any other notice required by these Bylaws, by a writing signed by the member entitled to notice which is delivered to the secretary (either before or after the date and time stated in the notice) for inclusion in the minutes or for filing with the corporate records. A member's attendance at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting, unless the member, at the beginning of the meeting, objects to holding the meeting on the basis of lack of notice or defective notice; and

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, unless the member objects to considering the matter when it is first presented.

Section 1.6. Quorum and Voting. A quorum shall be deemed present throughout any members meeting if persons entitled to cast 20% of the votes which may be cast for election of the board of directors of the Corporation are present in person or by proxy at the beginning of the meeting. Upon failure of a quorum, an adjournment may be taken by the vote of a majority of the members present for a period not to exceed thirty (30) days at any one adjournment. If a quorum exists, action on a matter shall be approved if the votes cast by the members present at the meeting which favor the action exceed the votes cast in opposition to the action, unless a greater number of votes is required by law, the Articles of Incorporation, the Declaration, or these Bylaws; if there are more than two (2) choices or candidates, the choice or candidate receiving a plurality of votes, whether or not a majority of the total votes cast, shall be the prevailing choice or candidate. Each member entitled to vote shall have the number of votes allocated to that member in accordance with the Declaration.

Section 1.7. Proxy. Members are entitled to vote at any members meeting in person or by written proxy, properly signed by the member or his or her duly authorized attorney-in-fact. Proxies shall be filed with the secretary before or at the time of the meeting. A proxy terminates eleven (11) months after its date, unless it provides otherwise. A member may not revoke a proxy except by actual notice of revocation to the person presiding over the meeting at which the proxy will be cast. A proxy is void if it is not dated or if it purports to be revocable without notice.

Section 1.8. Fixing Record Date. For the purpose of determining members entitled to notice or to vote at any members meeting, the board of directors may fix a date in advance as the record date. Such date shall not be fewer than ten (10) nor more than fifty (50) days prior to the date on

which the action is to be taken. If the directors do not fix such a record date, the record date shall be the close of business on:

(a) With respect to any meeting, the day before the first notice is delivered to members; and

(b) With respect to any informal action taken pursuant to Section 1.9, the date the first member signs a written consent.

Section 1.9. Informal Action by Members. Any action required or permitted to be taken at a meeting of the members may be taken without a meeting if members entitled to vote thereon unanimously agree and consent to such action in writing. Such consent may be executed in counterparts and received by electronically transmitted facsimile or other form of wire or wireless communication providing the Corporation with a complete copy of the document, including a copy of the signature on the document. Unless the members establish a different effective date, action is taken at the time the last member signs the consent. Such consent shall have the same effect as action taken at a meeting of the members and may be described as such in any document. A member may revoke his or her consent by a written revocation signed by the member and received by the Corporation before the last member has signed the consent, in which case the action proposed in the consent shall be invalid.

Section 1.10. Action by Written Ballot.

1.10.1. Any action that may be taken at any members meeting may be taken without a meeting if the Corporation delivers a written ballot (in the manner provided in subsection 1.5.1) to every member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against such proposed action. Approval by written ballot shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. If there are more than two (2) choices or candidates, and the quorum requirements are met, the choice or candidate receiving a plurality of votes, whether or not a majority of the total votes cast by ballot, shall be the prevailing choice or candidate.

1.10.2. Solicitations for votes by written ballot may not be revoked, and shall:

(a) Indicate the number of responses needed to meet the quorum requirements;

(b) State the percentage of approvals necessary to approve each matter other than election of directors;

(c) Specify the time by which the ballot must be received by the Corporation in order to be counted; and

(d) Be accompanied by written information sufficient to permit each member voting to reach an informed decision on the matter.

Section 1.11. Membership and Members List. After fixing a record date pursuant to Section 1.8, the Corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of, and to vote at, the meeting or to take such action by written ballot. The list shall show the address of each member entitled to notice of, and to vote at, the meeting or to take such action by written ballot, and the number of votes each member is entitled to vote at the meeting or by written ballot.

Section 1.12. Transactions Requiring Membership Approval. Notwithstanding anything to the contrary stated elsewhere in these Bylaws, neither the board of directors, nor any committee of such board, nor any officer, agent, or employee of the Corporation shall take any of the following actions without the prior approval of the voting members, unless otherwise provided by law, the Declaration, or the Articles of Incorporation:

(a) Amendment or restatement of the Declaration or Articles of Incorporation;

(b) Merger, dissolution, or sale or other disposition of substantially all of the assets of the Corporation;

(c) Sale, lease, disposition, pledge, gift, or encumbrance of any interest in real or personal property belonging to the Corporation, except in accordance with the established policies for such matters approved from time to time in advance by the voting members;

(d) Aggregate borrowing of the Corporation for any period for any purpose in excess of \$5000, or of a dollar amount to be established by the voting members from time to time; the term "borrowing" for these purposes shall include any commitment for the payment of money pursuant to any contract;

(e) The formulation of an initial, or any change in any subsequent, formal or informal statement of the purposes and objectives of the Corporation;

(f) Any expenditure of a nature that was not anticipated or reflected in a budget approved in advance of such expenditure by the voting members, and any expenditure which either singly or when aggregated with all other similar amounts throughout the Corporation's fiscal year exceeds 5% of the amount budgeted for such expenditure or class of expenditures pursuant to a budget approved in advance of such expenditure by the voting members; or

(g) Any expenditure of the principal of or income from any fund or funds in any manner that is inconsistent with any restrictions imposed on such fund or funds by donors to the Corporation or by the voting membership.

ARTICLE II
Board of Directors

Section 2.1. Powers and Duties. The business and the property of the Corporation shall be controlled and managed by the board of directors, except as otherwise expressly provided by law, the Articles of Incorporation, the Declaration, or these Bylaws.

2.1.1. By way of example and not limitation, the board of directors shall:

- (a) Employ independent contractors and employees as the board deems necessary;
- (b) Cause to be kept a complete record of all its acts and corporate affairs;
- (c) Supervise all officers and any agents and employees of the Corporation, and see that their duties are properly performed;
- (d) As more fully provided in the Declaration and CCIOA to:
 - (1) Fix the amount of the annual budget and annual assessment against each lot;
 - (2) Cause delivery of all required notices relative to budgets and assessments;
 - (3) Collect assessments which are not paid when due as provided in the Declaration or otherwise allowed by law; and
 - (4) Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid.
- (e) Obtain and maintain insurance as required by Article IV of these Bylaws and CCIOA;
- (f) Cause all officers, employees, or agents having fiscal responsibilities to be bonded, as provided by Section 4.2 and law; and

(g) Cause all property owned or used by the Corporation to be properly maintained.

2.1.2. The president or secretary may prepare, execute, certify, and record amendments to the Declaration on behalf of the Corporation.

2.1.3. If the board of directors delegates powers of the board or officers relating to collection, deposit, transfer, or disbursement of corporate funds to other persons or to a managing agent:

(a) Such other persons or managing agent shall maintain fidelity insurance coverage or a bond in an amount not less than \$50,000 or such higher amount as the board may require;

(b) Such other persons or managing agent shall maintain all funds and accounts of the Corporation separate from the funds and accounts of other associations managed by the other persons or managing agent and shall maintain all reserve accounts of each association so managed separate from operational accounts of the Corporation; and

(c) An annual accounting for Corporation funds and a financial statement shall be prepared and presented to the Corporation by the managing agent, a public accountant, or a certified public accountant.

Section 2.2. Number, Term and Nomination.

2.2.1. The affairs of the Corporation shall be managed by a board of three (3) directors initially. When the Declarant relinquishes control of the board to the Owners pursuant to the Declaration, the board shall be managed by five (5) directors.

2.2.2. At the meeting in which the board is increased to five (5) directors, two (2) directors shall be elected for a term of three (3) years, two for a term of two (2) years, and the remaining directors for a term of one (1) year; and at each annual meeting thereafter the members shall elect for terms of three (3) years the same number of directors as there are directors whose terms are expiring at the time of each election. Directors shall be elected by ballot and members may not cumulate their votes in favor of or against directors.

2.2.3. Nominations for election to the board of directors may be submitted to the secretary, in writing, by any member or director through and including the day before the election date, but not more than fifty (50) days prior to such date. Nominations from the floor may be made at the meeting in which the election is held immediately prior to the vote.

Section 2.3. Vacancies. Any vacancy in membership of the board of directors shall be filled for the remainder of the unexpired term by the affirmative vote of a majority of the remaining directors, whether or not consisting of a quorum.

Section 2.4. Resignation and Removal.

2.4.1. A director may resign at any time by giving written notice of his or her resignation to the Corporation. Such resignation is effective when the notice is received by the Corporation, unless the notice specifies a later date. A board member who has failed to attend three (3) consecutive board meetings shall be deemed to have resigned upon a confirming vote of a majority of the board. If a director is deemed to have resigned for failing to attend meetings, his or her resignation date shall be the date of confirmation of resignation by the board of directors.

2.4.2. At any meeting of the members at which a quorum is present, the members, by a vote of 67% of all persons present and entitled to vote, may remove the entire board of directors or any lesser number, other than a director appointed by the Declarant.

Section 2.5. Annual Meeting of Directors. The annual meeting of the board of directors shall be held as soon as is conveniently possible following the annual members meeting.

Section 2.6. Special Meetings. Special meetings of the board of directors shall be held whenever called by the president or by a majority of the directors.

Section 2.7. Time and Place of Meetings; Executive Session.

2.7.1. All meetings of the board of directors shall be held at a time and place in Mesa County to be designated by the president or, if called by directors, at such time and place in Mesa County designated by those directors; except, the annual meeting shall be held in accordance with Section 2.5. Upon prior approval of the board, one or more directors may participate in any meeting of the board by any means of communication by which all persons participating in the meeting can hear one another simultaneously. Such participation shall constitute presence in person at the meeting.

2.7.2. All meetings of the board of directors or any committees of the board shall be open to attendance by all members or their representatives, and agendas for such meetings shall be made reasonably available for examination by all members or their representatives.

2.7.3. The board of directors or any committee of the board may hold an executive or closed door session and may restrict attendance to directors and such other persons requested by the board during any regular or special meeting. The matters to be discussed at such an executive session shall include only the following:

(a) Matters pertaining to employees of the Corporation or the managing agent's contract, or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the Corporation;

(b) Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

(c) Investigative proceedings concerning possible or actual criminal misconduct;

(d) Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure; and

(e) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy.

Section 2.8. Notice of Meetings. Meetings of the board of directors shall be held only after delivering, at least two (2) days in advance of such meeting to each director personally or by wire or wireless communication, or mailing at least seven (7) days in advance to each director at the director's last known address, a written notice of such meeting, giving the date, time and place of the meeting. A director may waive any notice of a meeting with a written waiver signed by the director and filed with the minutes or corporate records.

Section 2.9. Quorum and Manner of Action. A quorum will be deemed present throughout any meeting if directors entitled to cast 50% of the votes are present at the beginning of the meeting. The act of the majority of the directors present at any meeting at which a quorum is present shall be the act of the board of directors.

Section 2.10. Proxies. A director may be deemed present at a meeting if, prior to the meeting, the director grants and delivers a written proxy to another director who is present in person at the meeting. The proxy must direct a vote to be cast with respect to a particular proposal that is described with reasonable specificity in the proxy. No other proxies by directors shall be allowed.

Section 2.11. Compensation of Directors. No director shall receive compensation for his or her attendance at meetings of the board of directors. However, upon a vote of the directors, a director may be reimbursed for actual expenses incurred in performance of the director's duties. The compensation allowed to directors shall be changed only by action of the members. This Bylaw may only be amended by the members.

Section 2.12. Presumption of Assent and Right of Dissent. A director who is present at a meeting of the board of directors when corporate action is taken is deemed to have waived notice of the meeting and assented to all action taken at the meeting unless:

(a) The director objects to holding the meeting or transacting business at the meeting at the beginning of the meeting, or promptly upon the director's arrival, and does not thereafter vote for or assent to any action taken at the meeting;

(b) The director contemporaneously requests that the director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or

(c) The director causes written notice of the director's dissent or abstention as to any specific action to be received by the presiding officer of the meeting before adjournment of the meeting or by the Corporation promptly after adjournment of the meeting.

The right of dissent or abstention pursuant to this Section 2.12 is not available to a director who votes in favor of the action taken.

Section 2.13. Informal Action by Directors. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if each and every director in writing either votes for the action, or votes against such action or abstains from voting, and waives the right to demand that action not be taken without a meeting. Such consent may be executed in counterparts and received by electronically transmitted facsimile or other form of wire or wireless communication providing the Corporation with a complete copy of the document, including a copy of the signature on the document. Unless the directors establish a different effective date, action is taken at the time the last director signs the consent. Such consent shall have the same effect as action taken at a meeting of directors and may be described as such in any document. A director may revoke his or her consent by a written revocation signed by the director and received by the secretary before the last director has signed the consent. All signed written instruments necessary for any action taken pursuant to this Section 2.13 shall be filed with the minutes of the board of directors.

Section 2.14. Committees.

2.14.1. By resolution adopted by a majority of the directors then in office, the board of directors may designate one or more committees, and appoint one or more directors to serve on them. To the extent provided in the resolution, any such committee may have all the authority of the board, as designated in the resolution establishing the committee, except that no committee shall have the authority to: (i) authorize distributions; (ii) elect, appoint, or remove any director; (iii) amend the Articles of Incorporation; (iv) adopt, amend or repeal these Bylaws; (v) approve a plan of merger; or (vi) approve a sale, lease, exchange, or other disposition of all, or substantially all, of the Corporation's property, with or without goodwill, otherwise than in the usual and regular course of business subject to approval by

the board of directors. The board of directors may establish any requirements for the governance of such committees that comply with these Bylaws and law.

2.14.2. The board of directors may establish one or more committees, advisory boards, auxiliaries, or other bodies of any kind whose members are not directors in order to provide advice, service and assistance to the Corporation; except that such committees may not exercise any power or authority reserved to the board of directors by the Act or these Bylaws.

ARTICLE III Officers

Section 3.1. General. The officers of the Corporation shall be a president, a secretary, and a treasurer. All officers shall be natural persons, eighteen (18) years of age or older. The board of directors may elect or appoint such additional officers as it may consider necessary who shall hold their offices for such terms and have such authority and duties as from time to time may be determined by the board of directors. The salaries, if any, of the officers of the Corporation shall be fixed by the board of directors. In all cases where the duties of any officer, agent, or employee are not prescribed by these Bylaws or by the board of directors, such officer, agent, or employee shall follow the orders and instructions of the president.

Section 3.2. Election and Tenure of Officers. Except as otherwise provided in the Declaration, the officers of the Corporation shall be elected by the board of directors annually at the annual meeting of the board. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as conveniently possible. Election shall be by ballot and a majority of the votes cast shall be necessary to elect. One person may hold more than one office. A director or directors may hold any office(s). Each officer shall hold office until the first of the following to occur: the officer's successor is duly elected and qualified; the officer's death; the officer's resignation; or the officer's removal.

Section 3.3. Resignation. An officer may resign at any time by giving written notice of resignation to the Corporation. The resignation of an officer is effective when the notice is received by the Corporation, unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board of directors may permit the officer to remain in office until the effective date and may fill the pending vacancy before the effective date with the provision that the successor does not take office until the effective date, or the board of directors may remove the officer at any time before the effective date and may fill the resulting vacancy.

Section 3.4. Removal. The board of directors may remove any officer at any time, with or without cause, by a majority vote of the board. Such removal shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not, in and of itself, create a contractual right.

Section 3.5. Vacancies. A vacancy in any office, however occurring, may be filled by the board of directors for the unexpired portion of the term.

Section 3.6. President. The president shall, subject to the direction and supervision of the board of directors, be the chief executive officer of the Corporation and shall have general and active control of its affairs and business and general supervision of its officers, agents, and employees. The president shall present a report of the general conduct and transactions of the company at the annual members meeting. The president shall have custody of the treasurer's bond, if any.

Section 3.7. Treasurer. The treasurer shall perform all the duties and obligations of the president when the president is unable to act due to a vacancy in the office, absence, or illness. The treasurer shall be the principal financial officer of the Corporation and shall have the care and custody of all the funds, securities, evidences of indebtedness, and other personal property of the Corporation. The treasurer shall be required to keep written records showing all receipts and expenditures of the company, and shall make such reports related thereto as the board may require. The treasurer shall, if required by the board, give the Corporation a bond in such sums and with such sureties as shall be satisfactory to the board, conditioned upon the faithful performance of the treasurer's duties and for the restoration to the Corporation of all books, papers, vouchers, money, and other property of whatever kind in the treasurer's possession or under the treasurer's control belonging to the Corporation. The treasurer shall have such other powers and perform such other duties as from time to time may be prescribed by the board of directors or the president. The assistant treasurers, if any, shall have the same powers and duties, subject to the supervision of the treasurer.

Section 3.8. Secretary. The secretary shall perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to the secretary by the president or by the board of directors. The secretary shall keep the minutes of the proceedings of the members and the board of directors. The secretary shall see that all notices are duly given in accordance with the provisions of the Declaration, these Bylaws or as required by law. The secretary shall be custodian of the corporate records and shall authenticate corporate documents. The secretary shall maintain a record containing the names and addresses of all members. Assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.

ARTICLE IV

Insurance

Section 4.1. Property and Liability Insurance.

4.1.1. Commencing not later than the time of the first conveyance of a lot to a person other than the Declarant under the Declaration, the Corporation shall maintain, to the extent reasonably available:

(a) Property insurance on the common area and on property to become common area, for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the common area, in an amount deemed sufficient in the judgment of the board of directors, but not less than any amount specified in the Declaration. The Declarant shall be included as an additional insured in the Declarant's capacity as a member, officer, or board member. The members shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the common area. The insurance shall cover claims of one or more insured parties against other insured parties.

4.1.2. If the insurance described in subsection 4.1.1 is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy having been obtained, the Corporation promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all members.

4.1.3. Insurance policies carried pursuant to subsection 4.1.1 must provide that:

(a) Each member is an insured person under the policy with respect to liability arising out of such member's interest in the common area or membership in the Corporation;

(b) The insurer waives its rights to subrogation under the policy against any member or person of his or her household;

(c) No act or omission by any member, unless acting within the scope of such member's authority on behalf of the Corporation, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a member covering the same risk covered by the policy, the Corporation's policy provides primary insurance.

4.1.4. The Corporation may carry any other insurance it considers appropriate to protect the Corporation or the members, including insurance on property it is not obligated to insure.

4.1.5. The Corporation may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Corporation settles claims for damages to real property, it shall have the authority to assess negligent members causing such loss or benefitting from such repair or restoration all deductibles paid by the Corporation. In the event that multiple properties are damaged by a loss, the Corporation in its reasonable discretion may assess each member a pro rata share of any deductible paid by the Corporation.

4.1.6. The Corporation shall promptly repair or replace any portion of the common area for which insurance is required, by law or these Bylaws, which is damaged or destroyed unless: the common interest community is terminated; repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; 67% of the members vote not to rebuild; or, prior to the conveyance of any lot to a person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the common area rightfully demands all or a substantial part of the insurance proceeds.

4.1.7. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense. If a common area is not repaired or replaced, the insurance proceeds attributable to the damaged common area shall be used to restore the damaged area to a condition compatible with the remainder of the common area, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to the common area that is not rebuilt shall be distributed to the lienholders, as their interests may appear, and the remainder of the proceeds shall be distributed to the members, pro rata.

Section 4.2. Fidelity Insurance.

4.2.1. If any Corporation employee controls or disburses Corporation funds, the Corporation must obtain and maintain, to the extent reasonably available, fidelity insurance in at least an aggregate amount not less than two (2) months of current assessments plus reserves, calculated from the then-current budget of the Corporation.

4.2.2. Any person employed as an independent contractor by the Corporation for the purposes of managing the Corporation must obtain and maintain fidelity insurance in the same amount as specified in subsection 4.2.1, unless the Corporation names such person as an insured employee in a contract of fidelity insurance as described in subsection 4.2.1.

ARTICLE V
Dissolution

Section 5.1. Authorization. To authorize the dissolution of the Corporation, the board of directors shall adopt and recommend a proposal to dissolve to the members, which shall be approved upon the affirmative vote of at least two-thirds (2/3) of the members entitled to vote. If the board of

directors determines that it should make no recommendation, because of conflict of interest or other special circumstances, and communicates the basis for its determination to the members, dissolution may be approved without such recommendation upon the affirmative vote of at least two-thirds (2/3) of the members entitled to vote. The board of directors may condition the effectiveness of the dissolution, and the members may condition their approval of the dissolution, on any basis.

Section 5.2. Notice. The Corporation shall give notice to members entitled to vote, pursuant to Section 1.5, of the members meeting at which the proposal to dissolve will be voted on. The notice shall contain or be accompanied by a copy of the proposal or a summary thereof.

Section 5.3. Articles of Dissolution. After dissolution is authorized, the Corporation shall dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth the Corporation's name, the address of its principal office or a statement that no such principal office shall be maintained and an address for service of process, the date dissolution was authorized, and a statement that the number of votes cast for the proposal to dissolve by each voting group entitled to vote separately on the proposal was sufficient for approval by that voting group.

Section 5.4. Revocation. The Corporation may revoke its dissolution within 120 days after the effective date of the dissolution by the same action that authorized its dissolution pursuant to Section 5.1. After the revocation of dissolution is authorized, the Corporation shall revoke the dissolution by delivering to the Secretary of State for filing, within 120 days after the effective date of dissolution, articles of revocation of dissolution, together with its articles of dissolution, that set forth the Corporation's name, the date of the dissolution, the date the revocation of dissolution was authorized, and a statement that the number of votes cast for revocation of dissolution by each voting group entitled to vote separately on the proposal to dissolve was sufficient for approval by that voting group.

ARTICLE VI
Miscellaneous

Section 6.1. Amendment of Bylaws. The board of directors shall have the power to make, amend, and repeal these Bylaws at the annual meeting of the board or at any special meeting called for that purpose, unless otherwise provided in the Declaration, these Bylaws, or by law.

Section 6.2. Offices. The initial principal office of the Corporation shall be located at 730 29th Street, Boulder, Colorado 80303. The Corporation may have such other offices, either within or outside the State of Colorado, as the board of directors may designate or as the business of the Corporation may require from time to time.

Section 6.3. Fiscal Year. The fiscal year of the Corporation shall be the calendar year.

ADOPTED AND APPROVED by the board of directors on the date first set forth above.

ATTEST: Nasa S. Sajid
President

ATTEST: Ken Anderson
Secretary

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ARTICLES OF INCORPORATION
OF

FILED
DONETTA DAVIDSON
COLORADO SECRETARY OF STATE

COMSTOCK WEST SUBDIVISION HOMEOWNERS ASSOCIATION
A NONPROFIT ORGANIZATION

PURSUANT to Section 7-122-102 and Part 3 of Article 90 of Title 7, Colorado Revised Statutes (C.R.S.), these Articles of Incorporation are delivered to the Colorado Secretary of State for filing.

1. The entity name of the corporation is Comstock West Subdivision Homeowners Association.
2. The street address of the corporation's initial registered office is 730 29th Street, Boulder, CO 80303, and the name of its initial registered agent at that office is Kara Safriet.
3. The address of the corporation's initial principal office is 730 29th Street, Boulder, CO 80303.
4. The name of the incorporator is Michael A. Tracy, whose address is 730 29th Street, Boulder, CO 80303.
5. The corporation will have voting members.
6. Distribution of assets upon dissolution shall be governed by the Colorado Revised Nonprofit Corporation Act.
7. The initial directors of the corporation are Michael A. Tracy, Kevin Conderino and Kara Safriet.
8. The name of the individual who causes this document to be delivered for filing, and to whom the Secretary of State may deliver notice if filing of this document is refused, is Kevin Conderino, whose mailing address is c/o Michael A. Kuzminski, 744 Horizon Court, Suite 300, Grand Junction, Colorado 81506.

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