

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 5th 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.