

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.

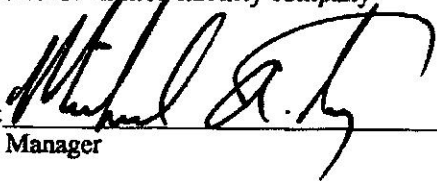
Section 14.13. Binding Effect. The provisions of this Declaration shall be binding upon and for the benefit of Declarant, each Owner, and each and all of their heirs, personal representatives, successors in interest, and assigns.

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

Donathy J. Miller
Notary Public

