

COMSTOCK ESTATES GENERAL RULES

Revised October 9, 2005

In an effort to help owners and occupants become familiar with some of the rules contained within the Declaration of Covenants, Conditions and Restrictions for Comstock Estates Subdivision, the Board of Directors (BOD) and Architectural Review Committee (ACC) have extrapolated the following items from that Declaration and present them here, in a more concise format. This document is not intended to be a replacement for the Actual Declaration of Covenants, Conditions and Restrictions for Comstock Estates, but is given only for general information.

Adherence to these rules along with the Comstock Estates Covenants will help our neighborhood remain attractive and continue to be a nice place to live for all residents. Failure to do so can negatively impact the value of your property, surrounding properties, and the entire subdivision.

Also, please be respectful of board members. They are unpaid volunteers elected by homeowners with the duty of enforcing the covenants. They are trying to preserve the neighborhood you choose to live in and protect your property values. If you have questions about any of these rules, please contact a member of the BOD or ARC. Infractions needing the board's attention must be submitted in writing to the BOD.

1. Every owner of one 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 or more lots in the property may be a member of the association. No owner shall be entitled to sever his ownership interest in a lot from membership in the association. See Article 2, Section 2.01.
2. Landscaping meeting the minimum requirements must be finished in a timely manner, 120 days for the front yard and one year for the back yard from the date of occupancy. The BOD has discretionary authority to grant extensions

under reasonable circumstances. An extension request must be submitted in writing to the Board. See Article 9, Section 9A.24.

3. Owners are to maintain their lots in a neat, clean and cultivated manner, free of trash and debris. See Article 9, Section 9A.05.
4. Buildings, fences, signs or other structures, alterations, painting, and landscaping must conform to the Comstock Homeowners Association Covenants and local codes and regulations. All such construction must be reviewed and approved by the BOD or ARC. See Article 7, Section 7.01.
5. Storage or accessory buildings (such as dog houses, tool sheds, firewood, garbage, barbecue type or enclosures), non-portable or affixed outdoor furniture such as picnic tables, barbecues, hot tubs, dog runs, etc., shall be reasonably screened from public and neighbor view. For pipeline repair purposes, a minimum of two feet must be maintained between the structure and common underground irrigation pipeline. Accessory buildings shall not exceed a maximum of eight feet in height and are subject to ARC approval. See Article 9, Section 9A.09.
6. It is highly recommended that structures have a roof slope and shingle that matches the house roof and should have a paint color that blends with the house. See Article 7, Sections 7.08 and 7.09.
7. Storage sheds or unattached building structures must meet City of Fruita codes and some storage sheds require a permit. City of Fruita codes requires a minimum two foot side wall clearance(s) from fence(s). The City of Fruita must be called to obtain information concerning permits.
8. No portion of any lot may be used for anything other than residential purposes. No commercial activities of any kind are permitted, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any lot. See Article 9, Section 9A.09(b).
9. Any type of recreational vehicle, recreational trailer, boats, vans, or utility trucks or trailers must be stored in an enclosed garage or behind a six foot solid screen fence. The front of the fence must not be located closer to the street than the front of the house. Any vehicle parked, without moving, for more than two

weeks is considered "stored" and must be screened. City of Fruita codes do not allow recreational vehicles to be stored on the street except for brief trip loading and unloading, and trailers of any type must be at least twenty feet back from the street. Unlicensed or inoperative vehicles may not be stored on the lot unless in an enclosed garage. See Article 9, Section 9A.10(a) and (b).

10. All driveways must be composed of concrete unless approved by the ARC. See Article 7, Section 7.12.
11. Residents may keep no more than four domestic pets, so long as they do not create a nuisance to any other resident. Pet(s) may not be kept for any commercial purpose. Owners are responsible for any damage caused by their pet(s). See Article 9, Section 9A.04.
12. Residents should clean up after their pets in the public use areas such as walk ways and parks. Residents must not allow their pets to defecate or urinate on neighbor's yards and should clean up immediately if an accident occurs.
13. No signs are to be placed on the property, except "For Sale" real estate signs of such property, and political or "Yard Sale" signs that must be removed immediately after the election or event. No signs are to be placed in common areas. See Section 9A.07.
14. All yard ornamentation shall be screened from public view or must be approved by the BOD or ARC. Clotheslines, dog runs, woodpiles and other types of storage areas shall not be visible from the street. See Article 9A.09.
15. Any vehicle or trailer repair, maintenance, dismantling, painting, or servicing of any kind, which cannot be completed within twenty four hours, must be performed off the property or in an enclosed garage. See Article 9A.10©.
16. Automobile parts must be stored in an enclosed garage or off the property. See Article 9A, Section 9A.11.
17. No resident shall allow an excessively bright light, excessive loud noise, or a noxious or offensive odor to emit from his or her property. No firearms, explosives, air rifles, BB guns, crossbows, or similar devices shall be discharged within the subdivision. See Article 9A, Section 9A.15.

18. Garbage cans and other trash containers shall be maintained and screened from the street and neighbor's view. Containers shall be placed at the end of the driveway, not on the sidewalks, just prior to collection and returned to a screened area the same day as trash pickup. See Article 9A, Section 9A.16
19. Basketball hoops and other obstructions should not be left on the sidewalk. See Article 9A, Section 9A.11.
20. No antenna for reception or transmission may be erected or used on a lot. A satellite dish of no more than 24" diameter is permitted. Satellite dishes should be located at the rear of the house so they are not readily noticeable by neighbors or visible from the street. See Article 9A, Section 9A.08.

BYLAWS

OF

COMSTOCK ESTATES FILING NO. 1 HOMEOWNERS
ASSOCIATION,

A COLORADO NONPROFIT CORPORATION

THESE BYLAWS OF COMSTOCK ESTATES FILING NO. 1 HOMEOWNERS ASSOCIATION, A COLORADO NONPROFIT CORPORATION (the "Corporation") are effective this _____ day of January, 2002, 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 Estates Filing No. 1 Homeowners Association (the "Articles of Incorporation") or the Declaration of Covenants, Conditions and Restrictions for

Comstock Estates Subdivision, Filing no. 1 (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 Annual Meeting. The annual meeting of the members shall be held on the fourth Thursday in January of each year, at the hour of ___:___ AM/PM, for the purpose of the election of Directors and for the transaction of such other business as may lawfully come before the meeting.

Section 1.2 Special Meetings. Special meetings of the members may be called by the president, by a majority of the BOD, or by members holding at least twenty percent (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 1.4.

Section 1.3 Location of Meeting. The BOD 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 1.4 Notice of Meetings; Waiver of Notice.

1.4.1 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.

1.4.2 Notice of any meeting must state the date, time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Bylaws (if the members, rather than Directors, are voting to amend) or Declaration, any budget

changes, any proposal to remove an officer or director, and any proposal to dissolve.

1.4.3 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 1.5 Quorum and Voting. A quorum shall be deemed present throughout any members meeting if persons entitled to cast twenty percent (20%) of the votes which may be cast for election of the BOD 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 an 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 the 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 1.6 Proxy. Members are entitled to vote at any members meeting in person

or by written proxy, properly signed by the member or his 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. Every proxy shall be revocable and shall automatically terminate upon conveyance of the member's lot.

Section 1.7 Fixing Record Date. For the purpose of determining members entitled to notice or to vote at any members meeting, the BOD 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 1.8 Order of Business. The order of business at annual meetings of the member and, insofar as practicable at all other meetings of the members, shall be as follows:

- a) Call of the roll of members and approval of proxies;
- b) Proof of notice of meeting or executed waiver;
- c) Reading of minutes of last meeting;
- d) Reports of officers and committees;
- e) Election of officers;
- f) Unfinished business;
- g) New business;
- h) Miscellaneous business.

Section 1.9 Informal Action by Members. Any action required by law or these Bylaws to be taken at a members meeting, or any other action which may be taken at a members meeting, may be taken without a meeting upon execution of a written consent as provided by law.

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 1.4.1) 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.

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. Membership in the Corporation shall be upon the terms and conditions stated in the Declaration. After fixing a record date pursuant to Section 1.7, 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 BOD, nor any committee of such BOD, 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 \$5,000, 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 five percent (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 BOD, 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 BOD 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 to 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 the Declaration and the CCIOA;
- f) Cause all officers, employees or agents having fiscal responsibilities to be bonded, as provided by the Declaration 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.

Section 2.2 Number, Term and Nomination.

2.2.1 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 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 BOD may be submitted to the Secretary, in writing, by any member or director not fewer than ten (10) nor more than fifty (50) days prior to the election date.

Section 2.3 Vacancies. Any vacancy in membership of the BOD 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 vote 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 BOD.

2.4.2 At a special members meeting called pursuant to these Bylaws, or by any other means in accordance with these Bylaws, the entire BOD or any lesser numbers may be removed, with or without cause, by the voting members, if the number of votes cast to remove the director(s) would be sufficient to elect the director(s). If a director is elected by a voting group, only that voting group may participate in the vote to remove that director.

Section 2.5 Regular Meetings of Directors. Regular meetings of the BOD shall be held immediately following the annual members meeting. The BOD may provide, by resolution, for additional regular meetings.

- Section 2.6 Special Meetings. Special meetings of the BOD shall be held whenever called by the president or by a majority of the Directors.
- Section 2.7 Time and Place of Meetings. All meetings of the BOD shall be held at the hour of ____:____ AM/PM at the principal office of the Corporation unless another time or location is unanimously agreed upon prior to the meeting by the BOD or provided otherwise by these Bylaws, the Declaration or law. One or more Directors may participate in or conduct 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.
- Section 2.8 Notice of Meetings. Regular meetings of the BOD shall require no further notice than that provided by these Bylaws. Special meetings shall be held only after delivering, at least two (2) days in advance of such a meeting to each director personally or mailing to each director at the director's last known address, a written or printed notice of such meeting, giving the time, date and purpose 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 persons entitled to cast fifty percent (50%) of the votes on the BOD 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 BOD.
- 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 BOD. 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 BOD 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 a written consent setting forth the action to be taken is signed by all of the Directors entitled to vote with respect to the subject matter of the consent. 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 BOD.

Section 2.14 Committees. The BOD may create one or more committees of the board and appoint one or more Directors to serve on such committee(s) as the Directors deem appropriate to assist the Directors in carrying out their duties. No committee member shall be compensated for committee service.

ARTICLE III OFFICERS

Section 3.1 General. The officers of the Corporation shall be a president, secretary and treasurer. All officers shall be natural persons, eighteen (18) years of age or older. The BOD 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 BOD. The salaries, if any, of the officers of the Corporation shall be fixed by the BOD. In all cases where the duties of any officer, agent, or employee are not prescribed by these Bylaws or by the BOD, 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 BOD 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, except that the president and treasurer shall be different people. A director or Directors may hold any office(s). Each officer shall hold office until the first of the following to occur: his successor is duly elected and qualified; his death; his resignation; or until his 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 BOD 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 BOD may remove the officer at any time before the effective date and may fill the resulting vacancy.
- Section 3.4 Removal. Any officers may be removed by the affirmative vote of the BOD at any time, with or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person 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 BOD for the unexpired portion of the term.
- Section 3.6 President. The president shall, subject to the direction and supervision of the BOD, 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 and shall deposit the same in accordance with the instructions of the BOD. The treasurer shall be required to keep written books and accounts showing all receipts and expenditures of the company. The treasurer shall perform all other duties incident to the office of treasurer and, upon request of the board, shall make such reports to it as may be required at any time. 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 powers and perform such other duties as may be from time to time prescribed by the BOD or the president. The assistant treasurers, if any, shall have the same powers and duties, subject to the supervision of the treasurer. The treasurer shall also prepare and maintain an adequate system of internal audit, and prepare and furnish to the president and the BOD statements of account showing the financial position of the Corporation and the results of its operations.

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 BOD. The secretary shall keep the minutes of the proceedings of the members and the BOD. The secretary shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law. The secretary shall be custodian of the Corporation records and of the seal of the Corporation, if any. The secretary shall keep at the Corporation's registered office, or principal place of business within or outside Colorado, 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 AMENDMENT OF BYLAWS

The BOD shall have the power to make, amend, and repeal the Bylaws of the Corporation by a resolution properly adopted by the BOD.

ARTICLE V DISSOLUTION

- Section 5.1 Authorization. To authorize the dissolution of the Corporation, the BOD shall adopt and recommend a proposal to dissolve to the members, which shall be approved upon the affirmative vote of two-thirds (2/3) of members entitled to vote. If the BOD 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 two-thirds (2/3) of members entitled to vote. The BOD 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 1.4, 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 Seal. The BOD may provide a corporate seal which may be circular in form and contain the name of the Corporation and the words "Colorado Seal".

Section 6.2 Offices. The principal office of the Corporation shall be located at P.O. Box 40614, Grand Junction, Colorado 81502. The Corporation may have such other offices, either within or outside the State of Colorado, as the BOD 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 BY written consent of the Board of Directors on the date first written above.

COMSTOCK ESTATES FILING NO. 1
HOMEOWNERS ASSOCIATION

BY: _____
Secretary

*Book 2348 Page 569
Rcpt #1808694
Mesa County, CO*

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COMSTOCK ESTATES SUBDIVISION, FILING NO. 1**

THIS DECLARATION ("Declaration") is made this 7th day of August, 1997, by Comstock Estates, 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 all of Comstock Estates Subdivision, Filing no. 1, City of Fruita, Mesa County, Colorado.
- 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

PAGE

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 Estates Filing No. 1 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 be binding upon and inure to the benefit of 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 servitude 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 Estates Filing No. 1 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 Grand Valley 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” (BOD) 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, without limitation, Outlot A, Block 1, plus 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 in 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 “Common Expenses” shall mean and include expenditures made and liabilities incurred, by or on behalf of the Association.
- Section 1.09 “Conveyance” shall mean and refer to conveyance of a fee simple title, or lease of any part of the property.
- Section 1.10 “Declarant” shall mean and refer to Comstock Estates, 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 1.11 “Lot” shall mean and refer to each numbered lot of the property described in the map, except those designated as twin home lots (“Twin Home Lot(s)”) on the map that have then been approved by the City of Fruita for separate ownership of the two dwelling units (whether by creation of condominium, townhouse or

otherwise), which shall constitute two separate lots for all purposes under this Declaration. Boundaries of a lot shall be as shown and defined on the plat map of the subdivision as recorded and amended.

Section 1.12 “Unimproved Lot” shall be a lot upon which no improvements have been constructed.

Section 1.13 “Improved Lot” shall be a lot upon which improvements have been constructed.

Section 1.14 “Member” shall mean and refer to every person or entity who holds a membership in the Association as provided in Article II, Section 2.01.

Section 1.15 “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 1.16 “Mortgagee” shall mean and include mortgagees, trustees, beneficiaries and holders of a mortgage, and the holders of any indebtedness secured by mortgage.

Section 1.17 “Mortgagor” shall mean and include mortgagors and trustors under deeds of trust which are mortgages.

Section 1.18 “Owner” shall mean and refer to Declarant and to any person or entity holding a record for 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 1.19 “Subdivision” shall mean all of the property, and improvements thereon, subject to this Declaration or any amendment to this Declaration.

Section 1.20 “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 4.04 of this Declaration.
- 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 in his 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 lot in accordance with the provisions of this Declaration, or as a result of the negligence, recklessness, or willful misconduct of any owner, his 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 1.21

"Residence" means the single family dwelling unit located on a lot (or each of the two single family dwelling units located on a twin home lot).

Section 1.22 “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 1.23 “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.

ARTICLE II
THE ASSOCIATION
MEMBERSHIP: VOTING RIGHTS: DECLARANT CONTROLS

Section 2.01 Membership. Every owner of one 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 or more lots in the property may be a member of the Association. No owner shall be entitled to sever his 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 vote in the Association, subject to Section 2.05 below.

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 Section 2.06(a) , the Board shall be managed by five (5) Directors. Directors shall meet the qualifications described in the Articles of Incorporation and ByLaws of the Association.

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 to owners other than Declarant; or, 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 BOD of the Association, subject to the limitations stated in this section.
- 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 BOD must be elected by the owners of lots other than Declarant.
- c) 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, not fewer than 33-1/3% of the members of the BOD must be elected by owners other than Declarant.

- d) Upon the termination of the period of Declarant control specified in subsection 2.06(a) of this Article, the owners shall elect a BOD of at least five (5) members, who must be owners other than Declarant or designated representatives of owners other than Declarant. The BOD 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 sixty seven percent (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 BOD may be removed with or without cause, other than a member appointed by Declarant.

Section 2.07

Quorum. A quorum will be deemed present throughout any meeting of the Association if persons entitled to cast 20% of the votes which may be cast for election of the BOD of the Association are present in person or by proxy at the beginning of the meeting. A quorum will be deemed present throughout any meeting of the BOD of the Association if persons entitled to cast 50% of the votes on the Board are present at the beginning of the meeting.

ARTICLE III
PROPERTY RIGHTS IN THE LOTS AND COMMON AREA

Section 3.01

Title to the Common Area. No later than upon conveyance of 75% of the lots 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 of the Association.
- d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument in any number of counterparts signed by members entitled to cast two thirds of the votes has been recorded, agreeing to such dedication or transfer, and provided written notice of the

proposed action is sent to every member no less than thirty (30) days nor more than sixty (60) days in advance.

- e) 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
- f) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

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.

Section 3.06 Use of Outlot A, Block 1. Despite anything to the contrary stated elsewhere in this Declaration, Outlot A, Block 1 shall be used only for open space or other use which will not conflict with its functions as an area for storm water runoff and detention. This

Section shall not be amended without the consent of the City of Fruita.

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 (including any lots subsequently added under Section 14.05 below), 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 Section 38-33.3-316(1) C.R.S. or any other provision of CCIOA (as it may be subsequently amended or by any other applicable law.

All items set forth in this Section, from the time such items become due, shall be 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 days (30) overdue.

Each such item, together with interest, costs, and reasonable attorneys fees, shall also be the joint and several personal obligations 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, the Articles of Incorporation of the Association (as amended from time to time); or as otherwise authorized by CCIOA or other applicable law.

Section 4.03

Initial Assessment.

- a) The initial regular assessment for common expenses of the Association shall be fixed in an amount set by, and made upon the resolution of, the BOD of the Association.
- 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 BOD of the Association 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 such 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 BOD. 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 may be made by the Board at any time, except as limited by the Declaration, CCIOA or other applicable law.

Section 4.05

Expense Allocation. Except as otherwise stated in this Section, 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 benefitting or caused by fewer than all lots shall be assessed exclusively against the lots benefitted by or causing the common expense or other costs or expense.

Section 4.06

Priority of Lien. The lien for assessments, which includes without limitation all those items specified in item (a) and (b) in Section 4.01 of this Article IV shall have the priority specified in CCIOA which, as of the date of the Declaration, is codified at Section 38-33.3-316(2), C.R.S. or other applicable law.

ARTICLE V

BUDGET AND RECORDS

- Section 5.01 Books and Records. The BOD 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 representative during regular business hours at the principal office of the Association. The BOD 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 BOD 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 BOD 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 not less than fourteen (14) nor more than sixty (60) days 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 BOD.
- Section 5.06 Reserve Fund. As part of each annual budget, the BOD 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 below, foreclose the lien provided for in Section 4.01 above against the lots 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 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

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 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 (ACC as to harmony of external design and location in relation to surrounding structures, topography and other matters specified in this Article VII except for Sections 7.06 through 7.13 and the first sentence of this Section 7.01; provided, however, that Declarant and any successor Declarant shall not be required to comply with the provisions of this Article VII. In the event said committee, or its designated representatives 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.

Section 7.02

Plan Submission Procedure. All plans and specifications required to be submitted to the ACC 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.

- Section 7.03 Plan Requirements. Residence plans must consist of: exterior elevations, a plot plan including property lines, set backs, easements, structures, driveways, any accessory structures - fences, proposed grading, plus floor plans indicating square footage. Exterior colors shall also be submitted.
- Section 7.04 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 7.05 Completion. Approved projects must be completed within the later of six (6) months after issuance of a building permit or within six months after approval by the ACC if no building permit is required. Failure to complete work within the prescribed time may cause the approval to be rescinded and re-submission will be required. The ACC may grant an extension under extenuating circumstances brought to its attention.
- Section 7.06 Building Size. In considering the design of proposed improvements, the ACC 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 level. Minimum square footage of heated living area for a residence (excluding garage, enclosed patios and decks, attics and unheated storage areas) in Comstock Estates Subdivision, Filing No. 1 shall be 1400 square feet for all lots, except that minimum square footage shall be 1200 square feet for Lots 4,5 and 9, Block 2, Lot 3, Block 3 and Lots 6 and 11, Block 4 and 950 square feet for the residence on each twin home lot.
- Section 7.07 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 ACC will have the right to decide if the design meets these requirements.

Section 7.08 Exterior Colors. Semi-transparent or solid colors in moderate hues only are acceptable, and must be approved by the ACC. 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 7.09 Roofs. Roofs must be architectural asphalt shingle with at least a twenty five (25) year life, unless otherwise approved by the ACC. A minimum four in twelve pitch shall be maintained on all roofs. All roof colors must be of a moderate hue as approved by the ACC.

Section 7.10 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 twenty (20) percent 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 twenty (20) percent requirement.

Section 7.11 Windows. Windows shall be of a design and color complimentary to the exterior of the residence. Window frames of mill finished aluminum will not be allowed.

Section 7.12 Driveways. All driveways shall be composed of concrete unless otherwise approved by the ACC.

Section 7.13 Structures. Only new construction shall be permitted in the subdivision. No structure shall be built or placed on the property without submission to, and approval by, the ACC in accordance with this Article VII.

Section 7.14

Time of Construction. Subject to the time limits stated in Section 7.05, all projects approved by the ACC 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 year after the date of purchase, unless an extension is granted by the ACC prior to the expiration of that one year period.

ARTICLE VIII
ARCHITECTURAL CONTROL COMMITTEE

Section 8.01

Composition of the Committee. The ACC shall consist of three (3) or more persons appointed by the BOD of the Association; 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 ACC. 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 members 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 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 and his heirs, successors, legal representatives, and assigns that he will not bring any action or suit at law or in equity against the Declarant, the Association, the ACC, or any of the members thereof to recover any such damage.

Section 8.03

Notice of Noncompliance or Non-completion. 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 non-completion, executed by the ACC 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 Acc may from time to time, in its sole discretion, adopt, amend and repeal rules and regulations interpreting and implementing, the provisions of Article VIII.

Section 8.05

Variances. Where circumstances (such as topography, location of property lines, location of trees, or other matters) require, the ACC, 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 ACC, 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 the granting of any variance shall not affect in any way the Association's or owner's obligation to comply with the ordinances of the City of Fruita and other applicable governmental laws or regulations.

Section 8.06 Appointment and designation. The ACC 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 ACC 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 ACC shall be the principal place of business of the Association or such other place as the ACC may from time to time designate in writing to the BOD. The address shall be the place for the submission of any plans or specifications and the place where the current rules and regulations, if any, of the ACC shall be kept.

Section 8.08 Inspection. Any member or agent of the ACC 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 ACC as to its improvement or maintenance in compliance with the provisions thereof.

Section 8.09 General Provisions. The members of the ACC shall not be entitled to any compensation for services performed under Article VIII hereof. The powers and duties of the ACC 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 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 ACC.

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; © this Declaration; and (d) the Articles and ByLaws of the Association to the extent not inconsistent with (a), (b) or ©.

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 except in an

instrument signed by seventy five (75%) of all owners, including seventy five (75%) of all owners other than Declarant, agreeing to such encumbrance, dedication, or transfer has been recorded in the Mesa County records. Such instrument may be signed in counterparts which shall together constitute a single agreement.

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 of 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 Article 9 hereof 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 family or a guest or invitee or 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 may be appealed by said 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 whatsoever 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 BOD of the Association.

ARTICLE IX-A USE RESTRICTIONS

Section 9A.01 Delegation of Use. Any owner may delegate, subject to any ByLaws of the Association, his right of enjoyment to the Common Area and use of Association Water to the members of his family residing with him, his tenants or contract purchasers who reside on the lot owned by that owner.

Section 9A.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 said construction and sale, including, but without limitation, a business office, storage area, construction yards, signs, model units

and sales office.

Section 9A.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) Except for the lots specifically identified on the map as a twin home lot, only one single family dwelling may be constructed on each lot. On each lot identified on the map as a twin home lot, no more than two single family dwellings may be constructed. 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 (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, 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 lots.
- 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 utility 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 9A.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 9A.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 9A.06 Temporary Structures, Time Limited 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 9A.07 Signs. No sign, graphic or advertising device shall be placed on the property except (a) one sign of not more than four square feet advertising a lot for sale, and (b) political signs in support of candidates or ballot issues limited to the ninety day (90) 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 9A.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 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 9A.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 ACC. This Section 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 clothesline, 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 shall be subject to the review and approval of the ACC.

Section 9A.10 Vehicular Parking, Storage and Repairs.

- a) Any house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, motor-driven cycle, truck (larger than one ton), self-contained motorized recreational vehicle, or other type of recreational

vehicle or equipment, may be parked or stored on or within the property only if 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). Section 9A.19 therefore further limits the location of such a fenced vehicle storage area. Any such vehicle may be parked as a temporary expedience for loading, delivery, or emergency. 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 herein above provided, 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, 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 shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said 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 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 with 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 washing and polishing or any motor vehicle, boat, trailer, or motor driven cycle, together with those activities normally incident and necessary to such washing and polishing.

- d) Each residence shall have a minimum of a two (2) car garage (one car garage for twin home lots) and a maximum of a three (3) car garage.

Section 9A.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 9A.12

Lots Not to be Subdivided. Except for twin home lots described elsewhere in this Declaration, 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 entire lot (or twin home lots, if applicable), as conveyed, shall be used as a building site.

Section 9A.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 9A.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 9A.15 No Annoying Light, 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 lot 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 devices shall be discharged on the property.

Section 9A.16 Garbage and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, the Common Area, or any 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 9A.17 Leases. The term "lease" as used herein, 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 lot under the following conditions:

- a) All leases shall be in writing;

- b) All leases and lessee's occupancy of the lot shall be subject in all respects to the provisions of this Declaration, and the Articles of Incorporation, ByLaws and rules and regulations of the Association, and by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease; and
- c) No lease shall be for less than thirty (30) days.

The provisions of (b) and © 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 9A.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 9A.19

- a) Except as provided in subsections (b) and © below, no fencing, privacy walls or hedges exceeding three 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 ACC 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.
- b) A six (6) foot high wood privacy fence will be constructed east of the irrigation ditch which runs north-south on the west boundary of each of Lots 7,8,9,10,11,12 and 13 in Block 4. The fence will be

constructed at the expense of the owner of each of those lots for the portion of the fence located on that owner's lot within six (6) months after issuance of a certificate of occupancy for the residence on that lot. The fence shall be of design and construction so as to present a uniform appearance facing the property located to the west of these lots. Design, location and construction of this fence will be approved by the ACC and, if required, the City of Fruita.

- c) Subject to approval by the ACC, either Declarant or the Association may construct a fence in the Utilities and Irrigation Easement along the south boundary of Lots 1 through 11, Block 4 and Outlot A, Block 1 of Comstock Estates Subdivision, Filing No. 1 as shown on the map. If constructed pursuant to this provision, the fence shall become the property of the Association and all aspects of its maintenance, repair, removal, replacement and modification will be Common Expenses, except as otherwise provided in this Declaration. The fence will be constructed so as not to interfere with the use of the easement which is located for irrigation and utilities purposes. After its initial construction, the Association may remove, replace, redesign, or otherwise change the initial fence as the Association determines is proper. Despite anything to the contrary stated elsewhere in this Declaration, this fence shall not exceed 6 feet in height.

Section 9A.20 Service Area. Storage or accessory buildings (such as dog houses, tool sheds, firewood, garbage, barbeque type buildings or enclosures), non-portable or affixed outdoor furniture such as picnic tables, barbecues, hot tubs, etc., shall be reasonably screened from public and neighboring view.

Section 9A.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, providing 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 Common Areas.

Section 9A.22 Basements. No basements are allowed.

Section 9A.23 Structure. No home or garage shall be of the type known as "pre-built, pre-cut, modular, manufactured or mobile homes," regardless of its quality.

Section 9A.24 Landscaping. Except as otherwise provided herein, 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 (excluding Declarant) to landscape the front yard of his or her lot within one hundred twenty (120) days from issuance of a Certificate of Occupancy. The landscaping shall include at least two (2) trees, and five (5) shrubs. The time limits contained herein may be extended for good cause, a one time extension of time for an additional one hundred twenty (120) days may be granted to comply with this provision of the ACC in writing.

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 law 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 yard or home in a condition which violates any of the use restrictions herein above set forth, the BOD of the Association shall have the power to contract with an independent third party to remedy the violation. Said 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 9A.25 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 X ASSOCIATION WATER

Section 10.01 Management of Association Water. The Association shall have the exclusive authority to allocate, deliver, manage, and control the use of the Association Water. 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.

Section 10.02 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 X, Declarant shall have the right to utilize the Irrigation Facilities to provide irrigation water to land added to the property under Section 13.05; 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 10.03 Irrigation Assessments. All billings by Elmwood Lateral Ditch Co. And Grand Valley Irrigation Company associated with Association water shall be Common Expenses.

Section 10.04 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 10.05 Drainage. Release of contaminants or hazardous materials into the property drainage is prohibited and the Association shall indemnify and hold harmless Grand Valley Irrigation Co. And Elmwood Lateral Ditch Co.
- Section 10.06 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. Upon the transfer to the Association, full responsibility for the Irrigation Facilities and Association Water shall be borne by the Association.
- Section 10.07 Transfer to Association. No later than upon conveyance of 75% of the lots to owners other than Declarant, Declarant shall convey fee simple title to Irrigation Facilities and Association Water (consisting of at least one share of Grand Valley Irrigation Company Stock) per acre of the property 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.

ARTICLE XI INSURANCE

- Section 11.01 Insurance. The Association shall obtain and maintain insurance as required by the CCIOA, currently codified at C.R.S., Sections 38-33.3-313.
- Section 11.02 Corporate Employees. If any owner or Association employee controls or disburses Association funds, the Association must obtain and maintain, to the extent reasonably available, fidelity insurance is an aggregate amount equal to not less than two months of current assessments plus reserve calculated from the then-current

budget of the Association.

Section 11.03 Independent Contractors. Any person employed as an independent contractor by the Association for the purposes of managing the Association must obtain and maintain fidelity insurance in that same amount unless the Association names such a person as an insured employee in a contract of fidelity insurance described above.

Section 11.04 Additional Coverage. The Association may carry or require of an independent contractor employed to manage the Association fidelity insurance coverage in an amount greater than that specified in this section. In addition, the Association may carry any other insurance, such as Directors and officers coverage, unless otherwise prohibited by law.

Section 11.05 Common Expenses. Premiums for insurance required by the Association under this provision are Common Expenses of the Association.

ARTICLE XII 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:

- 1) the planned community is terminated;
- 2) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

- 3) eighty percent (80%) of the owners, including every owner of a lot that will not be rebuilt, vote to not rebuild; or
- 4) 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 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 XIII GENERAL PROVISIONS

Section 13.01 Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 13.02 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 9A.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 13.03 Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or ByLaws of the

Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the ByLaws of the Association, the Articles of Incorporation shall control.

Section 13.04 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 13.05 Expansion.

- a) Reservation of Right to Expand. Declarant reserves the development right to expand the property to include no more than 350 additional lots and additional Common Areas at any time or times without approval by the lot owners. The area of potential expansion is all property (other than Comstock Estates Subdivision, Filing No. One) described in the deed recorded in May 12, 1995, in Book 2144 at Page 543 of the Mesa County records.
- 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 declarations, upon placing the supplemental parcel map(s) depicting the new lots.
- 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 13.05 will expire twenty years after the date of recording of this Declaration in the Mesa County real estate records.

Section 13.06

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 him 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 13.07 Amendment and Termination. Subject to the provisions of Section 38-33.3-217(1), (5) and (6), C.R.S., all or any portion of this Declaration may be supplemented, changed or cancelled 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 Mesa County, Colorado real estate records.

Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, Articles of Incorporation or ByLaws of the Association at any time prior to the termination of Declarant's control or 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 13.08 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 improvements 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 Article 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 14.09 shall expire ten (10) years after the recording of this Declaration, except as to land added to the property under Section 13.05 as to which those reserved rights will expire ten 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 13.09 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 shall control in the event of any conflict with any other provisions contained in this Declaration. Declarant shall have the rights stated in this Section for the same time period as the rights reserved in Section 13.09.

Section 13.10 CCIOA Controls. Any provision of this Declaration in conflict with the provisions of CCIOA shall be void and of no effect.

Section 13.11 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 13.12 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 13.13 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 13.14 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 13.15 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 13.16 Applicability of Governmental Regulations. The covenants, conditions and restrictions contained herein are separate and distinct from any zoning, building or other law 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 hereof 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 ACC shall waive any such covenants, conditions or restrictions to the extent it results in such a violation, and in connection therewith, the ACC may impose such conditional

covenants, conditions and restrictions as may be necessary to carry out the intent of this Declaration.

DECLARANT:

COMSTOCK ESTATES, LLC,
A COLORADO LIMITED
LIABILITY COMPANY

BY: Lisa A. Comstock
LISA A. COMSTOCK, MANAGER

STATE OF COLORADO)
) SS.
COUNTY OF MESA)

Subscribed and sworn to before me this 7th day of August, 1997, by Lisa A. Comstock, as Manager of Comstock Estates, LLC, a Colorado Limited Liability Company.

WITNESS my hand and official seal.

My commission expires: 02-10-98.

Kristin Coakley
NOTARY PUBLIC-KRISTIN COAKLEY

*Book 2446 Page 472
Recpt #184874
06/01/98
Mesa County, CO*

**SECOND AMENDMENT AND
SUPPLEMENTAL DECLARATION**

**TO THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COMSTOCK ESTATES SUBDIVISION
FILING NO. 1**

This Second Amendment and Supplemental Declaration is made as of May 15, 1998, by Comstock Estates, LLC ("Declarant").

RECITALS

- A. Declarant has previously caused to be recorded in Book 2348 at Page 569 of the Mesa County records the Declaration of Covenants, Conditions and Restrictions of Comstock Estates Subdivision, Filing No. 1 (the "Declaration") and in Book 2370 at Page 146 a First Amendment to the Declaration.

- B. In Section 13.05 of the Declaration, Declarant expressly reserved to itself and any successor declarant (TERMS USED IN THIS DOCUMENT SHALL BE THE SAME MEANING AS DEFINED IN THE DECLARATION UNLESS OTHERWISE SPECIFICALLY DEFINED OR MODIFIED IN THIS INSTRUMENT), the right to expand the property by annexing additional lots and Common Area within certain described area(s) by one or more duly recorded documents to the Declaration.

- C. Declarant wishes to expand the property to include real property ("Filing No. 2") in Mesa County legally described as follows:

See "Exhibit A" attached and incorporated here by this reference.

The property described in the attached Exhibit A is within the area of

lands as to which expansion of the property is permitted by Section 13.05 of the Declaration.

- D. Declarant reserves the continuing right to further expand the property in accordance with the provisions of Section 13.05 of the Declaration.

THEREFORE, Declarant declares that both the property and Filing No. 2 shall be held, sold and conveyed subject to the Declaration, which is for the purpose of protecting the value and desirability of the property and Filing No. 2 and which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the property or Filing No. 2 properties; provided, however, that the Declaration of Covenants, Conditions and Restrictions of Comstock Estates Subdivision, Filing No. 2 recorded in Book ____ at Page ____ of the Mesa County records shall control in the event of any conflict with the Declaration of this Second Amendment and Supplemental Declaration.

TERMS

1. General. The terms and provisions contained in this Second Amendment and Supplemental Declaration shall be in addition and supplemental to the terms and provisions contained in the Declaration. All terms and provisions of the Declaration, including all definitions (except those terms and provisions specifically modified in this Supplemental Declaration or the Filing No. 2 Declaration) shall be applicable to Filing No. 2. The definitions used in the Declaration are expanded and shall hereafter be deemed to encompass and refer to the property as defined in the Declaration and to Filing No. 2.
2. Plat Map. A map or plat of Filing No. 2 is attached as "Exhibit B" and incorporated here by this reference. The map shall constitute a supplemental parcel map under Section 13.05(d) of the Declaration. This Second Amendment and Declaration is recorded to make the Declaration operative to Filing No. 2 as provided in Section 13.05(d) of the Declaration.
3. Effect of Expansion. Assessments levied by the Association as provided in the Declaration, after the recording of this Second Amendment and Supplemental Declaration, shall be amended to reflect the increase in the

number of lots caused by the expansion of the property to include Filing No. 2 levied against all lots including lots which are part of Filing No. 2. The recording of this Second Amendment Supplemental Declaration shall not alter the amount of the assessments assessed to a lot prior to such recording. Despite inclusion of additional lots under the Declaration, each owner shall remain fully liable with respect to his obligation for the payment of all prior assessments of the Association, including those relating to the expenses for all Common Area and related costs and fees, if any.

- 4. Severability. Invalidation of any covenant, restriction or provision contained in this document by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.
- 5. Conflicts Between Documents. In case of conflict between the Declaration as supplemented by this Second Amendment and Supplemental Declaration and the Articles and the ByLaws of the Association, the Declaration as amended and supplemented shall control.

DECLARANT:

COMSTOCK ESTATES, LLC
A Colorado Limited Liability Co.

BY: Lisa A. Comstock
Lisa A. Comstock, Manager

STATE OF COLORADO)
) SS.
COUNTY OF MESA)

Subscribed and sworn to before me this 15th day of May, 1998 by Lisa A. Comstock as Manager of Comstock Estates, LLC, a Colorado Limited Liability Company.

WITNESS my hand and official seal.

My commission expires: May 6, 2000.

Roxanne McConell
NOTARY PUBLIC-Roxanne McConell

EXHIBIT "A"

A parcel of land in the City of Fruita, County of Mesa, State of Colorado, being a portion of the Southeast 1/4 of the Southeast 1/4 of Section 7, Township 1 North, Range 2 West, Ute Meridian, said Parcel also being a portion of Block 5 of Comstock Estates, Filing No. One, as per plat filed in Plat Book No. 15, Pages 381 and 382 in the office of the Clerk and Recorder of Mesa County; more particularly described as follows:

BEGINNING at the Northeast Corner of Outlot A, as said lot is shown on plat of said Comstock Estates, Filing No. One;

thence, along the Southerly Boundary of said Block 5, of Comstock Estates, Filing No. One, through the following courses,

South 89 degrees 42'02" West, 207.22 feet;

thence, South 87 degrees, 01'53" West, 102.63 feet;

thence, South 89 degrees, 42'19" West, 86.50 feet;

thence, North 00 degrees, 17'41" West, 310.00 feet;

thence, South 89 degrees, 42'19" West, 100.00 feet;

thence, North 00 degrees, 17'41" West, 27.00 feet;

thence, South 89 degrees, 42'19" West, 152.00 feet;

thence, North 00 degrees, 17'41" West, 150.00 feet;

thence, leaving said Southerly Boundary of Block 5, along the Northerly prolongation of

the last said course, North 00 degrees, 17'41" West, 15.22 feet;

thence, North 89 degrees, 42'19" East, 100.00 feet;

thence, North 00 degrees, 17'41" West, 1.78 feet;

thence, North 89 degrees, 42'19" East, 292.11 feet;

thence, North 77 degrees, 44'35" East, 44.00 feet;

thence, South 12 degrees, 15'25" East, 8.90 feet to the beginning of a tangent, 122.00 foot radius curve concave West;

thence, Southerly along said curve, through a central angel of 10 degrees, 24'05" a Length of 22.15 feet;

thence, radial to said curve, North 88 degrees, 08'40" East, 99.18 feet;

thence, South 05 degrees, 20'15" East, 6.62 feet;

thence, North 89 degrees, 42'19" East, 143.68 feet;

thence, South 00 degrees, 17'41" East, 40.72 feet;

thence, South 90 degrees, 00'00" East, 108.85 feet, to a point in the Easterly Boundary of said Block 5;

thence, along the Easterly and Southerly Boundary of said Block 5, through the following courses:

South 00 degrees, 00'01" West, 221.78 feet;

thence, South 33 degrees, 46'16" West, 254.33 feet to the POINT OF BEGINNING.

The herein above described parcel of land containing 6.581 acres, more or less, also known as Comstock Estates, Filing No. 2.

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COMSTOCK ESTATES SUBDIVISION
FILING NO. 2**

This Declaration of Covenants, Conditions and Restrictions for Comstock Estates Subdivision Filing No. 2 ("Declaration") is made May 27, 1998 by Comstock Estates, LLC, A Colorado Limited Liability Company ("Declarant").

RECITALS

- A. Declarant owns real property (together the "Lots" or Filing No. 2 and individually a "Lot") in the City of Fruita, County of Mesa, State of Colorado, legally described as:

All of Comstock Estates Subdivision Filing No. 2

- B. Declarant desires to adopt, establish and impose covenants, conditions and restrictions upon the lot for the purpose of enhancing, maintaining and protecting the value and desirability of the lot and the remainder of all of Comstock Estates Subdivision, including Filing No. 1, Filing No. 2 and all future filings (together the "Subdivision").

THEREFORE, Declarant covenants, agrees and declares that all of the lots shall be held, sold, conveyed, encumbered, leased, used, occupied and improved, subject to the following limitations, restrictions, covenants, conditions and reservations, all of which are declared and agreed to be in furtherance of a general plan for the improvements and development of the lots and the subdivision. All of the limitations, restrictions, covenants and conditions shall run with the land, shall be binding upon all present and future owners of the lots and shall inure to the benefit of (and be enforceable in any action at law or in equity by) Declarant and its successors and assigns, each present and future owner of any lot in the subdivision (including Filing No. 1, Filing No. 2 and future filings), or by the Comstock Estates Filing No. 1 Homeowners Association ("Association"), its successors and assigns.

TERMS

1. Definitions. Terms in this declaration not expressly defined in it shall have the same meaning as in the Declaration of Covenants, Conditions and Restrictions for Comstock Estates Subdivision, Filing No. 1 ("Filing No. 1 Declaration") recorded August 8, 1997 in Book 2348 at Page 569 of the Mesa County records.
2. Building Size. Minimum square footage of heated living area for a residence (excluding garage, enclosed patios and decks, attics and unheated storage areas) in Filing No. 2 shall be 1,400 square. A residence shall have no more than one level, except that homes with two above ground living levels (two story houses, but not split levels or tri-levels may be constructed on Lots 11, 12 and 13 of Filing No. 2.
3. Vehicle Storage. In addition to the restrictions contained in Section 9(A).10 of the Filing No. 1 Declaration, the screened areas for storage of vehicles and recreational equipment shall be located only adjacent to the garage located on that lot.

4. No 17 Road Access. There shall be no driveway or other access to any of the lots directly from 17 Road (Coulson Avenue).
5. 17 Road Fence. Subject to approval by the ACC of the Association, either Declarant or the Association may construct (and maintain, repair, remove, replace, redesign and remodel) a fence in the Utilities and Irrigation Easement along the south boundary of Lots 11, 12, 13, 14 and 15 and the east or easterly boundaries of Lots 7,8,9,10 and 11 as shown on the plat of Filing No. 2 of the subdivision. If constructed pursuant to this provision, the fence shall become the property of the Association and all aspects of its maintenance, repair, removal, replacement and modification will be Common Expenses, except as otherwise provided in the Filing No. 1 Declaration. The fence will be constructed so as not to interfere with the use of the easement which is located for irrigation and utilities purposes. After its initial construction, the Association as its expense may remove, replace, redesign, or otherwise change the initial fence as the Association determines is proper. Despite anything to the contrary stated elsewhere in this Declaration, this fence shall not exceed 6 feet in height.
6. Roofs. A minimum of five in twelve pitch shall be maintained on all roofs.
7. Conflict of Provisions. In case of any conflict between this Declaration and the Filing No. 1 Declaration, this Declaration shall control. Immediately subsequent to the recording of this Declaration, Declarant expects to record an amendment and supplement to the Filing No. 1 Declaration expanding the coverage of the Filing No. 1 Declaration to encompass and incorporate Filing No. 2 under the Reservation of Right to Expand reserved to Declarant in Section 13.05 of the Filing No. 1 Declaration.
8. Severability. Invalidation or partial invalidation of any of the covenants, restrictions or other provisions contained in this Declaration shall in no way affect or limit any other provision, all of which shall remain in full force and effect.

DECLARANT:

COMSTOCK ESTATES, LLC,
A Colorado Limited Liability Co.

BY: Lisa A. Comstock
Lisa A. Comstock, Manager

STATE OF COLORADO)
) SS.
COUNTY OF MESA)

Subscribed and sworn to before me this 22nd day of May, 1998 by Lisa A. Comstock as
Manager of Comstock Estates, LLC, a Colorado Limited Liability Company.

WITNESS my hand and official seal.

My commission expires: 03-29-99

Margaret Steelman
NOTARY PUBLIC-Margaret Steelman

*BOOK 2370 PAGE 146
Recpt #1817829
10/24/97 Mesa County, CO*

PAGE

FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COMSTOCK ESTATES SUBDIVISION, FILING NO. 1

This First Amendment to the Declaration of Covenants, Conditions and Restrictions for Comstock Estates Subdivision, Filing No. 1 is made this 24th day of October, 1997 by Comstock Estates, LLC, a Colorado Limited Liability Company ("Declarant").

RECITALS

A. The purpose of this First Amendment is to amend the Declaration of Covenants, Conditions and Restrictions for Comstock Estates Subdivision, Filing No. 1 (the "Declaration") recorded on August 8, 1997 in Book 2348 at Page 569 of Mesa County Records.

B. Declarant is the owner of at least 67% of the lots (as defined in Section 1.11 of the Declaration) in the subdivision (as defined in Section 1.19 of the Declaration).

C. Based upon its ownership of lots as described in the preceding recital paragraph, Declarant is authorized and entitled to amend and supplement the Declaration under Section 13.07 of the Declaration, and this First Amendment of the Declaration is signed and recorded by Declarant for that purpose.

THEREFORE, Declarant agrees to, votes for, and makes the following amendments of the Declaration:

1. The second sentence of Section 7.06 is amended to read as follows:

A residence shall be no more than one level, unless a basement is

approved by the ACC as provided in Section 9A.22.

2. The final sentence of Section 7.08 is deleted. As amended, Section 7.08 will read as follows:

Section 7.08. Exterior Colors. Semi-transparent or solid colors in moderate hues only are acceptable, and must be approved by the ACC.

3. Section 9A.22 is amended to read as follows:

Section 9A.22. Basements. No basements are allowed, unless approved by the ACC in accordance with the provisions of Article VII.

4. Section 13.05(d) of the Declaration contains typographical errors in that a portion of that section was inadvertently omitted at the time of preparation, signing and recording of the Declaration. Section 13.05(d) of the Declaration is amended and corrected to read as follows:

(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.

5. Except as expressly modified by this First Amendment, the Declaration shall remain in full force and effect according to its original terms. The provisions of this First Amendment shall be binding upon and for the benefit of Declarant, each owner (as defined in the Declaration) and each and all of their heirs, personal representatives, successors in interest and assigns.

DECLARANT:

COMSTOCK ESTATES, LLC,
A Colorado Limited Liability Co.

BY: Lisa A. Comstock
Lisa A. Comstock, Manager

STATE OF COLORADO)
) SS.
COUNTY OF MESA)

Subscribed and sworn to before me this 2^{4th} day of October, 1997 by Lisa A. Comstock as Manager of Comstock Estates, LLC, a Colorado Limited Liability Company.

WITNESS my hand and official seal.

My commission expires: 06-29-01

Signed
NOTARY PUBLIC

*BOOK 2348 PAGE 569
Recpt #1808694
08/08/97 Mesa County, CO*

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COMSTOCK ESTATES SUBDIVISION, FILING NO. 1**

THIS DECLARATION ("Declaration") is made this 7th day of August, 1997, by Comstock Estates, 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 all of Comstock Estates Subdivision, Filing No. 1, City of Fruita, Mesa County, Colorado.
- 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

PAGE

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 Estates Filing No. 1 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 be binding upon and inure to the benefit of 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 servitude 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 Estates Filing No. 1 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 Grand Valley 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” (BOD) 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 without limitation Outlot A, Block 1, plus 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 in 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 “Common Expenses” shall mean and include expenditures made and liabilities incurred, by or on behalf of the Association.
- Section 1.09 “Conveyance” shall mean and refer to conveyance of a fee simple title, or lease of any part of the property.
- Section 1.10 “Declarant” shall mean and refer to Comstock Estates, 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 1.11 “Lot” shall mean and refer to each numbered lot of the property described in the map, except those designated as twin home lots (“twin home lots”) on the map that have then been approved by the City of Fruita for separate ownership of the two dwelling units (whether by creation of condominium, townhouse or

otherwise), which shall constitute two separate lots for all purposes under this Declaration. Boundaries of a lot shall be as shown and defined on the plat map of the subdivision as recorded and amended.

Section 1.12 “Unimproved Lot” shall be a lot upon which no improvements have been constructed.

Section 1.13 “Improved Lot” shall be a lot upon which improvements have been constructed.

Section 1.14 “Member” shall mean and refer to every person or entity who holds a membership in the Association as provided in Article II, Section 2.01.

Section 1.15 “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 performance of an obligation.

Section 1.16 “Mortgagee” shall mean and include mortgagees, trustees, beneficiaries and holders of a mortgage, and the holders of any indebtedness secured by mortgage.

Section 1.17 “Mortgagor” shall mean and include mortgagors and trustors under deeds of trust which are mortgages.

Section 1.18 “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 1.19 “Subdivision” shall mean all of the property, and improvements thereon, subject to this Declaration or any amendment to this Declaration.

Section 1.20 “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 4.04 of this Declaration.
- 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 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 lot in accordance with the provisions of this Declaration, or as a result of the negligence, recklessness, or willful misconduct of any owner, his 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 1.21

"Residence" means the single family dwelling unit located on a lot (or each of the two single family dwelling units located on a twin home lot).

Section 1.22 “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 1.23 “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.

ARTICLE II
THE ASSOCIATION
MEMBERSHIP: VOTING RIGHTS: DECLARANT CONTROLS

Section 2.01 Membership. Every owner of one 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 or more lots in the property may be a member of the Association. No owner shall be entitled to sever his 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 vote in the Association, subject to Section 2.05 below.

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 Section 2.06(a), the Board shall be managed by five (5) Directors. Directors shall meet the qualifications described in the Articles of Incorporation and ByLaws of the Association.

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 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 of the Association, subject to the limitations stated in this section.
- 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 BOD 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 BOD must be elected by owners other than Declarant.

- d) Upon the termination of the period of Declarant control specified in subsection 2.06(a) of this Article, the owners shall elect a BOD of at least five (5) members, who must be owners other than Declarant or designated representatives of owners other than Declarant. The BOD 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 sixty seven percent (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 BOD may be removed with or without cause, other than a member appointed by Declarant.

Section 2.07

Quorum. A quorum will be deemed present throughout any meeting of the Association if persons entitled to cast 20% of the votes which may be cast for election of the BOD of the Association are present in persons or by proxy at the beginning of the meeting. A quorum will be deemed present throughout any meeting of the BOD of the Association if persons entitled to cast 50% of the votes on the Board are present at the beginning of the meeting.

**ARTICLE III
PROPERTY RIGHTS IN THE LOTS AND COMMON AREA**

Section 3.01

Title to the Common Area. No later than upon conveyance of 75% of the lots 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 of the Association.
- d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument in any number of counterparts signed by members entitled to cast two-thirds of the votes has been recorded, agreeing to such

dedication or transfer, and provided written notice of the proposed action is sent to every member no less than thirty (30) days nor more than sixty (60) days in advance;

- e) 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
- f) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

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 this lot.

Section 3.05

General Restrictions. All owners of lots by their acceptance of their respective deeds, covenants 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.

Section 3.06

Use of Outlot A, Block 1. Despite anything to the contrary stated elsewhere in this Declaration, Outlot A, Block 1 shall be used only for open space or other use which will not conflict with its

function as an area for storm water runoff and detention. This Section shall not be amended without the consent of the City of Fruita.

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 (including any lots subsequently added under Section 14.05 below) 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 Section 38-33.3-316(1), C.R.S. or any other provision of CCIOA (as it may be subsequently amended) or by any other applicable law.

All items set forth in this Section, 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, the Articles of Incorporation of the Association (as amended from time to time); or as otherwise authorized by CCIOA or other applicable law.

Section 4.03

Initial Assessment.

- a) The initial regular assessment for common expenses of the Association shall be fixed in an amount set by, and made upon the resolution of, the BOD of the Association.
- 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 installation of new improvements, all to the extent set forth in the approved budget upon which such assessment is based.
- c) Until the BOD of the Association 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 BOD. 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 the Declaration, CCIOA or other applicable law.

Section 4.05

Expense Allocation. Except as otherwise stated in this Section, 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 benefitting or caused by fewer than all lots shall be assessed exclusively against the lots benefitted 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 item (a) and (b) in Section 4.01 of this Article IV shall have the priority specified in CCIOA which, as of the date of the Declaration, is codified at Section 38-33.3-316(2), C.R.S. or other applicable law.

**ARTICLE V
BUDGET AND RECORDS**

Section 5.01

Books and Records. The BOD 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 representative during regular business hours at the principal office of the Association. The BOD 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 BOD 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 BOD 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 not less than fourteen (14) nor more than sixty (60) days 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 BOD.

Section 5.06 Reserve Fund. As part of each annual budget, the BOD 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 below, foreclose the lien provided for in Section 4.01 above 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 assessment.

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

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 ACC as to harmony of external design and location in relation to surrounding structures, topography and other matters specified in this Article VII except for Sections 7.06 through 7.13 and the first sentence of this Section 7.01; provided, however, that Declarant and any successor Declarant shall not be required to comply with the provisions of this Article VII. In the event said ACC, or its designated representatives fail 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.

Section 7.02

Plan Submission Procedure. All plans and specifications required to be submitted to the ACC 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.

Section 7.03 Plan Requirements. Residence plans must consist of: exterior elevations, a plot plan including property lines, set backs, easements, structures, driveways, any accessory structures, fences, proposed grading, plus floor plans indicating square footage. Exterior colors shall also be submitted.

Section 7.04 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 7.05 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 ACC if no building permit is required. Failure to complete work within the prescribed time may cause the approval to be rescinded and re-submission will be required. The ACC may grant an extension under extenuating circumstances brought to its attention.

Section 7.06 Building Size. In considering the design of proposed improvements, the ACC 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 residence and area. A residence shall be no more than one level. Minimum square footage of heated living area for a residence (excluding garage, enclosed patios and decks, attics and unheated storage areas) in Comstock Estates Subdivision, Filing No. One shall be 1400 square feet for all lots, except that minimum square footage shall be 1200 square feet for Lots 4,5 and 9, Block 2, Lot 3, Block 3 and Lots 6 and 11, Block 4 and 950 square feet for the residence on each twin home lot.

Section 7.07 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 ACC will have the right to decide if the design meets these requirements.

Section 7.08 Exterior Colors. Semi-transparent or solid colors in moderate hues only are acceptable, and must be approved by the ACC. 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 7.09 Roof. Roofs must be architectural asphalt shingle with at least a twenty five (25) year life, unless otherwise approved by the ACC. A minimum four in twelve pitch shall be maintained on all roofs. All roof colors must be of a moderate hue as approved by the ACC.

Section 7.10 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 twenty (20) percent 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 twenty (20) percent requirement.

Section 7.11 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 7.12 Driveways. All driveways shall be composed of concrete unless otherwise approved by the ACC.

Section 7.13 Structures. Only new construction shall be permitted in the subdivision. No structure shall be built or placed on the property

without submission to, and approval by, the ACC in accordance with this Article VII.

Section 7.14

Time of Construction. Subject to the time limits stated in Section 7.05, all projects approved by the ACC 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 year after the date of purchase, unless an extension is granted by the ACC prior to the expiration of that one year period.

ARTICLE VIII
ARCHITECTURAL CONTROL COMMITTEE

Section 8.01

Composition of the Committee. The ACC shall consist of three (3) or more persons appointed by the BOD of the Association; 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 offices of the Clerk and Recorder of Mesa County, Colorado, whichever occurs earlier, Declarant shall appoint the ACC. 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 to the power to: initially constitute the membership of the ACC, appoint member(s) to the ACC upon the occurrence of any vacancy, and for whatever reason to remove any member of the ACC, 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 ACC shall be deemed approved by the ACC without the issuance of any writing evidencing such approval.

Section 8.02

No Liability. Neither Declarant or the Association, nor the ACC 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 fo 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 and his heirs, successors, legal representatives, and assigns that he 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 Non-completion. 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 non-completion, executed by the Acc 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 Acc may from time to time, in its sole discretion, adopt, amend and repeal rules and regulations interpreting and implementing the provisions of Article VIII.

Section 8.05

Variances. Where circumstances (such as topography, location of property lines, location of trees, or other matters) require, the ACC, 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 ACC, 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 not affect in any way the Association's or owner's obligation to comply with the ordinances of the City of Fruita and other applicable governmental laws or regulations.

Section 8.06 Appointment and Designation. The ACC 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 ACC 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 ACC 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 BOD. The address shall be the place for the submission 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 ACC 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 Acc 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 Article VIII hereof. 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

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 ACC.

Section 8.10

Compliance with Governmental Law. 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 of the Association, to the extent not inconsistent with (a), (b) or ©.

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 except in an instrument signed by seventy five percent (75%) of all owners, including seventy five percent of all owners other than Declarant, agreeing to such encumbrance, dedication, or transfer has been recorded in the Mesa County records. Such instrument may be signed in counterparts which shall together constitute a single agreement.

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 of 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 Article 9 hereof 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 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 or 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 may be appealed by said 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 whatsoever 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 BOD of the Association.

ARTICLE IX-A USE RESTRICTIONS

Section 9A.01 Delegation of Use. Any owner may delegate, subject to any ByLaws of the Association, his right of enjoyment to the Common Area and use of Association Water to the members of his family residing with him, his tenants, or contract purchasers who reside on the lot owned by that owner.

Section 9A.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 said construction and sale, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 9A.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) Except for the lots specifically identified on the map as a twin home lot, only one single family dwelling may be constructed on each lot. On each lot identified on the map as a twin home lot, no more than two single family dwellings may be constructed. 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 (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, 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 9A.04 Household Pets. No animals, livestock, reptiles, poultry or insects, or 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 9A.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 costs as a special assessment to the owner on whose lot or improvement such maintenance or repairs were conducted.

Section 9A.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 9A.07 Signs. No sign, graphic, or advertising device shall be placed on the property except (a) one 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 9A.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 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 9A.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 ACC. This section 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 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 shall be subject to the review and approval of the ACC.

Section 9A.10

Vehicular Parking, Storage and Repairs.

- a) Any house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, motor driven cycle, truck (larger than one ton), self contained motorized recreational vehicle, or other type of recreational vehicle or equipment, may be parked or stored on or within the property only if 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). Section 9A.19 therefore further limits the location of such a fenced vehicle storage area. Any such vehicle may be parked as a temporary expedience for loading, delivery, or emergency. 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 herein above provided, 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, 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 shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said 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 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 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 washing and polishing of any motor vehicle, boat, trailer or motor driven cycle, together with those activities normally incident and necessary to such washing and polishing.
- d) Each residence shall have a minimum of a two (2) car garage (one car garage for twin house lots) and a maximum of a three (3) car garage.

Section 9A.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 9A.12 Lots Not to be Subdivided. Except for twin home lots described elsewhere in this Declaration, 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 entire lot (or twin home lot, if applicable), as conveyed, shall be used as a building site.
- Section 9A.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 9A.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 9A.15 No Annoying Light, 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 lot 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 devices shall be discharged on the property.
- Section 9A.16 Garbage and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, the Common Area, or any 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 9A.17 Leases. The term "lease" as sed herein, shall include any agreement for the leasing or rental o fa 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 lot under the following conditions:

- a) All leases shall be in writing;
- b) All leases and lessee's occupancy of the lot shall be subject in all respects to the provisions of this Declaration, and the Articles of Incorporation, ByLaws and rules and regulations of the Association, and by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease; and
- c) No lease shall be for less than thirty (30) days.

The provisions of (b) and © 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 9A.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 9A.19 Fences.

- a) Except as provided in subsections (b) and © below, no fencing, privacy walls or hedges exceeding three 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 ACC 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.

- b) A six (6) foot high wood privacy fence will be constructed east of the irrigation ditch which runs north-south approximately on the west boundary of each of Lots 7,8,9,10,11,12 and 13 in Block 4. The fence will be constructed at the expense of the owner of each of those lots for the portion of fence located on that owner's lot within six (6) months after issuance of a certificate of occupancy for the residence on that lot. The fence shall be of design and construction so as to present a uniform appearance facing the property located on the west of these lots. Design, location and construction of this fence will be approved by the ACC and, if required, the City of Fruita.

- c) Subject to approval by the ACC, either Declarant or the Association may construct a fence in the Utilities and Irrigation Easement along the south boundary of Lots 1 through 11, Block 4 and Outlot A, Block 1 of Comstock Estates Subdivision, Filing No. 1 as shown on the map. If constructed pursuant to this provision, the fence shall become the property of the Association and all aspects of its maintenance, repair, removal, replacement and modification will be common expenses, except as otherwise provided in this Declaration. The fence will be constructed so as not to interfere with the use of the easement which is located for irrigation and utilities purposes. After its initial construction, the Association may remove, replace, redesign, or otherwise change the initial fence as the Association determines is proper. Despite anything to the contrary stated elsewhere in this Declaration, this fence shall not exceed 6 feet in

height.

Section 9A.20 Service Area. Storage or accessory buildings (such as dog houses, tool sheds, firewood, garbage, barbeque type buildings or enclosures), non-portable or affixed outdoor furniture such as picnic tables, barbecues, hot tubs, etc., shall be reasonably screened from public and neighboring view.

Section 9A.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 providing that the panels or collectors are integrated into the structure

with regard to the overall appearance and design, subject to approval by the ACC. Window mounted and through the wall units are not allowed unless screened from the street, neighboring lots and the Common Area.

Section 9A.22 Basements. No basements are allowed.

Section 9A.23 Structure. No home or garage shall be of the type known as "pre-built, pre-cut, modular, manufactured or mobile homes," regardless of its quality.

Section 9A.24 Landscaping. Except as otherwise provided herein, 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 (excluding Declarant) to landscape the front yard of his or her lot within one hundred twenty (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. The time limits contained herein may be extended for good cause, a one time extension of time for an additional one hundred twenty (120) days may be granted to comply with this provision by the ACC in writing.

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 law 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 yard or home in a condition which violates any of the use restrictions herein above set forth, the BOD of the Association shall have the power fo contract with an independent third party to remedy the violation. Said 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 9A.25

Maintenance of Common Area. To the extent not performed by the applicable governmental entity of 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 of fencing or in any way change the

retaining wall on any portion of the Common Area.

ARTICLE X ASSOCIATION WATER

- Section 10.01 Management of Association Water. The Association shall have the exclusive authority to allocate, deliver, manage, and control the use of the Association Water. 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.
- Section 10.02 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 consent, 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 X, Declarant shall have the right to utilize the Irrigation Facilities to provide irrigation water to land added to the property under Section 13.05; provided that:

property drainage is prohibited and the Association shall indemnify and hold harmless Grand Valley Irrigation Co. And Elmwood Lateral Ditch Co.

Section 10.06 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. Upon the transfer to the Association, full responsibility for the Irrigation Facilities and Association Water shall be borne by the Association.

Section 10.07 Transfer to Association. No later than upon conveyance of 75% of the lots to owners other than Declarant, Declarant shall convey fee simple title to Irrigation Facilities and Association Water (consisting of at least one share of Grand Valley Irrigation Company Stock) per acre of the property 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.

ARTICLE XI INSURANCE

Section 11.01 Insurance. The Association shall obtain and maintain insurance as required by the CCIOA, currently codified at C.R.S., Sections 38-33.3-313.

Section 11.02 Corporate Employees. If any owner or Association employee controls or disburses Association funds, the Association must obtain and maintain, to the extent reasonably available, fidelity insurance is an aggregate amount equal to not less than two months of current assessments plus reserve calculated from the then-current budget of the Association.

Section 11.03 Independent Contractors. Any person employed as an independent contractor by the Association for the purposes of managing the Association must obtain and maintain fidelity insurance in that same amount unless the Association names such a person as an insured employee in a contract of fidelity insurance described above.

Section 11.04 Additional Coverage. The Association may carry or require of an independent contractor employed to manage the Association fidelity insurance coverage in an amount greater than that specified in this section. In addition, the Association may carry any other insurance, such as Directors and officers coverage, unless otherwise prohibited by law.

Section 11.05 Common Expenses. Premiums for insurance required by the Association under this provision are Common Expenses of the Association.

ARTICLE XII 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:

- 1) the planned community is terminated;
- 2) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- 3) eighty percent (80%) of the owners, including every owner of a lot that will not be rebuilt, vote to not rebuild; or
- 4) 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 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 XIII GENERAL PROVISIONS

Section 13.01 Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 13.02 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 9A.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 13.03 Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or ByLaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the ByLaws of the Association, the Articles of Incorporation shall control.

Section 13.04 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 13.05

Expansion.

- a) Reservation of Right to Expand. Declarant reserves the development right to expand the property to include no more than 350 additional lots and additional Common Areas at any time or times without approval by the lot owners. The area of potential expansion is all property (other than Comstock Estates Subdivision, Filing No. One) described in the deed recorded in May 12, 1995, in Book 2144 at Page 543 of the Mesa County records.
- 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 declarations, upon placing the supplemental parcel map(s) depicting the new lots.
- 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 13.05 will expire twenty years after the date of recording of this Declaration in the Mesa County real estate records.

Section 13.06

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 him 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 13.07

Amendment and Termination. Subject to the provisions of Section 38-33.3-217(1), (5) and (6), C.R.S., all or any portion of this Declaration may be supplemented, changed or cancelled 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 Mesa County, Colorado real estate records.

Declarant hereby reserves and is granted the right and power to

record technical amendments to this Declaration, Articles of Incorporation or ByLaws of the Association at any time prior to the termination of Declarant's control or 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 13.08

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 improvements 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 Article 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 14.09 shall expire ten (10) years after the recording of this Declaration, except as to land added to the property under Section 13.05 as to which those reserved rights will expire ten 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 13.09 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 shall control in the event of any conflict with any other provisions contained in this Declaration. Declarant shall have the rights stated in this Section for the same time period as the rights reserved in Section 13.09.
- Section 13.10 CCIOA Controls. Any provision of this Declaration in conflict with the provisions of CCIOA shall be void and of no effect.
- Section 13.11 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 13.12 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 13.13 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 13.14 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 13.15 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 13.16 Applicability of Governmental Regulations. The covenants, conditions and restrictions contained herein are separate and distinct from any zoning, building or other law 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 hereof 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 ACC shall waive any such covenants, conditions or restrictions to the extent it results in such a violation, and in connection therewith, the ACC may impose such conditional covenants, conditions and restrictions as may be necessary to carry out the intent of this Declaration.

DECLARANT:

COMSTOCK ESTATES, LLC,
A COLORADO LIMITED

PAGE

LIABILITY COMPANY

BY: Lisa A. Comstock
LISA A. COMSTOCK, MANAGER

STATE OF COLORADO)
) SS.
COUNTY OF MESA)

Subscribed and sworn to before me this 7th day of August, 1997, by Lisa A. Comstock, as Manager of Comstock Estates, LLC, a Colorado Limited Liability Company.

WITNESS my hand and official seal.

My commission expires: 02-10-98.

Kristin Coakley
NOTARY PUBLIC-KRISTIN COAKLEY

*Book 2446 Page 472
Recpt #184874
06/01/98*

Mesa County, CO

**SECOND AMENDMENT AND
SUPPLEMENTAL DECLARATION
TO THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COMSTOCK ESTATES SUBDIVISION
FILING NO. 1**

This Second Amendment and Supplemental Declaration is made as of May 15, 1998, by Comstock Estates, LLC ("Declarant").

RECITALS

- A. Declarant has previously caused to be recorded in Book 2348 at Page 569 of the Mesa County records the Declaration of Covenants, Conditions and Restrictions of Comstock Estates Subdivision, Filing No. 1 (the "Declaration") and in Book 2370 at Page 146 a First Amendment to the Declaration.

- B. In Section 13.05 of the Declaration, Declarant expressly reserved to itself and any successor declarant (TERMS USED IN THIS DOCUMENT SHALL BE THE SAME MEANING AS DEFINED IN THE DECLARATION UNLESS OTHERWISE SPECIFICALLY DEFINED OR MODIFIED IN THIS INSTRUMENT), the right to expand the property by annexing additional lots and Common Area within certain described area(s) by one or more duly recorded documents to the Declaration.

- C. Declarant wishes to expand the property to include real property ("Filing No. 2") in Mesa County legally described as follows:

See "Exhibit A" attached and incorporated here by this reference.

The property described in the attached Exhibit A is within the area of lands as to which expansion of the property is permitted by Section 13.05 of the Declaration.

- D. Declarant reserves the continuing right to further expand the property in accordance with the provisions of Section 13.05 of the Declaration.

THEREFORE, Declarant declares that both the property and Filing No. 2 shall be held, sold and conveyed subject to the Declaration, which is for the purpose of protecting the value and desirability of the property and Filing No. 2 and which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the property or Filing No. 2 properties; provided, however, that the Declaration of Covenants, Conditions and Restrictions of Comstock Estates Subdivision, Filing No. 2 recorded in Book ____ at Page ____ of the Mesa County records shall control in the event of any conflict with the Declaration of this Second Amendment and Supplemental Declaration.

TERMS

1. General. The terms and provisions contained in this Second Amendment and Supplemental Declaration shall be in addition and supplemental to the terms and provisions contained in the Declaration. All terms and provisions of the Declaration, including all definitions (except those terms and provisions specifically modified in this Supplemental Declaration or the Filing No. 2 Declaration) shall be applicable to Filing No. 2. The definitions used in the Declaration are expanded and shall hereafter be deemed to encompass and refer to the property as defined in the Declaration and to Filing No. 2.
2. Plat Map. A map or plat of Filing No. 2 is attached as "Exhibit B" and incorporated here by this reference. The map shall constitute a supplemental parcel map under Section 13.05(d) of the Declaration. This Second Amendment and Declaration is recorded to make the Declaration

operative to Filing No. 2 as provided in Section 13.05(d) of the Declaration.

3. Effect of Expansion. Assessments levied by the Association as provided in the Declaration, after the recording of this Second Amendment and Supplemental Declaration, shall be amended to reflect the increase in the number of lots caused by the expansion of the property to include Filing No. 2 levied against all lots including lots which are part of Filing No. 2. The recording of this Second Amendment Supplemental Declaration shall not alter the amount of the assessments assessed to a lot prior to such recording. Despite inclusion of additional lots under the Declaration, each owner shall remain fully liable with respect to his obligation for the payment of all prior assessments of the Association, including those relating to the expenses for all Common Area and related costs and fees, if any.
4. Severability. Invalidation of any covenant, restriction or provision contained in this document by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.
5. Conflicts Between Documents. In case of conflict between the Declaration as supplemented by this Second Amendment and Supplemental Declaration and the Articles and the ByLaws of the Association, the Declaration as amended and supplemented shall control.

DECLARANT:

COMSTOCK ESTATES, LLC
A Colorado Limited Liability Co.

BY: Lisa A. Comstock
Lisa A. Comstock, Manager

STATE OF COLORADO)
) SS.
COUNTY OF MESA)

Subscribed and sworn to before me this 15th day of May, 1998 by Lisa A. Comstock as Manager of Comstock Estates, LLC, a Colorado Limited Liability Company.

WITNESS my hand and official seal.

My commission expires: May 6, 2000.

Roxanne McConell
NOTARY PUBLIC-Roxanne McConell

EXHIBIT "A"

A parcel of land in the City of Fruita, County of Mesa, State of Colorado, being a portion of the Southeast 1/4 of the Southeast 1/4 of Section 7, Township 1 North, Range 2 West, Ute Meridian, said Parcel also being a portion of Block 5 of Comstock Estates, Filing No. One, as per plat filed in Plat Book No. 15, Pages 381 and 382 in the office of the Clerk and Recorder of Mesa County; more particularly described as follows:

BEGINNING at the Northeast Corner of Outlot A, as said lot is shown on plat of said Comstock Estates, Filing No. One;

thence, along the Southerly Boundary of said Block 5, of Comstock Estates, Filing No. One, through the following courses,

South 89 degrees 42'02" West, 207.22 feet;

thence, South 87 degrees, 01'53" West, 102.63 feet;

thence, South 89 degrees, 42'19" West, 86.50 feet;

thence, North 00 degrees, 17'41" West, 310.00 feet;

thence, South 89 degrees, 42'19" West, 100.00 feet;

thence, North 00 degrees, 17'41" West, 27.00 feet;

thence, South 89 degrees, 42'19" West, 152.00 feet;

thence, North 00 degrees, 17'41" West, 150.00 feet;

thence, leaving said Southerly Boundary of Block 5, along the Northerly prolongation of the last said course, North 00 degrees, 17'41" West, 15.22 feet;

thence, North 89 degrees, 42'19" East, 100.00 feet;

thence, North 00 degrees, 17'41" West, 1.78 feet;

thence, North 89 degrees, 42'19" East, 292.11 feet;

thence, North 77 degrees, 44'35" East, 44.00 feet;

thence, South 12 degrees, 15'25" East, 8.90 feet to the beginning of a tangent, 122.00 foot radius curve concave West;

thence, Southerly along said curve, through a central angel of 10 degrees, 24'05" a Length of 22.15 feet;

thence, radial to said curve, North 88 degrees, 08'40" East, 99.18 feet;

thence, South 05 degrees, 20'15" East, 6.62 feet;

thence, North 89 degrees, 42'19" East, 143.68 feet;

thence, South 00 degrees, 17'41" East, 40.72 feet;

thence, South 90 degrees, 00'00" East, 108.85 feet, to a point in the Easterly Boundary of said Block 5;

thence, along the Easterly and Southerly Boundary of said Block 5, through the following courses:

South 00 degrees, 00'01" West, 221.78 feet;

thence, South 33 degrees, 46'16" West, 254.33 feet to the POINT OF BEGINNING.

The herein above described parcel of land containing 6.581 acres, more or less, also known as Comstock Estates, Filing No. 2.

*BOOK 2370 PAGE 146
Recpt #1817829
10/24/97 Mesa County, CO*

**FIRST AMENDMENT TO THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
COMSTOCK ESTATES SUBDIVISION, FILING NO. 1**

This First Amendment to the Declaration of Covenants, Conditions and Restrictions for Comstock Estates Subdivision, Filing No. 1 is made this 24th day of October, 1997 by Comstock Estates, LLC, a Colorado Limited Liability Company ("Declarant").

RECITALS

PAGE

A. The purpose of this First Amendment is to amend the Declaration of Covenants, Conditions and Restrictions for Comstock Estates Subdivision, Filing No. 1 (the "Declaration") recorded on August 8, 1997 in Book 2348 at Page 569 of Mesa County Records.

B. Declarant is the owner of at least 67% of the lots (as defined in Section 1.11 of the Declaration) in the subdivision (as defined in Section 1.19 of the Declaration).

C. Based upon its ownership of lots as described in the preceding recital paragraph, Declarant is authorized and entitled to amend and supplement the Declaration under Section 13.07 of the Declaration, and this First Amendment of the Declaration is signed and recorded by Declarant for that purpose.

THEREFORE, Declarant agrees to, votes for, and makes the following amendments of the Declaration:

1. The second sentence of Section 7.06 is amended to read as follows:

A residence shall be no more than one level, unless a basement is approved by the ACC as provided in Section 9A.22.

2. The final sentence of Section 7.08 is deleted. As amended, Section 7.08 will read as follows:
Section 7.08. Exterior Colors. Semi-transparent or solid colors in moderate hues only are acceptable, and must be approved by the ACC.

3. Section 9A.22 is amended to read as follows:

Section 9A.22. Basements. No basements are allowed, unless approved by the ACC in accordance with the provisions of Article VII.

4. Section 13.05(d) of the Declaration contains typographical errors in that a portion of that section was inadvertently omitted at the time

as Manager of Comstock Estates, LLC, a Colorado Limited Liability Company.

WITNESS my hand and official seal.

My commission expires: 06-29-01

 Signed
NOTARY PUBLIC

*BOOK 2539 PAGE 743
Recpt #1884129
01/19/99 Mesa County, CO*

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COMSTOCK ESTATES SUBDIVISION
FILING NO. 3**

This declaration of Covenants, Conditions and Restrictions for Comstock Estates Subdivision Filing No. 3 ("Declaration") is made January 14, 1999, by Comstock Estates, LLC, a Colorado Limited Liability Company ("Declarant").

RECITALS

- A. Declarant owns real property (together the "Lots" or "Filing No. 3" and individually a "Lot") in the City of Fruita, County of Mesa, State of Colorado, legally described as:

All of Comstock Estates, Filing No. 3

- B. Declarant desires to adopt, establish and impose covenants, conditions and restrictions upon Filing No. 3 for the purpose of enhancing, maintaining and protecting the value and desirability of Filing No. 3 and the remainder of Comstock Estates Subdivision, including Filing No. 1, Filing No. 2, Filing No. 3 and all future filings (together the "Subdivision").

THEREFORE, Declarant covenants, agrees and declares that all of the lots shall be held, sold, conveyed, encumbered, leased, used, occupied and improved, subject to the

following limitations, restrictions, covenants, conditions and reservations, all of which are declared and agreed to be in furtherance of a general plan for the improvement and development of Filing No. 3 and the remainder of the subdivision. All of these limitations, restrictions, covenants and conditions shall run with the land, shall be binding upon all present and future owners of the lots and shall inure to the benefit of (and be enforceable in any action at law or in equity by any of) Declarant and its successors and assigns, each present and future owner of any lot in the subdivision (including Filing No. 1, Filing No. 2, Filing No. 3 and all future filings), or by the Comstock Estates Filing No. 1 Homeowners Association ("Association"), its successors and assigns.

TERMS

1. **Definitions.** Terms in this Declaration defined in the Declaration of Covenants, Conditions and Restrictions for Comstock Estates Subdivision, Filing No. 1 ("Filing No. 1 Declaration") recorded August 8, 1997 in Book 2348 at Page 569 of the Mesa County records, as amended, shall have the meaning assigned to them in the Filing No. 1 Declaration.
2. **Building Size.** Minimum square footage of heated living area for a residence (excluding garage, enclosed patios and decks, attics and unheated storage areas) in Filing No. 3 shall be 1,400 square feet. A residence shall have no more than one level, except that residences with two above ground living levels (two story houses, but not split levels or tri levels) may be constructed on Lots 17,18,19,20 and 21.
3. **Vehicle Parking and Storage.** In addition to the restrictions contained in Section 9A.10 and 9A.19 of the Filing No. 1 Declaration, fenced vehicle storage areas under Section 9A.10(a) shall be located only adjacent to the garage located on a lot. Any vehicle not in an approved storage location must be parked only upon the driveway unless approved otherwise by the ACC pursuant to Article VII of the Filing No. 1 Declaration.
4. **No 17 Road Access.** There shall be no driveway or other access to any of the lots directly from 17 Road (Coulson Avenue).
5. **17 Road Fence.** Subject to approval by the ACC of the Association (including without limitation approval of materials, design, location, and

construction) within six months after purchase of each of Lots 17,18,19,20 and 21 of Filing No. 1 by an owner other than Declarant, the owner of each of those lots shall construct a fence in the utilities and irrigation easement along the east boundary of that owner's lot. Upon completion, pursuant to this provision, each segment of the fence so constructed shall become the property of the Association and all aspects of its maintenance, repair, removal, replacement, redesign and modification will be common expenses, except as otherwise provided in the Filing No. 1 Declaration. The fence will be constructed so as not to interfere with the use of the easement on which is located for irrigation and utilities purposes. After its initial construction, the Association at its expense may remove, replace, redesign, or otherwise change each and all segments of the initial fence as the Association determines is proper. Despite anything to the contrary stated elsewhere in this Declaration, this fence shall not exceed 6 feet in height.

6. Roofs. A minimum of five in twelve pitch shall be maintained on all roofs of all residences in Filing No. 3.
7. Conflict of Provisions. Except concerning terms defined in the Filing No. 1 Declaration, in case of any conflict between this Declaration and the Filing No. 1 Declaration, this Declaration shall control. Immediately subsequent to the recording of this Declaration, Declarant expects to record a Third Amendment and Supplemental Declaration to the Filing No. 1 Declaration expanding the coverage of the Filing No. 1 Declaration to encompass and incorporate Filing No. 3 under the Reservation of Right to Expand reserved to Declarant in Section 13.05 of the Filing No. 1 Declaration.
8. Plat Map. A map or plat of Filing No. 3 is attached as Exhibit A and incorporated here by this reference. That map shall also constitute a supplemental parcel map under Section 13.05(d) of the Filing No. 1 Declaration.
9. Severability. Invalidation or partial invalidation of any of the covenants, restrictions or other provisions contained in this Declaration shall in no way affect or limit any other provision, all of which shall remain in full force and effect.

DECLARANT:

COMSTOCK ESTATES, LLC,
A Colorado Limited Liability Co.

BY: Lisa A. Comstock
 Lisa A. Comstock, Manager

STATE OF COLORADO)
) SS.
COUNTY OF MESA)

Subscribed and sworn to before me this 14th day of January, 1999 by Lisa A. Comstock as Manager of Comstock Estates, LLC, a Colorado Limited Liability Company.

WITNESS my hand and official seal.

My commission expires:12-08-2001

 Laura A. Tiedtke
NOTARY PUBLIC-Laura A. Tiedtke

*BOOK 2539 PAGE 745
01/11/99
Mesa County, CO*

**THIRD AMENDMENT AND
SUPPLEMENTAL DECLARATION
TO THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COMSTOCK ESTATES SUBDIVISION
FILING NO. 1**

This Third Amendment and Supplemental Declaration is made as of January 11, 1999,

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by Comstock Estates, LLC ("Declarant").

RECITALS

A. Declarant has previously caused to be recorded in Book 2348 at Page 569 of the Mesa County records the Declaration of Covenants, Conditions and Restrictions of Comstock Estates Subdivision, Filing No. 1 (the "Declaration") and in Book 2370 at Page 146 a First Amendment to the Declaration, and in Book 2446 at Page 472 a Second Amendment to the Declaration.

B. In Section 13.05 of the Declaration, Declarant expressly reserved to itself and any successor declarant the right to expand the lands covered by the Declaration by annexing additional lots and Common Area within certain described area(s) by one or more duly recorded Supplemental Declarations.

C. Declarant wishes to expand the lands covered by the Declaration to include real property ("Filing No. 3") in Mesa County legally described as follows:

All of Comstock Estates, Filing No. 3

Filing No. 3 is within the area of lands as to which expansion of the property is permitted by Section 13.05 of the Declaration.

D. Declarant reserves the continuing right to further expand the coverage of the Declaration in accordance with the provisions of Section 13.05 of the Declaration.

THEREFORE, Declarant declares that:

TERMS

1. General. All of Filing No. 3 shall be held, sold and conveyed subject to the Declaration (which is for the purpose of protecting the value and desirability of

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Filings 1 and 2 of Comstock Estates, Filing No. 3 and any lands subsequently covered by the Declaration as provided by its terms) and this Third Amendment and Supplemental Declaration, which covenants shall run with the land and be binding on Declarant, its successors and assigns, and all persons and antedates now or later having any right, title or interest in all or any part of the Filing No. 3; provided, however, that the Declaration of Covenants, Conditions and Restrictions of Comstock Estates Subdivision, Filing No. 3 ("Filing No. 3 Declaration") recorded in Book ____ at Page ____ of the Mesa County records shall control in the event of any conflict with the Declaration or this Third Amendment and Supplemental Declaration, except that the definition of terms in the Declaration shall control in the event of conflict with this instrument or the Filing No. 3 Declaration, as provided in Section 13.05(c)the Declaration.

2. Plat Map. A map or plat of Filing No. 3 is attached as Exhibit A and incorporated here by this reference. That map shall constitute a supplemental parcel map under Section 13.05(d) of the Declaration. This Third Amendment and Declaration is recorded to make the Declaration operative to Filing No. 3 as provided in Section 13.05(d) of the DECLARATION.

3. Effect of Expansion. Assessments levied by the Association as provided in the Declaration, after the recording of this Third Amendment and Supplemental Declaration, shall be amended to reflect the increase in the number of lots caused by the expansion of the lands covered by the Declaration to include Filing No. 3 and shall be levied against all lots, including lots which are part of Filing No. 3. The recording of this Third Amendment Supplemental Declaration shall not alter the amount of the assessments assessed to a lot prior to its recording. Despite inclusion of additional lots under the Declaration, each owner shall remain fully liable with respect to his obligation for the payment of all prior assessments of the Association, including those relating to the expenses for all Common Area and related costs and fees, if any.

4. Severability. Invalidation of any covenant, restriction or provision contained in this document by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

5. Conflicts Between Documents. In case of conflict between the Declaration (as supplemented by this Third Amendment and Supplemental Declaration) and the Articles or the ByLaws of the Association, the Declaration as amended and supplemented shall control.

DECLARANT:

COMSTOCK ESTATES, LLC,
A Colorado Limited Liability Co.

BY: Lisa A. Comstock
Lisa A. Comstock, Manager

STATE OF COLORADO)
) SS.
COUNTY OF MESA)

Subscribed and sworn to before me this 11th day of January, 1999 by Lisa A. Comstock as Manager of Comstock Estates, LLC, a Colorado Limited Liability Company.

WITNESS my hand and official seal.

My commission expires: 05-06-2000

 Signed
NOTARY PUBLIC

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