

**Section 11.05. Drainage.** Release of contaminants or hazardous materials, as defined in CERCLA, RCRA, FIFRA, the Toxic Substances Control Act, and any other applicable federal and state environmental laws, into the Property drainage is prohibited.

**Section 11.06. Maintenance and Water Assessments.** The Declarant and his 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 11.07. Transfer to Association.** As soon as practicable, but not later than 60 days after the formation of the Association, Declarant shall convey fee simple title to Irrigation Facilities and Association Water (consisting of at least one and one half shares of Grand Valley Irrigation Company Stock per acre of all property covered by this Declaration and that property with respect to which Declarant has reserved the right to expand in Section 14.05(a) of this Declaration together with any right in and to the Elmwood Lateral Ditch) 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. This Section requires the Declarant to convey to the Association only that portion of the Association Water and Irrigation Facilities that will be used on the Property then covered by this Declaration.

## ARTICLE XII INSURANCE

**Section 12.01. Insurance.** The Association shall obtain and maintain insurance as required by CCIOA, currently codified at C.R.S. § 38-33.3-313., as amended, and this Declaration.

**Section 12.02. Type of Insurance.** The Association shall obtain a master insurance policy insuring against damage to the Common Area. The master insurance policy insuring the Common Area shall be for broad form covered causes of loss, shall include the Owners as additional named insureds and shall include (or the Association shall obtain separately) commercial general liability insurance with single limited coverage of not less than \$1,000,000.00 with \$500,000.00 medical payments coverage. In addition, if reasonably available, the Association shall maintain directors and officers liability insurance. The association, as attorney-in-fact, shall have the authority conferred upon it in Article 13 of this Declaration to deal with insured items in the event casualty to them is an insured loss to the Association under its master insurance policy.

**Section 12.03. Waiver of Subrogation.** The Association and Lot Owners each waive any and all rights of recovery against the other, their officers, members, agents and employees, occurring on or arising out of the use and occupancy of the Property to the extent such loss or damage is covered or indemnified by proceeds received from insurance carried by the other party, or for which such party is otherwise reimbursed. Each of the parties shall, upon obtaining the insurance required under this Declaration, notify the insurance carrier that the foregoing waiver of subrogation is contained in this covenant, and, to the extent available, shall require the insurance carrier to include an appropriate Waiver of Subrogation Provision in the policy.

**Section 12.04. Fidelity Bonds.** If any Owner or Association employee controls or disburses Association funds, the Association must obtain and maintain, to the extent reasonably available, a fidelity bond insurance in 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 12.05. Independent Contractors.** Any person employed as an independent contractor by the Association for the purposes of managing the Association must obtain and maintain a fidelity bond in that same amount unless the Association names such a person as an insured employee in a contract of fidelity insurance described above. The Association may carry or require of an independent contractor employed to manage the Association fidelity bond coverage in an amount greater than that specified in this section.

**Section 12.06. Fidelity Bond Premiums.** Premiums for bonds required of the Association under this provision are Common Expenses of the Association.

**ARTICLE XIII  
DAMAGE OR DESTRUCTION OF COMMON AREA**

Section 13.1. Appointment of Association as Attorney-in-Fact. This Declaration constitutes each Owner's appointment of the Association as his or her attorney-in-fact to administer repairs, receive and apply insurance funds, and to ensure compliance with this Declaration upon the damage, destruction, or obsolescence of the Common Area. Any Grantee's acceptance of a Deed, or other instrument rendering that person an Owner as defined in §1.16 of this Declaration, to any Lot shall constitute the irrevocable appointment of the Association as the grantee's attorney-in-fact, to act with all the powers as provided in this Section.

Section 13.2. Rights of Association as Attorney-in-Fact. As attorney-in-fact, the Association, by its President and Secretary, shall have full and complete authority, right and power to make, execute, and deliver any contract, deed, or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers granted in this Declaration. Repair and reconstruction of the Common Area means restoring the same to substantially the same condition in which it existed prior to the damage. The obsolescence of the Common Area shall be determined by the Association, in its sole and absolute discretion. Except as otherwise provided in this Declaration, any insurance proceeds collected shall be paid to the Association for the purpose of repair, restoration, or replacement.

Section 13.3. Application of Insurance Proceeds. In the event of damage or destruction to any improvement installed by the Association within the Common Area, due to an insured loss, the Association shall apply the insurance proceeds to the reconstruction and repair of the damaged improvement. If the insurance proceeds are insufficient, the Association may levy a Capital Improvement 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 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 to the Association unless made jointly payable to the Owners and First Mortgagees of their respective Lots, if any. The Capital Improvement Assessment provided for in this Section shall be a debt of each Owner and a lien on his or her Lot and the improvements on it, and may be enforced and collected in the same manner as any Assessment lien provided for in this Declaration.

**ARTICLE XIV  
GENERAL PROVISIONS**

Section 14.01. 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. To the extent feasible, any non-complying provision shall be reformed to best comply with applicable law and to preserve the intent of the Declarant.

Section 14.02. Easements. Easements for the installation and maintenance of utilities, irrigation and drainage facilities are reserved as shown on the recorded Map of the Property. Within these easements no improvement, structure, planting or other material (excluding fences capable of being readily removed for the purposes of the easement and the fences described in Section 10.19) shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of such utilities or facilities, or which may change the direction of flow or drainage channels in the easements. Declarant reserves the right to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels.

Section 14.03. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or By-Laws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the By-Laws of the Association, the Articles of Incorporation shall control.

Section 14.04. Street Lighting. Unless street lighting and the cost of it is provided by the City of Fruita, Colorado, all Lots shall be subject to and bound to tariffs or other charges which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado or contracted for by the Association relating to street lighting in this Subdivision, together with rates, rules, regulations and terms therein provided and subject to all future amendments and changes on file with the Public Utilities Commission of the State of Colorado applicable to such facilities.

Section 14.05. Expansion.

- (a) *Reservation of Right to Expand.* Declarant reserves the development right to expand the Property to include no more than 27 additional Lots plus additional Common Areas at any time or times without approval by the Lot Owners. The area of potential expansion is all property (other than Evening Breeze Subdivision, Filing No. One) described in the Map attached to this Declaration pursuant to Section 1.21 hereof and CCIOA.
- (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 supplemental Maps setting forth the Lots and other real property, if any, to be included in the expansion, and 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 automatically extended to encompass and refer to the Property subject to this Declaration, as expanded. The recording of supplemental Map(s) or Plat Map(s) in the records of Mesa County, Colorado, 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. Subsequent to any expansion pursuant to this Section 14.05, any conveyance of Lots within the Property, as expanded, shall transfer all rights incident to the Property, as expanded.
- (d) *Declaration Operative to New Lots.* The new Lots shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declaration, upon placing the supplemental parcel Map(s) depicting the expansion Property and Supplemental Declaration(s) of public record in the real estate records of Mesa County, Colorado.
- (e) *No Objection to Expansion.* No Owner-Member of the Association shall have any right to object to the exercise of the developmental right set forth in this Section, including any permitted expansion by Declarant.
- (f) Declarant's rights under this Section 14.05 will expire twenty years after the date of recording of this Declaration in the Mesa County, Colorado, real estate records.

Section 14.06. 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, Colorado, real estate records of the Declaration, which shall be automatically extended for successive periods of twenty (20) years each, without action by or notice to any person or entity unless amended or terminated as provided below.

**Section 14.07. 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 canceled in whole or in part at any time by the vote or agreement of the Owners of 67% of the Lots. Such agreement may be in any number of counterparts. Such amendment shall be effective when duly recorded in Mesa County, Colorado, real estate records.

Declarant reserves and is granted the right and power to record technical amendments to this Declaration, Articles of Incorporation or By-Laws 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 14.08. Rights of Declarant Incident to Construction.** An easement is retained by and granted to Declarant, his 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 on it and to make such other use of it as may be reasonably necessary or incidental to Declarant's or his 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 himself and his successors and assigns, retains a right to store construction materials on Lots owned by Declarant and to make such other use of it as may be reasonably necessary or incidental for the purpose of the completion or improvement of the Property, the performance of Declarant's obligations under this Declaration, 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 Mesa County, Colorado. The rights of Declarant reserved in this Section 14.08 shall expire ten (10) years after the recording of this Declaration, except as to land added to the Property under Section 14.05 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.

**Section 14.09. Sales Office and Models.** 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, or portions of the Property owned by Declarant, 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 provision contained in this Declaration. Declarant shall have the rights stated in this Section for the same time period as the rights reserved in Section 14.08.

**Section 14.10. CCIOA Controls.** Any provision of this Declaration in conflict with the provisions of CCIOA shall be void and of no effect.

**Section 14.11. 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 14.12. 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 14.13. Binding Effect.** The provisions of this Declaration shall be binding upon and for the benefit of Declarant, each Owner, and each and all of their heirs, personal representatives, successors in interest, and assigns.

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

Section 14.15. Applicability of Governmental Regulations. The covenants, conditions and restrictions contained in this Declaration 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 in this Declaration or which may prohibit uses permitted in it or permit use prohibited in it. In the event of any conflict between the provisions of this Declaration and the provisions of any such law, ordinance, rule or regulation, the Owner must first comply with all governmental laws, ordinances, rules or regulations and then to the extent possible, the Owner must comply with these covenants, conditions and restrictions unless such compliance would result in a violation of such law, ordinance, rule or regulation, in which case, upon a finding that compliance with this Declaration would result in such a violation, the Architectural Control Committee shall waive any such covenants, conditions or restrictions to the extent it results in such a violation, and in connection with such waiver, the Architectural Control Committee may impose such conditional covenants, conditions and restrictions as may be necessary to carry out the intent of this Declaration.

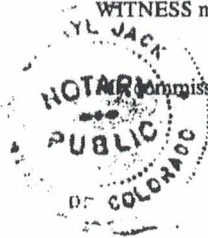
DECLARANT:

Raymond L. Oellrich  
RAYMOND L. OELLRICH

STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

Subscribed and sworn to before me this 10th day of May, 1999, by Raymond L. Oellrich.

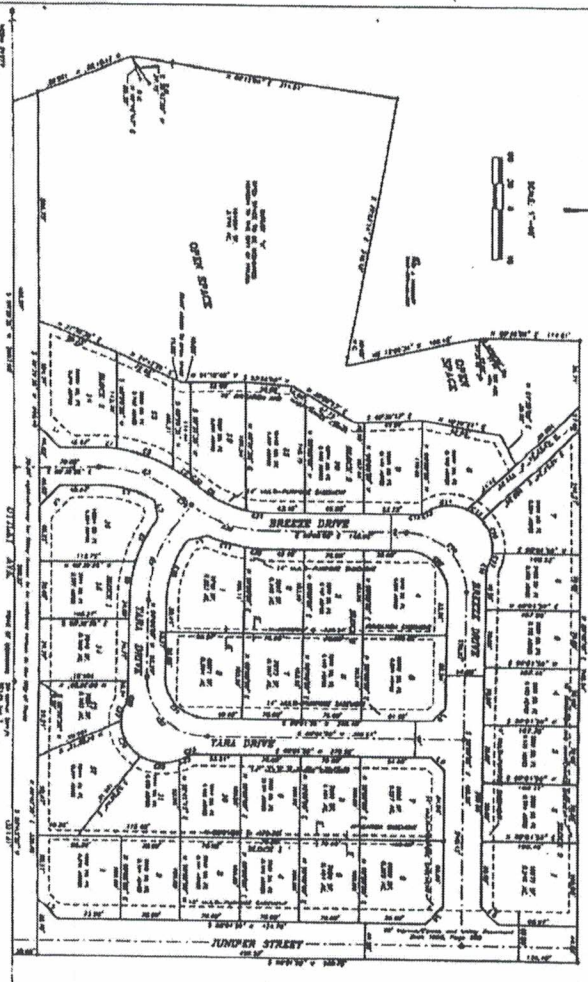
WITNESS my hand and official seal.



My commission expires: 02/22/2000.

Cheryl Jack  
Notary Public

EVENING BREEZE SUBDIVISION



**DEED INFORMATION**

DATE OF SALE: 8/26/2004  
 COUNTY: 1100  
 BOOK: 2585  
 PAGE: 100

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**LEGEND**

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RECORDER NOTE: POOR QUALITY DOCUMENT  
 PROVIDED FOR REPRODUCTION

SECOND AMENDMENT AND SUPPLEMENTAL DECLARATION  
TO THE DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS FOR EVENING BREEZE SUBDIVISION, FILING NO. 1

THIS SECOND AMENDMENT and Supplemental Declaration ("Supplemental Declaration") is made this 1st day of February, 2000 by Raymond L. Oelrich ("Declarant").

RECITALS

- A. On May 10, 1999, Declarant recorded the Declaration of Covenants, Conditions and Restrictions for Evening Breeze Subdivision, Filing No. 1 ("Declaration"), in Book 2585, at Page 80, of the Mesa County, Colorado, real property records.
- B. In Section 14.05 of the Declaration, Declarant reserved the right to add real estate to the terms of the Declaration by recording one or more supplemental declarations.
- C. Declarant wishes to expand the real estate covered by the Declaration to include real property ("Filing No. 2") in Mesa County, Colorado, legally described as follows:  
  
Evening Breeze Subdivision, Filing No. 2, Mesa County, Colorado
- D. Filing No. 2 is within the real property described in the Declaration as real property with respect to which Declarant has reserved a right of expansion.

THEREFORE, Declarant covenants, agrees and declares as follows:

TERMS

- 1. General. All of Evening Breeze Subdivision, Filing No. 2, shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to the limitations, restrictions, easements, covenants, conditions, reservations, liens and charges described in the Declaration and Supplemental Declaration, all of which are declared and agreed to be in the furtherance of a general plan for the improvement and development of Filing No. 4. All of the limitations, restrictions, easements, covenants, conditions, liens and charges contained in the Declaration and this Supplemental Declaration 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, his successors and assigns, each Owner, his or her successors and assigns, or by the Association, its successors and assigns.
- 2. Plat Map. A map or plat of Filing No 2 is attached as Exhibit A and incorporated herein by this reference. That map shall constitute a supplemental map under Sections 1.21 and 14.05(d) of the Declaration. This Supplemental Declaration is recorded to make the Declaration operative to Filing No. 2 as provided in Section 14.05(d) of the Declaration.
- 3. Effect of Expansion. Assessments levied by the Association, after recording this Supplemental Declaration, shall be amended to reflect the increase in the number of Lots caused by the expansion of the real estate covered by the Declaration to include Filing No. 2 and shall be levied against all Lots, including Lots which are part of Filing No. 2. The recording of this Supplemental Declaration shall not alter the amount of the assessments assessed to a Lot proper to its recording. Despite the inclusion of additional Lots under the Declaration, each owner shall remain fully liable with respect to his obligation for the payment of all proper Assessments of the Association, including this 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 Supplemental Declaration by judgment or court order shall not affect any other provision, all of which shall remain in full force and effect.
- 5. Conflicts Between Documents. In case of conflict between the Declaration (as supplemented by this Supplemental Declaration) and the Articles or Bylaws of the Association, the





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

This First Amendment to the Declaration of Covenants, Conditions and Restrictions For Comstock Estate Subdivision, Filing No. 1 is made this 27 day of May, 1999 by Raymond L. Oellrich ("Declarant");

RECITALS

A. The purpose of this First Amendment is to amend the Declaration of Covenants, Conditions and Restrictions for Evening Breeze Subdivision, Filing No. 1 (the "Declaration") recorded on May 10, 1999 in Book 2585, beginning at Page 80, Mesa County, Colorado real property 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 1.17 of the Declaration).

C. Declarant reserved the right to record technical amendments to the Declaration at any time prior to the termination of Declarant's control of the Association in Section 14.07 of the Declaration. Declarant made this reservation pursuant to C.R.S. § 38-33.3-205(4) which permits Declarant to amend the Declaration to correct "clerical" or "typographical" errors. Furthermore, based upon its ownership of Lots as described in the preceding recital, Declarant is authorized and entitled to amend the Declaration under Section 14.07 of the Declaration, and this First Amendment of the Declaration is signed and recorded by Declarant for that purpose.

THEREFORE, Declarant makes the following amendment of the Declaration:

1. In Section 10.22 of the Declaration, Declarant stated that Appendix N from the City of Fruita Land-use Code was attached to the Declaration as Exhibit 1. However, when the Declaration was recorded, this Exhibit was inadvertently omitted from the Declaration. Therefore, as recorded, Exhibit 1 is not attached to the Declaration as stated in Section 10.22. By this Amendment, Declarant records Appendix N to the City of Fruita Land-use Code as Exhibit 1 to the Declaration of Covenants, Conditions and Restrictions for Evening Breeze Subdivision, Filing 1, recorded in Book 2585 at Page 80, as if it were attached to the Declaration when recorded.

2. In all other respects, the Declaration is to remain as previously recorded.

DATED this 27 day of May, 1999.

DECLARANT:

*Raymond L. Oellrich*  
Raymond L. Oellrich

ACKNOWLEDGMENT

On this 27 day of May, 1999 before me personally appeared Raymond L. Oellrich and acknowledged the foregoing instrument.

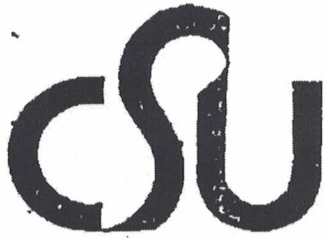
Witness my hand and official seal.

My commission expires: 10/20/01

*Sally D. Weese*  
Notary Public

F:\WP98\12\1\STAMPED.DEC





# COOPERATIVE EXTENSION SERVICE TRI RIVER AREA

DELTA, MESA, MONTROSE, & DURAY COUNTIES COOPERATING

"Colorado State University Cooperative Extension Service is dedicated to serve all people on an equal and nondiscriminatory basis."

June 17, 1983

## SUGGESTED DROUGHT TOLERANT PLANTS

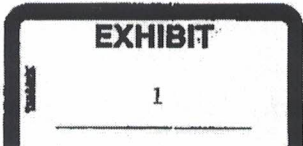
### TREES

- Acer ginnala - Amur Maple
- Fraxinus pennsylvanica - Green Ash
- Gymnocladus dioica - Kentucky Coffee Tree
- Alnus altissima - Tree of Heaven
- Koelreuteria paniculata - Goldenrain tree
- Ptelea trifoliata - Wafer-Ash
- Sophora japonica - Japanese Pagoda Tree
- Pinus nigra - Austrian Pine
- Pinus burgeana - Lacebark Pine
- Pinus edulis - Pinyon Pine
- Acer negundo - Box Elder
- Celtis occidentalis - Hackberry
  
- Maclura pomifera - Osage-Orange
- Gleditsia triacanthos - Honeylocust
  
- Fraxinus anomala - Single Leaf Ash
- Juniperus monosperma - One-seed Juniper

### SHRUBS

- Robinia neomexicana - New Mexican Locust
- Ceanothus americanus - New Jersey-tea
- C. sanguinea - Red Ceanothus
- Lonicera fragrantissima - Fragrant Honeysuckle
- L. maackii - Amur Honeysuckle
- L. tatarica - Tatarian Honeysuckle
- Polygonum auberti - Silver Lace Vine
- P. Reynoutria - Fleecflower
- Prunus besseyi - Western Sand Cherry
- Rhamnus cathartica - Common Buckthorn
- R. davurica - Dahurian Buckthorn
- R. frangula - Alder Buckthorn
- Syringa amurensis japonica - Japanese Tree Lilac
- S. x chinensis - Chinese Lilac
- S. oblata dilatata - Korean Early Lilac
- S. x persica - Persian Lilac
- Amorpha canescens - Lead-plant
- A. fruticosa - Indigobush Amorpha (Bastard Indigo)
- A. nana - Dwarf Indigo Amorpha

RECORDER NOTE: POOR QUALITY DOCUMENT  
PROVIDED FOR REPRODUCTION



SUGGESTED DROUGHT TOLERANT PLANTSSHRUBS (Continued)

- Artemisia species - Wormwood, Sagebrush  
Acriplex species - Salthush  
Caragana arborescens - Siberian Peashrub  
C. aurantiaca - Dwarf Peashrub  
C. maximowicziana - Maximowics Pea-tree  
C. pygmaea - Pygmy Pea-tree  
Cercocarpus montanus - Mountain-mahogany  
C. ledifolius - Curl-leaf Mountain-mahogany  
Chrysothamnus nauseosus - Rabbitbrush  
Colutea arborescens - Bladder-senna  
Cowania mexicana - Cliffrose  
Elaeagnus commutata - Silverberry  
Ephedra - Mormon Tea  
Eurotia lanata - White Sage (Winterfat)  
Fallugia paradoxa - Apacheplume  
Foresteria neomexicana - Mountain Privet  
Juniperus chinensis varieties - Chinese Juniper  
Shepherdia argentea - Silver Buffaloberry  
S. canadensis - Russet Buffaloberry  
Tamarix hispida - Kashgar Tamarisk  
T. odessana - Odessa Tamarisk  
T. parviflora - Small-flowered Tamarisk  
T. pentandra - Five-Stamen Tamarisk

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

THIS SECOND AMENDMENT and Supplemental Declaration ("Supplemental Declaration") is made this 1st day of February, 2000 by Raymond L. Oellrich ("Declarant").

**RECITALS**

A. On May 10, 1999, Declarant recorded the Declaration of Covenants, Conditions and Restrictions for Evening Breeze Subdivision, Filing No. 1 ("Declaration"), in Book 2585, at Page 80, of the Mesa County, Colorado, real property records.

B. In Section 14.05 of the Declaration, Declarant reserved the right to add real estate to the terms of the Declaration by recording one or more supplemental declarations.

C. Declarant wishes to expand the real estate covered by the Declaration to include real property ("Filing No. 2") in Mesa County, Colorado, legally described as follows:

Evening Breeze Subdivision, Filing No. 2, Mesa County, Colorado

D. Filing No. 2 is within the real property described in the Declaration as real property with respect to which Declarant has reserved a right of expansion.

THEREFORE, Declarant covenants, agrees and declares as follows:

**TERMS**

1. General. All of Evening Breeze Subdivision, Filing No. 2, shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to the limitations, restrictions, easements, covenants, conditions, reservations, liens and charges described in the Declaration and Supplemental Declaration, all of which are declared and agreed to be in the furtherance of a general plan for the improvement and development of Filing No. 4. All of the limitations, restrictions, easements, covenants, conditions, liens and charges contained in the Declaration and this Supplemental Declaration 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, his successors and assigns, each Owner, his or her successors and assigns, or by the Association, its successors and assigns.

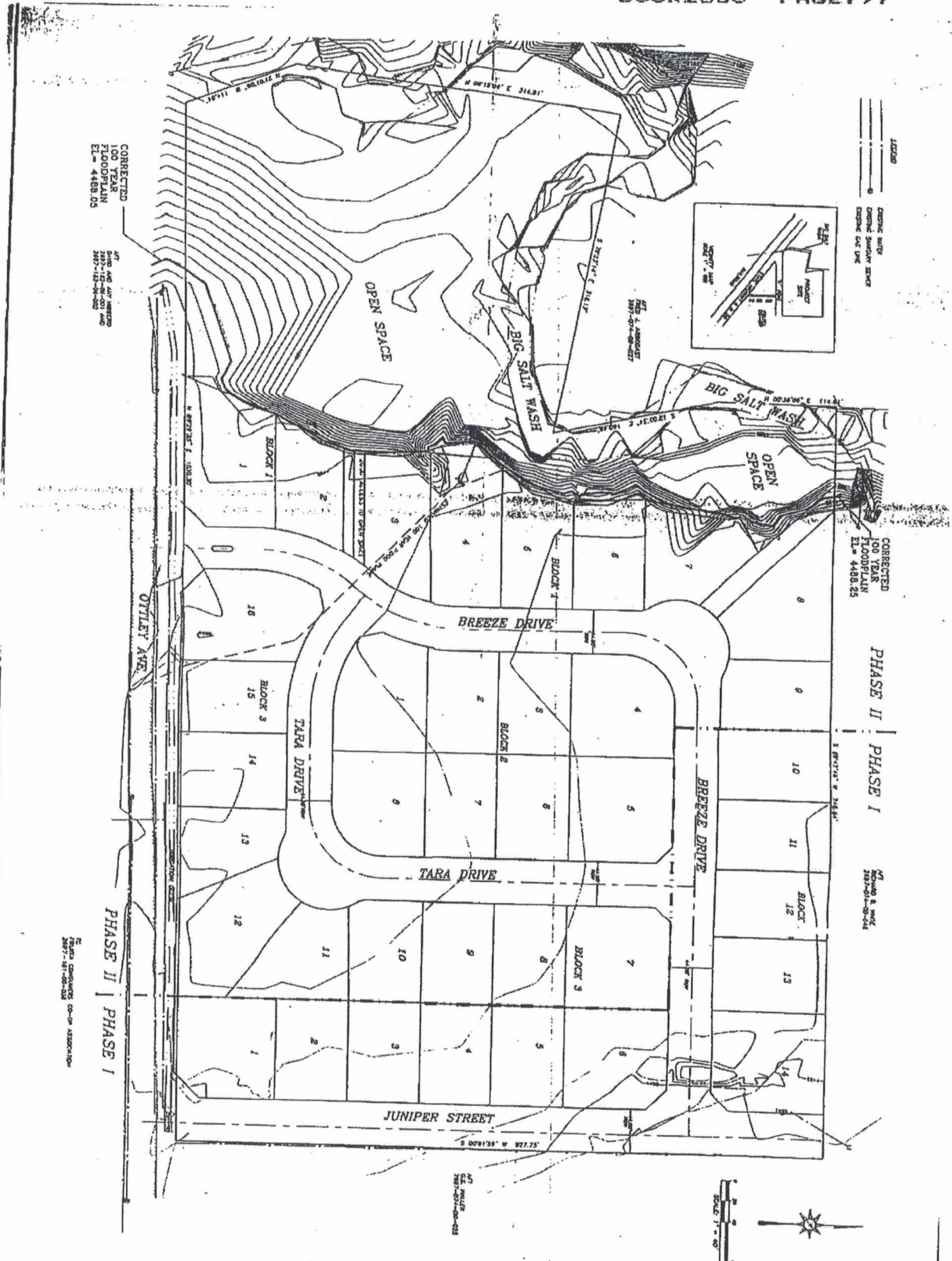
2. Plat Map. A map or plat of Filing No 2 is attached as Exhibit A and incorporated herein by this reference. That map shall constitute a supplemental map under Sections 1.21 and 14.05(d) of the Declaration. This Supplemental Declaration is recorded to make the Declaration operative to Filing No. 2 as provided in Section 14.05(d) of the Declaration.

3. Effect of Expansion. Assessments levied by the Association, after recording this Supplemental Declaration, shall be amended to reflect the increase in the number of Lots caused by the expansion of the real estate covered by the Declaration to include Filing No. 2 and shall be levied against all Lots, including Lots which are part of Filing No. 2. The recording of this Supplemental Declaration shall not alter the amount of the assessments assessed to a Lot proper to its recording. Despite the inclusion of additional Lots under the Declaration, each owner shall remain fully liable with respect to his obligation for the payment of all proper Assessments of the Association, including this 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 Supplemental Declaration by judgment or court order shall not affect any other provision, all of which shall remain in full force and effect.

5. Conflicts Between Documents. In case of conflict between the Declaration (as supplemented by this Supplemental Declaration) and the Articles or Bylaws of the Association, the





SHEET 1 of 1	ATKINS AND ASSOCIATES, INC. P. O. BOX 2702, 518 28 ROAD, SUITE B-105 GRAND JUNCTION, COLORADO 81502 970-245-6630 FAX 970-245-2355	EVENING BREEZE SUBDIVISION	SITE PLAN	DRAWN BY: JCS CHECKED BY: RLJ DATE: 11/19/99 PROJECT NO: 98011 FILE NAME: SITEPLAN-4	SCALE: 1" = 40' NORTH: NA VENT: NA
	<b>EXHIBIT</b>				
	A				
	RECORDER NOTE: POOR QUALITY DOCUMENT PROVIDED FOR REPRODUCTION				
	CORRECTED 100 YEAR FLOODPLAIN ELEVATION 4488.25 CORRECTED 100 YEAR FLOODPLAIN ELEVATION 4488.25				

**ASSIGNMENT OF DECLARANT RIGHTS AND  
THIRD AMENDMENT TO THE DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
EVENING BREEZE SUBDIVISION, FILING NO. 1**

THIS ASSIGNMENT OF DECLARANT RIGHTS ("Assignment") and THIRD AMENDED Declaration ("Third Amended Declaration") are made this 31<sup>st</sup> day of August, 2000 by Raymond L. Oellrich ("Oellrich") and ROI Development ("ROI"), LLC (together "Declarant").

**RECITALS**

A. On May 10, 1999, Declarant recorded the Declaration ("Declaration") of Covenants, Conditions and Restrictions for Evening Breeze Subdivision, Filing No. 1 ("Subdivision") in Book 2585 at Page 80 of the Mesa County, Colorado, real property records. Declarant subsequently amended the Declaration on May 24, 1999 in Book 2590, Page 288 and on February 1, 2000 in Book 2685, Page 795 of the Mesa County, Colorado, real property records.

B. Section 1.10 of the Declaration defines the Declarant as Raymond L. Oellrich and his "successors and assigns designated in writing to be the successor of Declarant." Section 38-33.3-304 of the Colorado Common Interest Ownership Act ("CCIOA") permits the assignment of Declarant rights under a declaration to successors of the original declarant.

C. ROI Development, LLC, has succeeded to the interests of Raymond L. Oellrich in all of the Subdivision, including that property added to the original Declaration by instrument recorded February 1, 2000 in Book 2685 at Page 795.

D. To the extent this instrument is an amendment of the Declaration, in Section 14.07 of the Declaration, Declarant reserved the right to record technical amendments to the Declaration, during th period of Declarant control, to correct errors and that may otherwise be necessary to clarify the meaning of any provisions of the Declaration. The period of Declarant control has not yet elapsed.

THEREFORE, Declarant covenants, agrees, declares and amends the Declaration as follows:

1. Assignment of Declarant Rights. Subject to the provisions of the Declaration and the Colorado Common Interest Ownership Act, Oellrich assigns, transfers and conveys all of Oellrich's rights and obligations under the Declaration, as amended and supplemented, to ROI and ROI accepts such assignment. From the date of recording this instrument, ROI is and shall be referred to as Declarant under Section 1.10 of the Declaration and shall have and exercise all those rights, responsibilities and obligations under the Declaration and the Association. This Assignment is made without representation or warranty as to the extent or nature of any rights assigned. ROI does not assume responsibility for any act or omission of Declarant arising prior to the date of recording this instrument.

2. Amendment of Section 11.04 of the Declaration. Section 11.04 of the Declaration states that "each owner shall be permitted to use a single ½ horsepower pump for irrigation water delivery to a Lot." Declarant has determined that a ½ horsepower pump is not sufficient for adequate irrigation water delivery to the Lot and that reference to it was in error. Therefore, Declarant hereby amends Section 11.04 of the Declaration to permit each owner to use a single ¾ horsepower pump to deliver irrigation water to his or her Lot.

3. Clarifying Statement Concerning FEMA. The Federal Emergency Management Agency ("FEMA") had previously identified part of all of the Property as contained within a purported 100-year flood plain. As shown on the attached Exhibit A, which is made a part of this instrument by this reference, FEMA has subsequently changed its view so that none of the Property is contained within any 100-year flood plain. Declarant records this instrument and Exhibit for the purpose of clarifying the meaning of any notations to FEMA on the Map or contained within the Declaration.

4. Restatement of Declaration, as amended. In all other respects, the Declaration shall remain the same as originally recorded and amended and supplemented.

DATED this 31<sup>st</sup> day of August, 2000.







# Federal Emergency Management Agency

Washington, D.C. 20472

BOOK 2746 PAGE 739

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

The Honorable Doug Hall  
Mayor, City of Fruita  
325 East Aspen, Suite 155  
Fruita, CO 81521

IN REPLY REFER TO:  
Case No.: 00-08-189P

Community: Town of Fruita, CO  
Community No.: 080194  
Panel Affected: 0001 B  
Effective Date of **MAY 04 2000**  
This Revision:

102-D

Dear Mayor Hall:

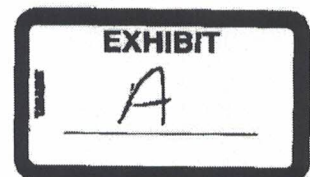
This responds to a request that the Federal Emergency Management Agency (FEMA) revise the effective Flood Insurance Rate Map (FIRM) for your community in accordance with Part 65 of the National Flood Insurance Program (NFIP) regulations. In a letter dated March 24, 2000, Mr. Bennett Boeschstein Community Development Director, City of Fruita, requested that FEMA revise the FIRM to correct the boundary delineations of the Special Flood Hazard Area (SFHA), the area that would be inundated by the flood having a 1-percent chance of being equaled or exceeded in any given year (base flood), along Big Salt Wash from just upstream to approximately 1,000 feet upstream of State Highways 50 & 6 (SH50&6). With his submittal, Mr. Boeschstein provided revised SFHA boundary delineations based on original Orthophoto Topography Maps.

All data required to complete our review of this request were submitted with letters from Mr. Boeschstein and Mr. Richard L. Atkins, P.E., P.L.S, Atkins and Associates, Inc. Because this Letter of Map Revision (LOMR) is being issued to correct a mapping or study analysis error, fees were not assessed for the review.

We have completed our review of the submitted data and the flood data shown on the effective FIRM. We have revised the FIRM to modify the floodplain boundary delineations of the base flood along Big Salt Wash from just upstream to approximately 1,000 feet upstream of SH50&6. As a result of the modifications, the width of the SFHA for Big Salt Wash decreased. The modifications are shown on the enclosed annotated copy of FIRM Panel(s) 0001 B. This Letter of Map Revision (LOMR) hereby revises the above-referenced panel(s) of the effective FIRM dated July 15, 1992.

The modifications are effective as of the date shown above. The map panel(s) as listed above and as modified by this letter will be used for all flood insurance policies and renewals issued for your community.

A review of the determination made by this LOMR and any requests to alter this determination should be made within 30 days. Any request to alter the determination must be based on scientific or technical data.



We will not physically revise and republish the FIRM and Flood Insurance Study (FIS) report for your community to reflect the modifications made by this LOMR at this time. When changes to the previously cited FIRM panel(s) and FIS report warrant physical revision and republication in the future, we will incorporate the modifications made by this LOMR at that time.

This LOMR is based on minimum floodplain management criteria established under the NFIP. Your community is responsible for approving all floodplain development and for ensuring all necessary permits required by Federal or State law have been received. State, county, and community officials, based on knowledge of local conditions and in the interest of safety, may set higher standards for construction in the SFHA. If the State, county, or community has adopted more restrictive or comprehensive floodplain management criteria, these criteria take precedence over the minimum NFIP criteria.

Because this LOMR will not be printed and distributed to primary users, such as local insurance agents and mortgage lenders, your community will serve as a repository for these new data. We encourage you to disseminate the information reflected by this LOMR throughout the community, so that interested persons, such as property owners, local insurance agents, and mortgage lenders, may benefit from the information. We also encourage you to prepare an article for publication in your community's local newspaper. This article should describe the changes that have been made and the assistance that officials of your community will give to interested persons by providing these data and interpreting the NFIP maps.

This determination has been made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Public Law 93-234) and is in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, Public Law 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65. Pursuant to Section 1361 of the National Flood Insurance Act of 1968, as amended, communities participating in the NFIP are required to adopt and enforce floodplain management regulations that meet or exceed NFIP criteria. These criteria are the minimum requirements and do not supersede any State or local requirements of a more stringent nature. This includes adoption of the effective FIRM and FIS report to which the regulations apply and the modifications described in this LOMR.

FEMA makes flood insurance available in participating communities; in addition, we encourage communities to develop their own loss reduction and prevention programs. Through the *Project Impact: Building Disaster Resistant Communities* initiative, launched by FEMA Director James Lee Witt in 1997, we seek to focus the energy of businesses, citizens, and communities in the United States on the importance of reducing their susceptibility to the impact of all natural disasters, including floods, hurricanes, severe storms, earthquakes, and wildfires. Natural hazard mitigation is most effective when it is planned for and implemented at the local level, by the entities who are most knowledgeable of local conditions and whose economic stability and safety are at stake. For your information, we are enclosing a copy of a pamphlet describing this nationwide initiative. For additional information on *Project Impact*, please visit our Web site at [www.fema.gov/impact](http://www.fema.gov/impact).

If you have any questions regarding floodplain management regulations for your community or the NFIP in general, please contact the Consultation Coordination Officer (CCO) for your community. Information

3

on the CCO for your community may be obtained by contacting the Director, Mitigation Division of FEMA in Denver, Colorado, at (303) 235-4830. If you have any questions regarding this LOMR, please contact the FEMA Map Assistance Center, toll free, at 1-877-FEMA MAP (1-877-336-2627).

Sincerely,



Sally P. Magee, Project Engineer  
Hazards Study Branch  
Mitigation Directorate

For: Matthew B. Miller, P.E., Chief  
Hazards Study Branch  
Mitigation Directorate

Enclosures

cc: Mr. Bennett Boeschenstein  
Community Development Director  
City of Fruita



Mr. Richard L. Atkins, P.E., P.L.S  
Atkins and Associates, Inc.

Mr. Bill DeGroot, P.E.  
Chief, Floodplain Management Program  
Urban Drainage and Flood Control District

Mr. Brian R. Hyde  
Senior Water Resources Specialist  
Colorado Water Conservation Board  
Department of Conservation

CONSIDER NOTE: POOR QUALITY DOCUMENT,  
PROVIDED FOR REPRODUCTION

**MAP LEGEND**

-  Revised 500-Year Floodplain
-  Revised 100-Year Floodplain



APPROXIMATE SCALE IN FEET  
0 400 400

NATIONAL FLOOD INSURANCE PROGRAM

**FIRM**  
FLOOD INSURANCE RATE MAP

TOWN OF  
FRUITA, COLORADO  
MESA COUNTY

PANEL 1 OF 4  
(SEE MAP INDEX FOR PANELS NOT PRINTED)

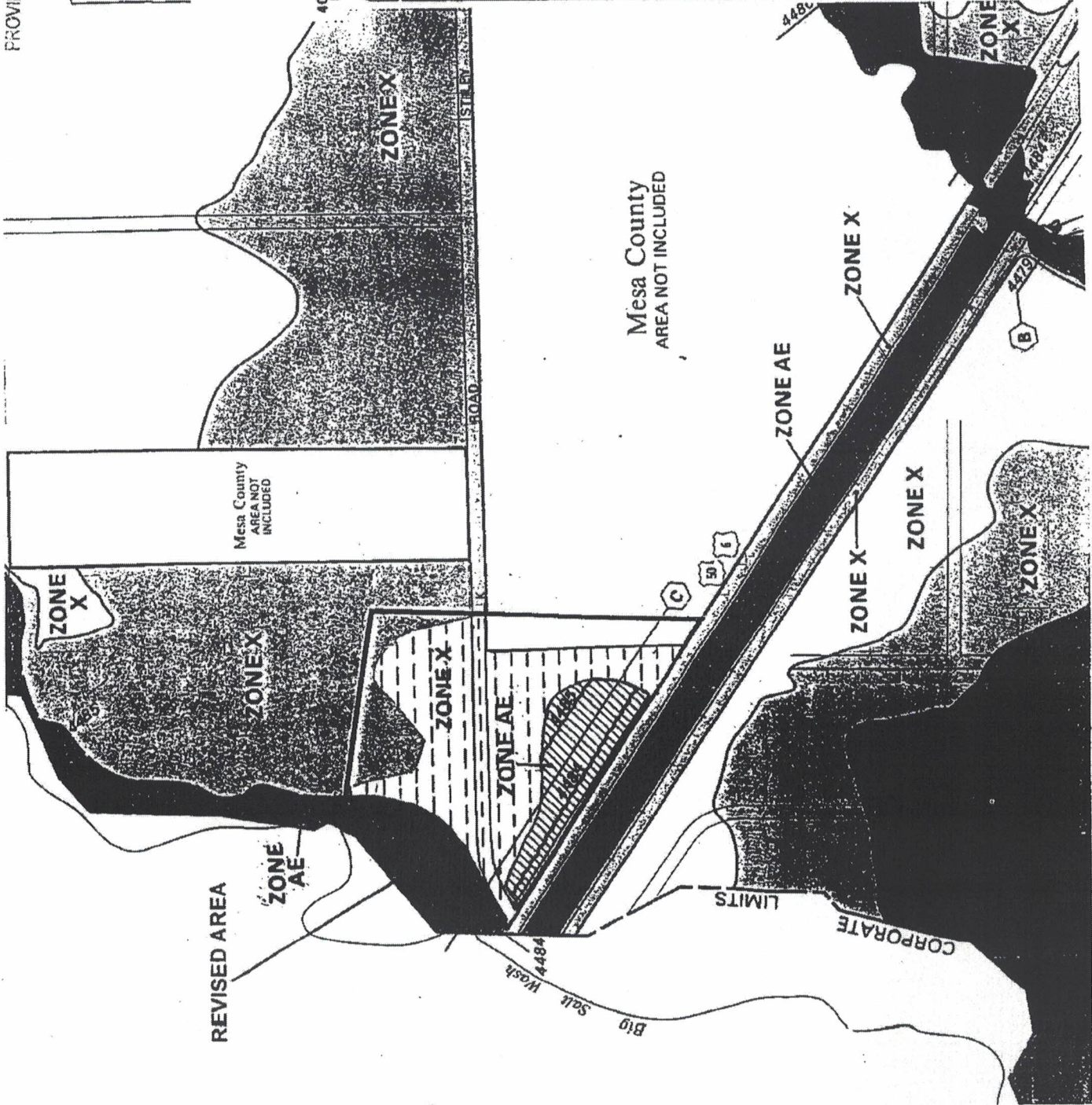
**REVISED TO REFLECT FIRM**  
**DATED MAY 04 2000**

OF COUNTY-PANEL NUMBER  
080194 0001 B

MAP REVISED:  
JULY 15, 1992



Federal Emergency Management Agency



**FOURTH AMENDMENT TO THE DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
EVENING BREEZE SUBDIVISION, FILING NO. 1**

**BOOK 2906 PAGE 11**

This Fourth Amendment is made this 16<sup>th</sup> day of August, 2001 by ROI Development, LLC, ("ROI" or "Declarant").

**RECITALS**

A. The purpose of this Fourth Amendment is to amend the Declaration of Covenants, Conditions and Restrictions for Evening Breeze Subdivision, Filing No. 1 (the "Declaration") recorded on May 10, 1999 in Book 2585, beginning at Page 80, of the Mesa County, Colorado real property records.

B. On August 31, 2000, ROI succeeded to the interests of Raymond L. Oellrich as Declarant, pursuant to the Assignment of Declarant Rights and Third Amendment to the Declaration of Covenants, Conditions and Restrictions for Evening Breeze Subdivision, Filing No. 1. as recorded in Book 2746, Page 737, of the Mesa County, Colorado real property records.

C. Declarant reserved the right to record technical amendments to the Declaration at any time prior to the termination of Declarant's control of the Association pursuant to Section 14.07 of the Declaration and Section 38-33.3-205(4), C.R.S. This Fourth Amendment of the Declaration is signed and recorded by Declarant for that purpose.

**TERMS**

THEREFORE, Declarant makes the following amendment of the Declaration:

1. Section 2.05 of the Declaration provides that the affairs of the Association shall be managed by a board of two directors initially. The Declaration is incorrect and there should be only one initial director, Raymond L. Oellrich. Therefore, by this Fourth Amendment, Declarant amends the typographical error in Section 2.05 of the Declaration to provide that there shall be one director initially, as if it stated the same when recorded.

2. In all other respects, the Declaration is to remain as previously recorded.

DATED this 16<sup>th</sup> day of August, 2001.

ROI DEVELOPMENT, LLC


  
By: Raymond L. Oellrich  
Its: Managing Member

**ACKNOWLEDGMENT**

On this 16 day of August, 2001 before me personally appeared Raymond L. Oellrich and acknowledged the foregoing instrument.

Witness my hand and official seal.

My commission expires: 6-23-03

  
Notary Public

