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**MASTER DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKSIDE SUBDIVISION**

DECLARATION, made this 1st day of September, 2000, by DARTER, LLC,
hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Section 5, Township 1 South,
Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, which is more particularly
described as:

The SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, and that part of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ lying South of the Palisade Canal,
and that part of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ lying South and West of the Palisade Canal and South and
East of the drainage ditch, all in Section 5, Township 1 South, Range 1 East of the Ute Meridian,

Mesa County, Colorado

Together with any and all water and water rights, irrigation rights and irrigation company stock
or interest, ditches and ditch rights of way, appurtenant thereto, or used in connection therewith;

WHEREAS, Declarant desires to create a Colorado common interest community and
provide for a common irrigation system;

NOW THEREFORE, Declarant hereby declares that:

**ARTICLE I
DECLARATION**

1. Brookside Subdivision, Filing One, described as:

A tract of land located in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 5,
Township 1 South, Range 1 East of the Ute Meridian, City of Grand Junction, County of Mesa,
State of Colorado more fully described as follows:

Beginning at the southeasterly corner of Brookside Subdivision Filing One, which is
identical with the E1/4 corner of Section 5, Township 1 South, Range 1 East of the Ute Meridian,
Mesa County, Colorado;

1. Thence N 89° 43' 55" W, 1322.25 feet;
2. Thence N 89° 44' 28" W, 661.27 feet;
3. Thence N 00° 06' 15" W, 655.84 feet;
4. Thence S 89° 45' 03" E, 49.66 feet;
5. Thence N 45° 02' 09" E, 551.85 feet;
6. Thence S 51° 36' 11" E, 223.29 feet;
7. Thence S 56° 55' 00" E, 196.96 feet;
8. Thence S 55° 50' 00" E, 100.00 feet;
9. Thence S 39° 59' 00" E, 83.00 feet;
10. Thence S 48° 00' 00" E, 172.00 feet;
11. Thence S 77° 11' 00" E, 382.00 feet;
12. Thence S 76° 00' 00" E, 199.00 feet;
13. Thence S 85° 58' 00" E, 375.09 feet;
14. Thence S 00° 09' 34" E, 414.62 feet to the Point of Beginning

containing 29.972 acres more or less,

("the Development") shall be held, sold and conveyed subject to the following easements,
restrictions, covenants, and conditions, which are for the purpose of protecting the value and
desirability of, and which shall run with, the real property and be binding on all parties having

any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

2. The Lots in Filing One are single family home lots.
3. Tracts A, C, and D are declared a common area and dedicated to all Owners of Brookside Subdivision, and shall be subject to the control of the Brookside Homeowners Association of Grand Junction, Inc.
4. Declarant specifically reserves the right to impose supplementary and additional covenants, conditions and restrictions on the real property, and to annex the balance of the land described above owned by Declarant, to the Development, subjecting said annexed real property to the terms and conditions imposed herein. This reservation of right specifically includes the right to develop the land in phases, which phases may include more than one dwelling unit per lot or multifamily structures. Upon completion of such annexation and re-subdivision, the respective interests in the common area and common elements of each owner will be reduced by reallocation to not less than .007692 (0.7692 per cent) of the whole, calculated on a maximum of 130 living units.
5. Declarant specifically reserves the right to create and dedicate common and limited common elements to various lots.
6. The part of each such lot not subject to an easement shall be held in fee simple by the owner of the lot, and not as a common element or limited common element of the development.

ARTICLE II DEFINITIONS

Section 1. "Association" shall mean and refer to BROOKSIDE HOMEOWNERS ASSOCIATION OF GRAND JUNCTION, INC., its successors and assigns. The Association shall be responsible for the irrigation system and any common areas and common elements of the development, and shall have no responsibility or duty toward the limited common areas and limited common elements.

Section 2. "Common Area" shall mean all real property (including the improvements thereto) owned or maintained by the Association for the common use and enjoyment of all the Owners. Common Area shall be owned, as tenants in common, by the Owners of the separate Units, each Unit having an undivided fractional interest in such Common Area as hereinafter provided.

Section 3. "Common Elements" shall mean the irrigation distribution system, the outdoor lighting of Common Area, landscaping on common areas and such other improvements as the Association may cause or accept. Common Elements shall be owned, as tenants in common, by the Owners of the separate Units, each Unit having an undivided fractional interest in such Common Elements as in hereinafter provided. Any references to "common elements" appearing on the plat (except references to limited common elements) shall be deemed solely for purposes of general information and shall not be limiting in any way, nor shall any such reference define the common elements in any way.

Section 4. "Declarant" shall mean and refer to Darter, LLC, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area, and where required by the context, shall include or mean the Unit.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot or unit which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 8. "Unit" means, as the context requires, a single family residence of any type. A single family lot unit shall include the real property, and a non-exclusive undivided interest in the irrigation system and other common elements as may be dedicated to or under the control of the Association.

ARTICLE III PROPERTY RIGHTS AND OBLIGATIONS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot or Unit, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot or Unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area not part of the Limited 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 agreeing to such dedication or transfer signed by eighty percent (80%) of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Property Subject to Easements. Each lot and unit is subject to the following easements:

(a) **Utility Easements.** The public utilities and special districts providing telephone service, electricity, gas, water, sewer and the cable television distributor are hereby granted the right to lay, construct, renew, operate, and maintain conduits, cables, pipes, wires, transformers, switching apparatus, and other equipment related to their services to the property, into and through the common elements, limited common elements, and the units, where reasonably necessary for the purpose of providing utility service to the property.

(b) **Developer's Reserved Easement.** The Declarant hereby reserves to itself, its successors and assigns, an easement on, under, around and through the Development for the purposes of developing all the land described above owned by Declarant, and installing utilities, streets, roads and amenities for the entire development. This Easement shall expire upon the earlier event of completion of all filings and phases of the Development, or any event described in Article IX, Section 6 below.

(c) **Encroachments.** If any portion of the common elements or limited common elements encroaches upon any unit, or if any unit encroaches upon any portion of the common elements or limited common elements or any other unit as a result of the construction, repair, reconstruction, settlement or shifting of any building, a valid mutual easement shall exist in favor

of the owners of the common elements, limited common elements, and the respective unit owners involved to the extent of the encroachment. A valid easement shall not exist in favor of any unit owner who creates an encroachment by his intentional, willful or negligent conduct or that of his or her agent.

(d) **Easements and Rights to Run with Land.** All easements and rights described here are easements and rights running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on any lot or unit owner, purchaser, mortgagee, and other person having an interest in the Property, or any part or portion of it. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Article, or described in any other part of the Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees, and trustees of such unit ownership as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

Section 4. Owner Maintenance and Repair Obligation.

(a) Every owner must perform promptly all maintenance and repair work within his own lot or unit, which if omitted would affect the development in its entirety or in a part belonging to other owners, being expressly responsible for the damages and liabilities that his failure to do so may engender, subject to the general rules of law regarding damages and liabilities.

(b) All the repairs of the installations serving a lot or unit such as water, light, gas, power, sewage, telephones, air conditioners, sanitary installations, doors, windows, lamps and all other accessories belonging to the unit, shall be at the owner's expense. If the repairs affect more than one lot or unit, the owners shall share equally in the cost of the repairs, subject to the general rules of law regarding liability for repairs required due to negligence or willful acts or omissions of an owner, or of the family, guests, or invitees of the Owner.

Section 5. Developer's Control of Development—Sequence and Timing.

The Declarant's development rights may be exercised with respect to different parcels of real property at different times. Declarant makes no assurances as to the portions and the order in which those portions may be subjected to the exercise of each development right. Exercise of a development right as to any portion of the real estate does not and shall not obligate the Declarant to exercise a development right as to any other portion of the remainder of the real estate that may be subjected to this Declaration.

Section 6. No Further Subdivision. Except as reserved to the Developer in Article I, no lot or unit may be further subdivided.

Section 7. Non-Partitionability of General and Limited Common Elements. The Common Elements and the Limited Common Elements shall be owned in common by all of the Owners of interests in the development, and shall remain undivided. By the acceptance of this deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements, the Limited Common Elements, and each Owner specifically agrees not to institute any action therefor. Further, each Owner agrees that this provision may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorney's fees, costs and other damages the Association incurs in connection therewith.

Section 8. Acceptance of Provisions of All Documents: The conveyance or encumbrance of a Unit shall be deemed to include the acceptance of all of the provisions of this Declaration, the Articles, the Bylaws, and if any in effect, the Regulatory Agreement, Rules and Regulations and Management Agreement and shall be binding upon each grantee without the necessity or inclusion of such express provision in the instrument of conveyance or encumbrance.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership in Association. Every Owner of a unit which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and say not be separated from ownership of any Unit which is subject to assessment.

Section 2. Voting. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot or Unit owned. When more than one person holds an interest in any Lot or Unit, all such persons shall be members. The vote for such Lot or Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot or Unit.

Class B. Class B Member(s) shall be Declarant and any successor of Declarant who takes title to all or part of the property for the purpose of development and sale of Lots and who is designated as Successor Declarant in a recorded instrument executed by Declarant. Class B membership shall terminate on the earlier of the following dates:

- (a) no later than sixty days after conveyance of seventy-five percent of the units that may be created to unit owners other than declarant; or
- (b) July 1, 2005; or
- (c) two years after the last conveyance of a unit by the declarant in the ordinary course of business; or
- (d) the date on which Declarant voluntarily relinquishes its Class B membership, as evidenced by a notice recorded in the office of the Mesa County Clerk and Recorder.

The time period during which Class B membership exists shall be known as the period of Declarant control, during which time the Declarant may appoint and remove the members of the Board of Directors of the Association and its officers that are not elected by Class A Members. After termination of the Class B membership, Declarant and any designated successor Declarant shall be entitled to one (1) Class A membership and one (1) Class A vote for each Lot or Unit owned. At such time, Declarant shall call a special meeting of the Members to advise the members that Class B membership has been terminated and to relinquish control of the Association to the Class A Members.

Section 3. Member Right to Examine Records. Each Owner and each first Mortgagee of a Unit has the right to examine copies of the current Declaration, Articles, Bylaws, and books and records of the Association at any reasonable time.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

(a) The Declarant, for each Lot and Units within the Property, hereby covenants, and each Owner of any Lot or Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

(b) The annual and special assessments assessed by the Association but unpaid by the Owner of any Unit, including interest on any monthly installment or annual assessment not paid when due, shall constitute a lien on such Unit superior (prior) to all other liens and

encumbrances, except only for all sums unpaid on a first Mortgage of record, including all unpaid obligatory sums as may be provided by such encumbrance, and including additional advances made thereon prior to the arising of such lien, and except for tax and special assessment liens in favor of a governmental assessing entity. The lien of the Association shall include default interest at eighteen percent (18%) per annum commencing the first day after due date, costs and reasonable attorneys fees incurred in collection thereof.

(c) The allocation of common expenses is based upon the percentage derived from the whole (one) divided by the number of units declared hereunder (40) resulting in a percentage of 2.50 per cent (.0250) per unit for allocation of common expenses. As the property is developed, the number of lots and units used in this formula shall increase by the number of lots or units annexed, if any, and the percentage allocation shall be adjusted to the new percentage resulting from dividing one by the new number of units.

(d) (1) The Association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. In addition to the assessments described in this Declaration, fees, charges, late charges, attorney fees, fines, and interest charged pursuant to Colorado Revised Statutes section 38-33.3-302 (1) (j), (1) (k), and (1) (l), section 38-33.3-313 (6), and section 38-33.3-315 (2) are enforceable as assessments. The amount of the lien shall include all those items set forth in this section from the time such items become due. 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's acceleration of installment obligations.

(2) (a) A lien under this section is prior to all other liens and encumbrances on a lot or unit except:

(I) Liens and encumbrances recorded before the recordation of the declaration;

(II) A security interest on the unit which has priority over all other security interests on the unit and which was recorded before the date on which the assessment sought to be enforced became delinquent; however, to the extent the lien for assessments is based on common expense assessments which would have become due in without acceleration in the during the six months immediately preceding institution by either the association or any party holding a lien senior to any part of the association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien, the lien for common area expenses is superior.

(III) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to provide and maintain the irrigation system and any Common Area and any Common Elements.

Section 3. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot or Unit to an Owner, the maximum annual assessment shall be one hundred twenty-five dollars per completed unit.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot or Unit to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot or Unit to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, or Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Where a Capital Improvement will benefit or burden fewer than all the units, the owners of the affected or benefited units shall be designated a class. The consent of two-thirds (2/3) of the votes will be required of each such class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast twenty percent (20%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments for the common areas and common elements must be fixed at a uniform rate for all Units and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to each Lot or Unit with the completion of a dwelling unit thereon the first day of the month following such completion. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot or Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. Annual assessments shall be payable in equal monthly installments of one-twelfth of the annual assessment amount, and such installments shall be due on the first day of each month. 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 or Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot or Unit is binding upon the Association as of the date of its issuance.

Section 8. Certificate of Assessment Due. Upon payment of a reasonable fee not to exceed Thirty Dollars (\$30.00) and upon the written request of any Owner, prospective Owner, any Mortgagee or any prospective Mortgagee of a Unit, the Association shall issue a written statement setting forth the amount of the unpaid expenses, if any, assessed to such Unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten (10) days, all unpaid Common Expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

Section 9. Liability for Assessments--Voluntary Transfer In a voluntary conveyance of a Unit, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the Grantor and the Unit up to the time of the grant or conveyance.

Section 10. Liability for Assessments-Involuntary Transfer Where the grantee of a Unit, including a first Mortgagee, comes into possession of a Unit pursuant to the remedies provided in its Mortgage or becomes an Owner of a Unit pursuant to foreclosure or its Mortgage or by the taking of a deed in lieu thereof, or any purchaser at a foreclosure sale, such acquirer of title, his successors and assigns, shall not be liable for any unpaid Common Expense or special assessment accruing prior to the time such acquirer of title becomes the Owner of any Unit, but will be liable for those thereafter. Any such unpaid assessments shall become a Common Expense to be collected equally from all Owners including such grantee, his successors and assigns.

Section 11. Effect of Nonpayment of Assessments: Remedies of the Association. To evidence any lien for any unpaid assessments, the Association shall prepare a written notice setting forth the amount, the name of the Owner of the Unit and a description of the Unit. Such notice shall be signed on behalf of the Association and by an officer of the Association and shall be recorded in the Office of the Clerk and Recorder of Mesa County. Such lien shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure by the Association of the defaulting Owner's Unit in like manner as Mortgages on real property; however, a lawsuit to recover a money judgment for unpaid assessment shall be maintainable without foreclosing or waiving this lien. The lien provided herein shall be in favor of the Association. In any action to collect said lien, including by foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs, expenses and attorney's fees for giving and/or filing the Notice or claim of lien, and all reasonable attorney's fees in connection with such foreclosure. The Owner shall also be required to pay to the Association the monthly assessment for the Unit during the period of foreclosure and the Association shall be entitled to a receiver to collect the same. The Association, on behalf of the Unit Owners, shall have the power to bid the Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same. In case of default in payment of the monthly installments allowed under Section 7 above, the Board may accelerate the missed installments plus the unpaid balance of the assessment, and declare the entire annual assessment due and payable immediately. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the his Lot or Unit.

ARTICLE VI ARCHITECTURAL CONTROL

Section 1. Review of Plans. No building, fence, wall, canopy, awning, structure or improvement shall be commenced, erected, altered, moved, removed or maintained upon the Development or any portion thereof, nor shall any exterior additional to, or change or alteration thereof be made that (a) except in conformity with the City of Grand Junction Code of Ordinances and Code of Zoning and Development and (b) until the plans and specifications showing the nature, kind, shape, height, materials, location and approximate cost of the same shall have been submitted to and approved in writing by the Architectural Control Committee as provided herein. The Architectural Control Committee shall be either the Board of Directors or a committee composed of three (3) or more representatives appointed by the Board. The Architectural Control Committee shall review plans and specifications as to harmony of external design and location in relation to surrounding structures and topography and the preservation and enhancement of the value and the visual appearance of the existing improvements.

Section 2. Procedures. Duplicate copies of plans and specifications relating to an improvement, including, but not limited to residences, fences, garages, and outbuildings, shall be submitted to the Architectural Control Committee for review and final approval. Plans and specifications shall contain, without limitation, the plot plans showing layout, including setbacks, flow and manner of surface, drainage, finish and natural grade elevations, floor plans showing overall dimensions, roof plans showing pitch, roof materials, color, exterior elevations showing doors, windows and exterior materials and colors, and if requested, a perspective sketch or such other details as may be necessary to explain the proposed project or any detail, feature or

component of the improvement. The Architectural Control Committee shall approve or disapprove all plans and requests within thirty (30) days after submission. In the event the Architectural Control Committee fails to take any action within thirty (30) days after requests have been submitted, approval will not be required and this Article V will be deemed to have been fully complied with.

Section 3. Majority Vote. A majority vote of the Architectural Control Committee is required for approval or disapproval of proposed developments.

Section 4. Written Records. The Architectural Control Committee shall maintain records of all applications submitted to it and of all actions it may have taken.

Section 5. No Liability. Each Owner hereby agrees that neither the Board of Directors nor Architectural Control Committee shall be liable for damages to any person submitted requests for approval or to any Owner with the Properties by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests.

ARTICLE VII MORTGAGEE RIGHTS

Section 1. Actions Requiring Mortgagee Approval. The prior written approval of eligible holders of a first Mortgage lien on Units in the Development shall be required for the following, in the percentage of total units set forth below. "Eligible holder" shall mean a holder of a first mortgage which has requested that the Association be given timely written notice of any events described below:

(a) Sixty-seven percent (67%) of all eligible holders for: i) restoration or repair of the unit or Townhome after partial condemnation, or damage due to an insurable hazard not in accordance with the original plans and specifications; ii) the abandonment or termination of the Development, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; iii) for the reallocation of common and limited common elements following partial or total taking by condemnation or partial or total destruction of the unit or the Development; iv) change the pro-rata interest or obligations of individual Townhome Units for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or determining the pro-rata share of ownership of each Unit in the Common Elements; and v) to use hazard insurance proceeds for loss to the improvements for other than the repair, replacement or reconstruction of such improvements.

(b) Fifty-one percent (51%) of the eligible holders for any material amendment to this Declaration, the Articles or the Bylaws of the Association. For the purposes of this Declaration, "material amendment" means and includes any change to the provisions thereof for voting; assessments, assessment liens or subordination of such liens; reserves for maintenance, repair and replacement of the common elements; insurance or fidelity bond requirements; rights to use of the common elements; responsibility for maintenance and repair of the units; expansion or contraction of the Townhome regime or the addition, annexation or withdrawal of property to or from the regime except as provided in this Declaration; boundaries of any unit; interests in the general or limited common elements; convertibility of units into common elements or common elements into units; leasing of units; imposition of any right of first refusal or similar restriction on the right of a unit owner to sell, transfer or otherwise convey the owner's unit; and establishment of self-management by the Association where professional management has been required by any agency.

Section 2. Institutional Holder Inspections. Any institutional holder of first Mortgage on a Unit in the Development will, upon request, be entitled to i) inspect the books and records of the Development including copies of the current Declaration, Articles, Bylaws, and books and records of the Association during normal business hours; ii) receive an annual audited financial statement of the Development within ninety (90) days following the end of any fiscal year of the

Development; and iii) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

Section 3. Notice upon Damage or Loss. In the event of substantial damage to or destruction of any Unit in excess of One Thousand Dollars (\$1,000.00), or any part of the Common Elements in excess of Ten Thousand Dollars (\$10,000.00), the institutional holder of any first Mortgage on a Unit shall be entitled to timely written notice of any such damage or destruction, and no Owner of a Unit or other party shall have priority over such institutional holder with respect to the distribution to such Owner of any insurance proceeds.

Section 4. Notice upon Condemnation. If any Unit or portion thereof, or the Building Common Elements or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any first Mortgage on a Unit will be entitled to timely written notice from the Association of any such proceeding or proposed acquisition and no Owner or other party shall have priority over such institutional holder with respect to the distribution to such Owner of the proceeds of any award or settlement.

Section 5. Right to Pay Delinquencies. Any holder of a lien on a Unit may, but shall not be required to, pay any unpaid Common Expense payable with respect thereto and upon such payment, such encumbrance shall have a lien on such Unit for the amounts paid, of the same rank as the lien of his encumbrance, without the necessity of having to record a notice or claim of such lien.

Section 6. Report of Delinquency. Upon request of a Mortgagee, the Association shall report in writing to the Mortgagee of a Unit any unpaid assessment remaining unpaid for more than thirty (30) days after due, or other default of any covenant, condition, obligation or term of this Declaration not cured within thirty (30) days, provided, however, that a Mortgagee shall have furnished to the Association notice of such encumbrance.

Section 7. Report on Tax Assessment. The Association, upon request of any Mortgagee, shall furnish evidence that all taxes, real estate assessments and charges shall relate only to an individual Unit and not to the Development as a whole.

Section 8. Mechanics Liens and Involuntary Transferees. Any Mortgagee of a Unit who shall become the Owner of such Unit pursuant to a lawful foreclosure sale or the taking of a deed in lieu of foreclosure shall not be under any obligation to indemnify and hold harmless any other Owner against liability for claims for labor or materials provided and incorporated into such Unit where such claims arise from such labor performed or materials supplied prior to the date such Mortgagee becomes an Owner of such Unit, but shall be under such obligation for any claims thereafter.

ARTICLE VIII RESTRICTIVE COVENANTS

Section 1. Residential Use. The Property is hereby restricted to residential dwellings for residential use and uses related to the convenience and enjoyment of such residential use. No structures of a temporary character, tents, shacks, garages, barns or other out-buildings shall be used or permitted to be kept or stored on any portion of the premises at any time, either temporarily or permanently; Except that a storage building of the same type of construction and materials and colors used in the residence on the lot may be erected so long the storage building size does not exceed 120 square feet.

Section 2. Minimum Structure Size. The total finished living area of any main structure shall be a minimum of 1000 square feet for any dwellings and, on the single family lots, a minimum of 1250 square feet for two-story or bi-level dwellings, excluding porches (open or enclosed), garages and basements. All measurements shall be on an outside dimension of the walls.

Section 3. Engineered Foundation Required. The foundation and/or slab(s) for every dwelling structure shall be individually designed by a Colorado licensed professional engineer.

Section 4. Manufactured Housing Prohibited. No mobile home, nor manufactured or factory-built housing unit may be placed on any lot. "Manufactured housing unit" and "factory built housing unit" mean any structure, or component thereof, designed primarily for residential occupancy, either permanent or temporary, including a mobile home, which is wholly or in substantial part made, fabricated, formed, or assembled in manufacturing facilities for installation, or assembly and installation, in either temporary or permanent locations.

Section 5. Fences. No rear yard fencing in excess of six (6) feet in height may be erected or maintained on any lot. All fencing must be approved by the Architectural Control Committee prior to installation, and a City of Grand Junction fence permit is required prior to installation.

In addition to the above restriction, the rear lot line of Lots 1 through 8 and 10 through 22 Block One; the north and west lot lines of Lot 23, Block One; the rear lot line of Lots 1 and 2 Block Six and Lot 1 Block Five; the south lot line of Lot 1 Block One; the west lot lines of Lot 23 Block One and Lot 7 Block Three; the east lot lines of Lot 1 Block Six and Lot 1 Block Four; the south lot lines of Lots 1 and 2 Block Four are further restricted:

No rear lot or side lot line fence adjacent to public and common use areas may be constructed of solid material constituting a visual barrier exceeding 4 feet 6 inches and in no event shall be higher than 5 feet 6 inches with the additional 1 foot of fence consisting of a non-visual barrier material. By way of example, an approvable fence would be a 4 foot 6 inch solid cedar material with 1 foot of cedar lattice on top of the solid cedar portion of the fence. Additional approved fence material may include 4 foot 6 inch solid material such as boards or vinyl fencing material, topped with a 1 foot high open lattice of similar material.

it to the open space
10 through Lot 23,
Lot 1, Block 1; the
act D," being the
as of Lot 23, Block

d of solid materials

cast adequate to

Chainlink or
woven wire material
shall not be used in
construction of
front lot fences

Section 7. Pets and Livestock. No animal, livestock including rabbits or poultry, or reptile of any kind shall be raised, bred or kept on the Property, except that pet birds and not more than two (2) domesticated pet dogs or cats may be kept on the premises at a Unit, subject to all City of Grand Junction and County of Mesa, Colorado animal ordinances and subject to rules and regulations from time to time adopted and amended by the Association; provided, however, that such pets are not kept for commercial purposes. An Owner is responsible for all damage caused by his animal(s).

Section 8. Business Activities and Signs. No advertising signs (except one not more than four square foot "For Rent" or "For Sale" sign per Unit), billboards, unsightly object, or nuisances shall be erected, placed or permitted to remain on the premises of a Unit or the Common Elements, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Unit or any resident thereof. Further, no retail trade or service business activity of any kind whatever which generates more than four vehicle trips (sales, deliveries, pick-ups, customers or other traffic, referred to as "business traffic") per day shall be conducted in the Buildings or in any portion of the Development. Such business traffic is allowed only between the hours of 8:00 o'clock a.m. and 7:00 o'clock p.m. of each day. Any business activities within Brookside Subdivision Filing No. 1 must comply with all local, state and federal laws for the business. Provided further, however, the foregoing covenants shall not apply to the business activities, signs and billboards or the maintenance of Buildings and improvements, if any, of the Declarant, its agents, contractors, and assigns during the marketing period, and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

Section 9. Storage and Rubbish. All garbage cans, wood piles, or similar items shall be kept screened so as to conceal them from view of neighboring Units and streets. All rubbish, trash or garbage shall be regularly removed from the property by the Owner to the designated trash bins, and shall not be allowed to be accumulated thereon.

Section 10. Automobiles, Commercial Vehicles, Boats and Recreational Vehicles. No Owner shall park, store or keep any recreational vehicle (including but not limited to any

camper unit, house car or motor home, boat) or other similar vehicle or any trailer of any kind on the streets. No Owner shall store or keep anywhere on the Property any large (twenty-eight feet or more in length) commercial-type vehicle. No inoperable or unlicensed automobiles or other vehicles shall be kept anywhere on the property in view of any other Owner or unit. In addition, no Owner shall park, store or keep anywhere on the property any vehicle or vehicular equipment, mobile or otherwise, deemed by the Board to be a nuisance. Ordinary maintenance and minor repairs of Owner's own vehicles are specifically permitted. Restoring vehicles and major repairs of vehicles are prohibited except where the vehicle and such activity is not visible from the street, any other lot, or from any of the common area and public ways.

Section 11. Leasing Restricted. No Unit may be leased for an initial term of less than thirty days, and such leases shall be subject to the terms and conditions of the Declaration(s) and the Association Articles and Bylaws.

Section 12. Nuisances. No nuisances shall be allowed or permitted upon the Development or any property in which the Association owns an interest, nor shall any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Development (or any property in which the Association owns an interest) by the residents thereof be allowed or permitted. All parts of the Development shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate, or any fire hazard allowed or permitted to exist. No Owner shall make or permit any use of his Lot or Unit, or make or permit any use of the Common Elements or any property in which the Association owns an interest which will increase the cost of insurance on the property.

No immoral, improper, offensive or unlawful use shall be made of the Development or any property in which the Association owns an interest, nor any part thereof, and all valid laws, zoning and other ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

ARTICLE IX ANNEXATION AND PHASING

Section 1. Annexation by Declarant. Declarant, for itself, its successors and assigns, expressly reserves, until ten (10) years from the date of the recording of this Declaration, the right to enlarge this Development (without the permission of the Owners) by annexing in phases the additional real property owned by Declarant adjacent to this Filing One. Such additions shall be expressed in and by a duly recorded supplement to this Declaration.

Section 2. Phasing and Development. The Declarant's development rights (to annex, phase and develop) may be exercised with respect to different parcels of real property at different times. Declarant intends to exercise development rights by developing as Filing Two the unplatted land west of Hudson Bay Street, to approximately the east sixteenth line of Section 5;

then developing as Filing Three approximately the area shown as "Lot 1, Block 8" on the plat of Brookside Subdivision Filing 1. Declarant makes no assurances as to the portions and the order in which those portions may be subjected to the exercise of each development right. Exercise of a development right as to any portion of the real estate does not and shall not obligate the Declarant to exercise a development right as to any other portion of the remainder of the real estate that may be subjected to this Declaration.

Section 3. Consent and Power of Attorney. Each owner and each mortgagee of a in the Development shall be deemed to have acquiesced in the amendments to this Declaration and in amendments to the Development Map for the purposes of adding additional lots and Common Elements and Limited Common Elements to the Development, in the manner set forth in this Article, and shall be deemed to have granted unto the said Declarant an irrevocable power of attorney, coupled with an interest, to effectuate, execute, and acknowledge and deliver any such amendments; and each such unit owner and mortgagee shall be deemed to have agreed and

covenanted to execute such further instruments, if any, as may be required by the Declarant, their successors or assigns, to properly accomplish such amendments.

Section 4. Common Expenses. In order that the Common Expenses of this Development, including all supplemental declarations hereto, shall continue to be shared equally and equitably by the Owners of the initial Units and the Owners of all subsequently submitted additional Units, the Common Expenses shall be equally shared in accordance with the following formula: to determine the share of the Common Expense for each Unit, multiply the total amount of the Common Expenses by a percentage obtained by dividing 100 by the number of total units installed on the property.

Section 5. Determination of Interests in Common Elements. Until all Units have been declared, one hundred percent (100%) of the interests in the Common Elements will not have been allocated until all of such Units have been annexed. Therefore, until declaration of all Units or a redetermination of such interests as provided below, if and when it is necessary to allocate insurance, sales or condemnation proceeds (or for any other purpose) among the Units and their Mortgagees according to their interests in the Common Elements, such allocation shall be determined on the basis of one share per Unit counting only those Units presently declared under this Declaration and all supplements of record as of the time of the occurrence of the event giving rise to such an allocation.

Section 6. Final Recomputation of Interests. A final recomputation of the interests of the Units in the Common Elements shall also occur as the result of termination of Declarant's right to enlarge the Development pursuant to this Section for any of the reasons set forth below:

- a. the Declarant has executed and recorded its Notice of Termination of Declarant's Right of Annexation, which Notice shall state that the Declarant hereby releases and waives its right to enlarge and annex additional property to the Development pursuant to this Article IX, and which Notice shall include a final schedule of one hundred percent (100%) of the Common Elements allocated equally among the declared Units existing as of the time of execution of such Notice; or
- b. within eighteen (18) months after Declarant has conveyed the last Unit it owned as part of the Declaration and all subsequent supplemental declarations, if the Declarant shall have failed to record with the County of Mesa, Colorado a supplemental declaration declaring additional Units pursuant to this Declaration.
- c. ten (10) years shall have elapsed since the day this Declaration was recorded with the County of Mesa and less than the entire 130 Units contemplated shall have been declared by execution and recording of this Declaration and supplemental declarations thereto.

Upon the occurrence of event (b) or (c), within thirty (30) days thereafter the Association shall prepare and record pursuant to this Article IX a schedule setting forth a final, recomputed equal allocation of interest in the Common Elements among the Condominium Units then declared and existing.

ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Association Authority to Contract Management. The Association reserves the right to contract out to one or more persons or entities, including a Managing Agent, contractors and employees, to perform such services as may devolve upon it; provided, however, that any such contracts shall not be for a term in excess of one (1) year and shall provide that the same be terminated on thirty (30) days' written notice, with or without cause, at any time by either party and without payment of any termination fee. Such contracts may be renewable, upon agreement of the parties, for successive one (1) year periods.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 4. Amendment. Subject to the Mortgage approval provisions set forth in this Declaration, this Declaration shall not be amended or revoked unless sixty-seven percent (67%) of members of the Association who are authorized to vote in person or by proxy consent and agree to such amendment or revocation by instrument duly recorded. The undivided interest in the Common Elements appurtenant to each Unit, as expressed in the Declaration and all supplements thereto and in any redetermination of such interests duly recorded, shall not be decreased without the consent of two-thirds (2/3) of the Unit Owners and sixty-seven percent (67%) of the Mortgagees as expressed in an amended Declaration duly recorded, although such interest in the Common Elements may be increased if all of the additional Units, are not created, as set forth under provisions concerning annexations. In determining whether the appropriate percentage of Mortgagee approval is obtained when so required by the terms of this Declaration, each Mortgagee shall have one (1) vote for each Mortgage owned.

Section 5. Notice to Mortgagees. At least thirty (30) days prior to the effective date of any amendment to this Declaration, the Association shall notify the holders of all recorded first Mortgages of such amendment.

Section 6. FHA/VA Approval. (a) **Actions Subject to Approval.** As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration or the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 7. Statutory Matters Not Set Forth Elsewhere.

(a) To the extent there needs be an allocation of common interests, the formula and percentage set forth in Article IV, Section 1(c) applies.

(b) Brookside is a planned community as defined in the Colorado Common Interest Community Act, Article 33.3 of Title 38, C.R.S.

(c) The descriptions of the boundaries of each single family lot are set forth on the subdivision plat filed in the records of the Mesa County, Colorado Clerk and Recorder's Office, in Plat Book ____ at Pages ____.

(d) The recording data for recorded easements and licenses appurtenant thereto the common interest community is or may be subject to under reservations set forth above are contained in the Plat of the Property, recorded in Plat Book ____, Page ____.

(e) Declarant reserves the right to maintain and use sales offices, management offices, and models in the Brookside development, and to maintain signs on the common elements advertising the community. Declarant reserves the right of use of one (1) unit, and any office and parking space in the common elements, and the right to locate and relocate to any unit not sold, or to common element area as necessary. Declarant's rights under this subsection shall expire upon Declarant no longer owning any units, subject to Declarant's right to remove Declarant's property from the community's real property and improvements so used.

(f) Declarant hereby gives notice of Declarant's intent to utilize the easement through the common elements defined in 38-33.3-218, C.R.S. as it exists on the date hereof.

(g) Within thirty days after adoption of any proposed budget for the common interest community, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners or any larger percentage specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the executive board.

(h) Notice of matters affecting the common interest community may be given to Owners by the Association or other Owners by personal delivery to each unit or by first class United States mails, properly addressed to the registered address of each Owner, and with postage prepaid.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 10th day of September, 2000.

DARTER, LLC

By: Terry Lawrence
Member Terry Lawrence

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing Master Declaration of Covenants, Conditions, and Restrictions of Brookside Subdivision was subscribed and sworn to before me this 10th day of September, 2000, by DARTER, LLC by Member Terry Lawrence.

WITNESS my hand and official seal.

My commission expires: 11-2-2001

David K. Hassler
Notary Public



2

PAGE DOCUMENT

BOOK 2792 PAGE 586

**FIRST AMENDMENT TO THE
MASTER DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKSIDE SUBDIVISION**

1980540 01/18/01 0138PM
MONIKA TODD CLK&REC MESA COUNTY CO
REC FEE \$10.00

DECLARATION, made this 20 day of December, 2000, by DARTER, LLC,
hereinafter referred to as "Declarant:"

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Section 5, Township 1 South,
Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, which is more particularly
described as:

The SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, and that part of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ lying South of the Palisade Canal,
and that part of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ lying South and West of the Palisade Canal and South and
East of the drainage ditch, all in Section 5, Township 1 South, Range 1 East of the Ute Meridian,

Mesa County, Colorado

Together with any and all water and water rights, irrigation rights and irrigation company stock
or interest, ditches and ditch rights of way, appurtenant thereto, or used in connection therewith;

all of which Declarant is developing as the Brookside Subdivision, and has recorded a plat over
part of said land for Brookside Subdivision, Filing One;

WHEREAS, Declarant recorded the Master Declaration of Covenants, Conditions and
Restrictions of Brookside Subdivision on the 21st day of September, 2000, in the records of the
Mesa County Clerk and Recorder's Office, in Book 2752 at Pages 921 through 935;

WHEREAS, the undersigned, being the owner of more than sixty-seven percent of the
lots in Filing One, and of the entire project, and is entitled to vote more than sixty-seven percent
of the votes in the Association, approve the changes set out below;

NOW THEREFORE, the Declaration of Conditions, Covenants and Restrictions of
Brookside Subdivision are amended in the following respects:

1. Article VIII, Restrictive Covenants, Section 5. Fences., is AMENDED to read
in its entirety:

Section 5. Fences. No rear yard fencing in excess of six (6) feet in height may be
erected or maintained on any lot. Chain link or woven wire material shall not be used in
construction of front lot fences. All fencing and fencing materials must be approved by the
Architectural Control Committee prior to installation, and a City of Grand Junction fence permit
is required prior to installation.

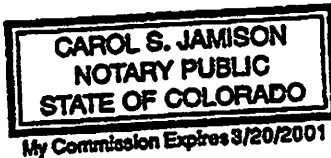
In addition to the above restriction, the rear lot line of Lots 1 through 8 and 10 through 22 Block One; the north and west lot lines of Lot 23, Block One; the rear lot line of Lots 1 and 2 Block Six and Lot 1 Block Five; the south lot line of Lot 1 Block One; the west lot lines of Lot 23 Block One and Lot 7 Block Three; the east lot lines of Lot 1 Block Six and Lot 1 Block Four; the south lot lines of Lots 1 and 2 Block Four are further restricted:

No rear lot or side lot line fence adjacent to public and common use areas may be constructed of solid material constituting a visual barrier exceeding 4 feet 6 inches and in no event shall be higher than 5 feet 6 inches with the additional 1 foot of fence consisting of a non-visual barrier material. By way of example, an approvable fence would be a 4 foot 6 inch solid cedar material with 1 foot of cedar lattice on top of the solid cedar portion of the fence. Additional approved fence material may include 4 foot 6 inch solid material such as boards or vinyl fencing material, topped with a 1 foot high open lattice of similar material.

2. This amendment shall apply to the entire Brookside Subdivision, including the future filings.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal the day and date first written above.

DARTER, LLC



By:

Member Terry Lawrence

STATE OF COLORADO)

) ss.

COUNTY OF MESA)

The foregoing First Amendment to the Master Declaration of Covenants, Conditions, and Restrictions of Brookside Subdivision was subscribed and sworn to before me this 20TH day of

DECEMBER 2000, by DARTER, LLC by Member Terry Lawrence.

WITNESS my hand and official seal.

My commission expires: 3-20-01

Notary Public

Book 2935 / 458
10/8/01

**FIRST SUPPLEMENT TO THE MASTER DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKSIDE SUBDIVISION**

**DECLARING BROOKSIDE SUBDIVISION FILING TWO, SUBJECTING SAID
FILING TWO TO EXISTING DECLARATIONS AND FURTHER DECLARATIONS,
AND ANNEXING SAID FILING TWO INTO BROOKSIDE SUBDIVISION**

DECLARATION, made this _____ day of _____, 2001, by DARTER, LLC,
hereinafter referred to as "Declarant:"

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Section 5, Township 1 South,
Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, which is more particularly
described as:

The SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, and that part of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ lying South of the Palisade Canal,
and that part of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ lying South and West of the Palisade Canal and South and
East of the drainage ditch, all in Section 5, Township 1 South, Range 1 East of the Ute Meridian,
Mesa County, Colorado

Together with any and all water and water rights, irrigation rights and irrigation company stock
or interest, ditches and ditch rights of way, appurtenant thereto, or used in connection therewith;

all of which Declarant is developing as the Brookside Subdivision, and has recorded a plat over
part of said land for Brookside Subdivision, Filing One;

WHEREAS, Declarant recorded the Master Declaration of Covenants, Conditions and
Restrictions of Brookside Subdivision on the 21st day of September, 2000, in the records of the
Mesa County Clerk and Recorder's Office, in Book 2752 at Pages 921 through 935, which
Declaration is occasionally referred to herein as "Master Declaration;"

WHEREAS, pursuant to the terms and conditions of said Declarations, the Declarant
reserved the right to expand the project by annexation of additional land as set forth on the
phasing plan included in said Declarations;

WHEREAS, Declarant recorded its First Amendment to the Master Declaration of
Covenants, Conditions and Restrictions of Brookside Subdivision on the 30th day of December,
2000, in the records of the Mesa County Clerk and Recorder's Office, in
Book 2792 at Pages 586 through 587;

WHEREAS, Declarant has recorded a plat over another part of said land as Brookside
Subdivision Filing Two;

WHEREAS, Declarant desires to extend existing Declarations of Covenants, Conditions and Restrictions and Amendments thereto to Brookside Subdivision Filing Two;

WHEREAS, Declarant desires to impose additional Declarations of Covenants, Conditions and Restrictions and Amendments upon Brookside Filing Two;

WHEREAS, Declarant desires to annex said Brookside Filing Two into Brookside Subdivision;

NOW THEREFORE, the Declaration of Conditions, Covenants and Restrictions of Brookside Subdivision are supplemented in the following respects:

A. ANNEXATION, DECLARATION AND IMPOSITION OF PRIOR DECLARATIONS

1. Brookside Subdivision Filing No. Two, particularly described as:

Lot 1, Block 8 of Brookside Subdivision, Filing One as recorded in Plat Book 18 at Pages 2 through 4 in the records of the office at the Mesa County Clerk and Recorder's Office, located in the SW ¼ of the NE ¼ and SE ¼ of the NE ¼ of Section 5, Township 1 South, Range 1 East of the Ute Meridian, City of Grand Junction, County of Mesa, State of Colorado.

Brookside Subdivision, Filing Two, as described above contains 18.891 acres more or less.

shall be developed pursuant to said Declarations, Amendments thereto and this Supplementary Declaration.

2. The real property, improvements constructed and located on the land described as Brookside Subdivision Filing Two are hereby submitted and dedicated to use and ownership under the terms, covenants, conditions, easements, restrictions, uses, limitations and obligations set forth in the Master Declaration of Covenants, Conditions and Restrictions of Brookside Subdivision on the 21st day of September, 2000, in the records of the Mesa County Clerk and Recorder's Office, in Book 2752 at Pages 921 through 935 and the First Amendment to the Master Declaration of Covenants, Conditions and Restrictions of Brookside Subdivision on the 30th day of December, 2000, in Book 2792 at Pages 586 through 587 of the records of the Mesa County Clerk and Recorder's Office, and this Declaration and dedication shall be deemed to run with the land, and shall be a burden and benefit to Declarant, its successors and assigns and any person acquiring and owning an interest in the Real Property and improvements, their grantees, successors, heirs, executors, administrators, devisees or assigns.

3. The real property comprising Brookside Subdivision Filing Two including the improvements thereon, shall be divided into fee simple estates. Each such estate shall consist of a separately designated Lot or Unit and the undivided interest in and to the common elements

appurtenant declared in the Master Declaration of Brookside Subdivision, amendments and supplements thereto, which documents are incorporated by reference herein, which undivided interest may never be increased, but may be decreased based on the number of annexations and enlargements of the project pursuant to Article IX of the Master Declaration.

4. Upon recordation of this Declaration Brookside Subdivision Filing Two shall become a part of Brookside Subdivision and subject to all terms, covenants, conditions and restrictions imposed heretofore and are of record.

5. Declarant specifically reserves the right to resubdivide, annex and otherwise enlarge the project as set forth in Article XI of the Master Declaration. Declarant intends to resubdivide Lot 1 of Block 9, Brookside Subdivision Filing Two. Until such time as such reserved right is exercised or lost, the final determination of undivided interests in and to the common elements appurtenant to Brookside Subdivision shall not be finally determined.

B. ADDITIONAL COVENANTS, CONDITIONS AND RESTRICTIONS APPLICABLE TO BROOKSIDE SUBDIVISION FILING TWO

In addition to the above restrictions imposed, the following common lot lines:

Lot 6, Block 2 common with Tract K;

Lot 1, Block 3 common with Tract K;

Lot 5, Block 4 common with Tract L;

Lots 2 through 7, Block 5 common with Tract G and Tract L;

Lots 1 through 4, Block 6 common with Tract F;

Lots 1 through 4, and Lot 6, Block 7 common with Tract F

Lot 1, Block 8 common with Tract G

are subjected to the further restriction:

No fence constructed of materials constituting a solid visual barrier exceeding four feet, four inches above the ground may be constructed on the common lines or adjacent to the common lines described above. The total height of fences adjacent to public and common use areas may not exceed five feet, four inches. Approvable fence materials may include a combination of materials that constitute a solid visual barrier and that do not constitute a solid visual barrier. By way of example only, an approvable fence may consist of four feet, four inches of solid material such as boards or vinyl fencing material, topped with a one-foot high open lattice of similar material.

C. PARTY OR COMMON WALLS.

6. Party Walls. The covenants, conditions and restrictions of this Part C shall apply to Lots 1 and 2 of Block One; to Lots 3 and 4 of Block One; to Lots 1 and 2 of Block Six; to Lots 3 and 4 of Block Six; and to Lots 5 and 6 of Block Seven, Brookside Subdivision Filing Two. These lots are designated as "SF-A", which identifies the lots as suitable for a attached single family dwellings. The designated and approved building envelopes for these particular lots

contemplate that the improvements on the lots will share a common wall.

7. There shall be a common wall between the lots ("paired lots" herein):

between Lots 1 and 2 of Block One;

between Lots 3 and 4 of Block One;

between Lots 1 and 2 of Block Six;

between Lots 3 and 4 of Block Six;

between Lots 5 and 6 of Block Seven,

all in Brookside Subdivision Filing Two, which shall be constructed, operated, maintained and used in accordance with the terms and conditions set forth in this Part C.

The boundary between each of the paired lots will pass directly through the center of a common wall in the building to be erected.

8. The wall constructed constitutes and remains a party wall, and the owners of each paired lot shall, from the date of conveyance to such owner, have the right to use the wall as a party wall jointly with the owner of the other lot of the paired lot.

9. Each party shall have the right to use the wall for the attachment of finishing materials or in any other lawful manner as a party wall for the benefit and support of any building now or subsequently constructed on each paired lot, provided, however, that the use shall not in any way injure or impair any adjoining building or the premises of the other party and shall not impair the party wall benefits and support to which the adjoining building is entitled, unless the other party consents in writing to that use.

10. The wall shall be maintained and kept in good repair at all times by both parties, and at a cost to be shared equally by both parties; subject, however, to the provisions set forth in Paragraphs 11, 12, and 13 below.

11. Should the wall be injured or destroyed by any act or omission of either party, whether intentional or unintentional, the wall shall be repaired or rebuilt at that party's expense. Any repairing or rebuilding of the wall shall be on the same location and of the same size as the original wall or portion of the wall; any repairing or rebuilding of the wall shall be of the same material or similar material of the same quality as that used in the original wall or portion of the wall, unless otherwise agreed to in writing by the other party.

12. Should the wall at any time while in use by both parties, as described in this agreement, be injured or destroyed by any cause other than the act or omission of one party, the wall shall be repaired or rebuilt at a cost to be shared equally by both parties. The rights of the parties with respect to a new wall shall be the same as their rights as set forth in this party wall agreement with respect to the original wall.

13. Any party who engages in construction or repair work as described in this Part C shall have the right, upon reasonable notice and during reasonable hours (except in the case of an emergency when no notice or hours restriction applies), to enter on the property of the other to the extent that it may be reasonably necessary in connection with that work, and he or she shall take and observe due precaution and care to protect the property of the other party. -

14. Neither party to this agreement shall make or provide openings in the wall of any nature whatever without the written consent of the other party.

15. This party wall agreement shall be in effect so long as Brookside Subdivision Declaration of Covenants, Conditions and Restrictions, (including amendments and supplements) is in existence. If the wall is rebuilt under this Part C, then this party wall agreement shall continue in full force and effect.

15. Nothing contained in this agreement shall operate to convey to either party the fee to any part of the land owned or to be acquired by the other party, the creation of rights in and to and obligations with respect to the wall being the sole purpose of this agreement.

The covenants contained in this Declaration shall be binding upon and inure to the benefit of each of the parties, their heirs, legatees, representatives, transferees, successors and assigns.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal the day and date first written above.

DARTER, LLC

By: _____
Member Terry Lawrence

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing First Supplement to the Master Declaration of Covenants, Conditions, and Restrictions of Brookside Subdivision was subscribed and sworn to before me this ____ day of

_____, 2001, by DARTER, LLC by Member Terry Lawrence

WITNESS my hand and official seal.

My commission expires: _____

Notary Public