

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR SUNWEST SUBDIVISION**

THIS DECLARATION, made on the date hereinafter set forth by Sunwest Homeowners Association, a Colorado nonprofit corporation, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant represents the Owners of certain property in the Town of Erie, County of Boulder, State of Colorado, which is more particularly described within Exhibit "A", attached hereto and incorporated by reference herein; and

WHEREAS, Declarant desires to maintain thereon a residential community with permanent green areas, open spaces, and other common facilities for the benefit of said community; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said green areas, open spaces, and other common facilities; and to this end, desires to subject the real property described on Exhibit "A" to the covenants, restrictions, easements, charges, and lien, hereinafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof; and

WHEREAS, Declarant deems it desirable for the efficient preservation of the values and amenities in said community to create an entity in which to delegate and assign the powers of maintaining and administering the common areas, open spaces and other common facilities, and for administering and enforcing the covenants, restrictions, assessments, and charges hereinafter created; and

WHEREAS, Declarant is incorporated under the laws of the State of Colorado, as the Sunwest Homeowners Association, a nonprofit corporation, for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, Declarant hereby declares that all of the real property described on Exhibit "A" shall be held, transferred, devised, given, sold, and conveyed subject to the following easements, restrictions, liens, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. That these easements, covenants, restrictions, liens and conditions shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the real property or any part thereof, their heirs, successors and assigns, and shall be a burden upon and inure to the benefit of each Owner thereof.

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to the Sunwest Homeowners Association, a Colorado nonprofit corporation, its successors and assigns.

Section 2. "Property or Properties" shall mean and refer to that certain real property described on Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean and refer to all of the real property including the improvements thereto, if any, owned by the Association for the common use and enjoyment of the Owners.

Section 4. "Lot" shall mean and refer to the plots of land shown on the recorded Plat or Subdivision Map of the Properties, together with the improvements located thereon, with the exception of the Common Area as hereinabove defined.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

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 which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation (i.e. a mortgagee).

Section 7. "Declarant" shall mean and refer to Sunwest Homeowners Association, its successors, assigns and transferees.

Section 8. "Plat" shall mean the Plat or Subdivision Map of Sunwest filing, and any other amended, supplemental, successive or additional plats or filings designating Lots.

Section 9. "Residence" shall mean and refer to a residential dwelling unit constructed upon any of the Lots shown upon any Plat of the Properties.

Section 10. "Yard" shall mean and refer to that specific area at the time of closing and such Yard shall be maintained by the Association. Any other areas at the time of closing of the Residence shall be maintained by the Owner thereof.

Section 11. "Mortgage" shall mean any mortgage, deed of trust, contract of sale or other document pledging a Lot as security for the payment of a debt or obligation.

Section 12. "Mortgagee" shall mean any person, corporation, partnership, trust, company or other legal entity which takes, holds, owns, or is secured by a mortgage.

ARTICLE II

Membership

Every Owner of a Lot which is subject to assessment shall be a Member of the Association. No Owner shall have more than one membership for any one Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of a Lot shall be the sole qualification for membership.

ARTICLE III

Voting Rights

Owners shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; provided, however, that the vote of such Lot shall be exercised as the several Owners among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

ARTICLE IV

Property Rights

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot; provided, however, that such right and easement of enjoyment in and to the Common Area shall be subject to the following:

- (a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area.
- (b) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and, in aid thereof, to mortgage or grant other security interests in the Common Area. No funds may be borrowed unless two-thirds (2/3) of the Members agree to such action, and an instrument reflecting such agreement is recorded with the Clerk and Recorder of Boulder, State of Colorado.
- (c) The right of the Association to fine and suspend the voting rights and right to use of the recreational facilities, if any, by an Owner for any period during which any assessment against his or her Lot remains unpaid; and the right of the Association to suspend the voting and right to use of the recreational facilities, if any, for a period not to exceed sixty (60) days from any infraction of its published Rules and Regulations.
- (d) The right of the Association to dedicate, sell or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by sixty-seven percent (67%) of the Members at a duly called meeting by the provisions of Article V, Section 5, including, but not limited to the granting of permits, licenses and easements for utilities, roads or other purposes deemed necessary or desirable by the Association.
- (e) The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements of the same.
- (f) The right of the Association to fix, repair or remedy any ongoing deficiency which the Owner refuses to rectify after notice by the Association, and to bill said Owner for the costs and expenditures associated therewith.

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

Section 3. Title to the Common Area. Declarant hereby covenants for itself, its successors and assigns, that it has title to the Common Area by one or more deeds to the Association free and

clear of all liens and encumbrances, except for easements, rights of way and restrictive covenants of record.

ARTICLE V

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligations of Assessments. Each Owner of any Lot situated on the Property, hereinbefore described, or subsequently annexed hereto, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association;

- (a) Annual assessments or charges; and
- (b) Special assessments for capital improvements. Such assessments shall be fixed, established, and collected from time to time, as hereinafter provided

The annual and special assessments, together with such interest thereon and costs of collection including reasonable attorney fees, as hereinafter provided, shall be a charge on his or her Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association through its Board of Directors shall be used exclusively for the purposes of promoting the safety and welfare of the residents on the Property; for the payment of water charges as associated with the Yard or Common Area; for the repairing, reconstructing, replacing, and maintaining of private roadways, public sidewalks, footpaths, utilities, landscaping and any other maintenance obligation which may be deemed necessary by the Association for the common benefit of the Owners, or the maintenance of property values, or which may be incurred by virtue of agreement with or requirement of the Town, County or other governmental authority having jurisdiction over the Property. Also, a portion of the annual assessments, which are payable in quarterly installments, shall be used to provide an adequate reserve fund for the replacement, repair, and maintenance of those portions of the Common Area which must be replaced on a periodic basis, and the Board of Directors shall be obligated to establish such reserve fund.

Section 3. Maximum Annual Assessment.

- (a) The maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.
- (b) The maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of the membership, voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may, at any time and from time to time, fix the annual assessment in an amount less than the maximum annual assessment described above.

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, including fixtures and personal property related thereto or for the purpose of defraying operating deficits; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes 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 ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast ten percent (10%) of the votes of the membership shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement and quorum requirement. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement of Annual Assessments. The Board of Directors shall fix the amount of the annual assessment against each Lot 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. The due date shall be in advance and shall be as of the first of each quarter (January 1st, April 1st, July 1st, and October 1st) and shall be delinquent thirty (30) days after the due date. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

Section 7. Uniform Rate of Assessment. Both the annual and special assessments shall be fixed at a uniform rate for all Lots.

Section 8. Effect of Non-Payment of Assessments – Remedies of the Association. Any assessments which are not paid when due shall be delinquent and shall effectuate a late charge as specified in the Rules and Regulations of the Association. If an assessment is not paid within thirty (30) days after the due date, in addition to any late charge specified in the Rules and Regulations of the Association, said assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay or foreclose the lien against the Property and include in such foreclosure the costs and reasonable attorney's fees incurred thereby. In addition to such action or as an alternative thereto, the Association may file with the Clerk and Recorder of Boulder County a Statement of Lien with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and the amount of delinquent assessments then owing, which Statement shall be duly signed by the President or the Vice-President of the Association or agent thereof, and which shall be served upon the Owner of the Lot by Certified Mail, Return Receipt Requested, mailed to the address of the Lot or to such other address as the Association may have in its records for the Owner of the Property. Thirty (30) days following the mailing of such notice, the Association may proceed to foreclose the Statement of Lien in the same manner as provided for the foreclosure of mortgages on real property under the statutes of the State of Colorado. In either a personal or foreclosure action, the Association shall be entitled to recover as part of the action, delinquent interest, costs and reasonable attorney fees. No Owner may waive or otherwise escape liability

for the assessments provided for herein by nonuse of the Common Area or abandonment of his or her Lot.

Section 9. Exempt Property. The following Property shall be exempt from the lien for assessments created herein:

- (a) All properties dedicated to and accepted by a local public authority; and
- (b) The Common Area.

Section 10. Notice to Mortgagee. Upon request of a first Mortgagee, insurer or guarantor of a first Mortgage on any Lot, and upon payment of reasonable compensation therefore, the Association shall report to such first Mortgagee, insurer or guarantor any unpaid assessments or other defaults under the terms of this Declaration which are not cured by the Owner of such Lot within thirty (30) days.

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 Properties, nor shall any exterior addition to or change or alteration thereof be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted, receipted for, and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, through an architectural control committee composed of three (3) or more representatives appointed by the Board.

Section 2. Architectural Control Committee. The Architectural Control Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on lands within the Properties conform to and harmonize with existing surroundings and structures.

Section 3. Procedures. 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 approve or disapprove such plans and requests have been submitted, approval will not be required and this Article will be deemed to have been fully complied with.

Section 4. Majority Vote. A majority vote of the Architectural Control Committee or the Board of Directors is required for approval or disapproval of proposed alterations or modifications.

Section 5. Written Records. The Architectural Control Committee shall maintain written records of all applications submitted to it and of all actions it may have taken.

Section 6. Liability. The Architectural Control Committee and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

Section 7. Variances. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article VIII hereof. Such variances or adjustments shall be granted only if the granting thereof shall not be materially detrimental or injurious to other property or improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

Section 8. Minor Violations of Setback Restrictions. If, upon the erection of any Residence upon any of the Lots which are subject to these restrictions, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of the Lots immediately adjoining the Lot upon which the violation or infringement occurs, and such waiver shall be binding upon all other Owners who are subject to this Declaration. Nothing herein contained shall prevent the maintenance of a suit for any other violation of the restrictions contained in this Declaration. A "minor violation" for the purpose of this Section is a violation of not more than one (1) foot beyond the required setback lines or Lot lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to such structures.

ARTICLE VII

Fence Maintenance

The Association, in addition to maintenance of the Common Area, shall be responsible for the repair and replacement of any damage to perimeter fences which are situated along Erie Parkway and Meller Drive, on any easement granted to the Town of Erie.

ARTICLE VIII

Use Restrictions

Section 1. The use of the Common Area, Lots and improvements thereon shall be subject to the restrictions set forth in Article IV, Section 1, and to those restrictions hereinafter set forth.

Section 2. The use of the Common Area shall be subject to such Rules and Regulations as may be adopted from time to time by the Board of Directors of the Association or the Association.

Section 3. No use shall be made of the Common Area which would in any manner violate the statutes, rules, regulations, orders or decrees of any court of governmental authority having jurisdiction over the Common Area.

Section 4. No Owner shall place any structures upon the Common Area, nor shall any Owner do any act which would temporarily or permanently deny free access to any part of the Common Area to any or all Owners.

Section 5. No use shall ever be made of the Common Area which will deny ingress and egress to those Owners having access to Lots only over Common Area and the right of ingress and egress to said Lots is hereby expressly granted.

Section 6. The Property is hereby restricted to single family residential dwellings for residential use and uses related to the convenience and enjoyment of such residential use. No buildings or

structures erected upon the Property shall be moved from other locations onto the Property. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding, shall be at any time used as a residence either temporarily or permanently.

Section 7. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that not more than two dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. All household pets shall be controlled by their Owner and shall not be allowed in or on the Common Area or any facility located thereon except when properly leashed. Each Owner of a household pet shall be financially responsible and liable for any damage caused by said household pet.

Section 8. No advertising sign (except one real estate sign of not more than five square feet and containing the words "For Sale" or "For Rent" per Lot), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Common Area or any Lot. Further, no retail business activities of any kind whatever shall be conducted on any Lot or in any portion of the Property.

Section 9. All clotheslines, equipment, garbage cans, service yards, wood piles or storage piles shall be kept within the patio area so as to conceal them from view of neighborhood Lots and streets. Retractable clotheslines may be used in the back yard of a Lot to dry clothes but shall be retracted out of sight when not in use. All rubbish, trash, or garbage shall be regularly removed from the Lots, and shall not be allowed to accumulate thereon.

Section 10. Exterior television and radio antennas for reception of commercial broadcasts as permitted by the FCC are allowed provided they do not exceed the normal size and shape of those devices commonly installed on residential properties, and further provided they do not present a safety hazard or violate any Town of Erie or other governmental authority permit requirements. No exterior HAM or CB radio antennas shall be placed, allowed, or maintained upon any portion of the improvements located upon the Property, except as may be approved, in writing, by the Association's Architectural Control Committee.

Section 11. No boat, camper, trailer truck, other than a truck of $\frac{3}{4}$ tons or less, automobile under repair, recreational vehicle, or other vehicle of a similar type or nature shall be parked or stored upon the Properties or on any private roadways therein, unless the same shall be stored or parked wholly within a garage area of the Lot with the garage door in a closed position. In the event that violation occurs and upon ten (10) days written notice to the registered Owner at the address of the Residence, the Association may authorize said violative vehicle to be towed and stored at said Owner's expense.

Section 12. Damage to any portion of the Common Area and improvements located thereon caused by an Owner or his or her family or guests shall be paid for by said Owner after due notice and hearing. The term "damage" shall not include ordinary wear and tear.

Section 13. The Owner of any Lot shall not suffer or permit any noxious or offensive activity to be conducted, carried on or practiced on his or her Lot or within his or her Residence, or upon the Common Area which constitutes a nuisance as provided by law, or which will detract from the residential value, reasonable enjoyment and quality of the Properties.

Section 14. No Lot or Lots shall be subdivided, except for the purpose of combining portions with an adjoining Lot, provided that no additional building site is created thereby.

Section 15. Any Owner who leases his or her Lot or the improvements constructed thereon shall be required to provide in his or her Lease that the terms of the Lease shall be subject in all respects to the provisions of this Declaration, the Association's Articles of Incorporation, Bylaws and Rules and Regulations, and any failure by the lessee to comply with the terms of such documents shall be a violation of the Lease agreement between the Owner and the lessee. The Owner will bear the obligation for any fines due to violations of the Association's documents by the lessee, as well as bear the obligation for any damages to the Common Area caused by the lessee. A copy of said Lease shall be provided to the Association. The minimum initial term of any such Lease shall be six (6) months and the minimum subsequent term thereof shall be thirty (30) days.

Section 16. Dwelling Size. All dwellings shall conform to the following minimum finished square footage not including basements.

Ranches and raised ranches (bi-levels)	1000 sq/ft.
Multi-levels	1000 sq/ft.
Two stories	1000 sq/ft.
All garages (minimum one side dimension of 22')	440 sq/ft.

Section 17. Dwelling Exteriors. All dwelling exteriors shall conform to the following:

No geodesic dome type structures, or structures deemed by the Architectural Control Committee to be unsightly, shall be permitted.

Brick, Stone, Stucco or an equal approved product shall cover a portion of front first level of the home and garage subject to approval by the Architectural Control Committee.

Exterior colors must be approved by the Architectural Control Committee. Only such colors as are deemed acceptable by the Architectural Control Committee shall be permitted.

Roofing materials shall be minimum 20 year asphalt or better. All roofing materials shall be approved by the Architectural Control Committee.

Roof-top solar technology shall be approved by the Architectural Control Committee.

All driveways must be hard surface – concrete, brick pavers, or equal approved by the Architectural Control Committee from street to home.

Section 18. Site Grading and Drainage. All building sites shall be graded for proper drainage away from the structure as to conform to the building code. All property lines shall be considered drainage easements and no property Owner shall impede that drainage so as to cause damage to adjacent property. No property Owner shall change or remove any drainage ways installed by the developer.

Section 19. Detached Structures and Out Buildings. Detached structures and out buildings shall conform to the same standards as the home with the exception that no brick will be required. No metal buildings will be permitted.

Section 20. Lighting. No Owner shall install any bright lights that may be offensive to an adjacent Owner.

Section 21. Occupancy of Structure. Occupancy of structure shall be limited to a single family. No subletting of basement apartments or other portions of the property to other than members of the family shall be permitted. The Owner may rent the entire property to a renter under these same conditions.

ARTICLE IX

Owners Obligation to Rebuild

If all or any portion of a residence is damaged or destroyed by fire or other casualty it shall be the duty of the Owner or Owners, with all due diligence, to rebuild, repair, or reconstruct such residence in a manner that will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within six (6) months after the damage occurs, and shall be completed within eighteen (18) months after the damage occurred, unless prevented by causes beyond the control of the Owner or Owners.

ARTICLE X

Landscaping and Fencing

All landscaping and fences must be approved by the Architectural Control Committee. Landscaping shall consist of a minimum 25% live green and two trees of two inch caliper or two six foot evergreen trees in the front yard. Fences shall be no higher than six feet. No chain link or picket fences shall be allowed except for special design and approved by the Architectural Control Committee.

ARTICLE XI

Easements

Section 1. Common Area. The easements over and across the Common Area shall be those shown or provided for upon the recorded Plat and such other easements as may be established pursuant to the provisions of this Declaration of Covenants, Conditions and Restrictions.

Section 2. Encroachments. Each Lot and the Common Area shall be subject to an easement for: encroachment of Residences onto adjoining Lots or the Common Area or encroachment of the Common Area onto any Lot; overhangs, as designed or constructed, by the developer; and for any encroachments occurring thereafter as a result of settling or shifting of any structure. A valid easement shall exist for said encroachments and overhangs and for their maintenance, repair and replacement. If any structure is partially or totally destroyed and then rebuilt, the Owners of Lots agree that minor encroachments of parts of construction onto adjacent Lots or the Common Area due to the reconstruction shall be permitted and that a valid easement for such overhangs and encroachments and the maintenance thereof shall exist.

Section 3. Utilities. There is hereby created a blanket easement upon, across, over and under the Common Area for installation, replacing, repairing and maintaining all utilities, including but

not limited to water, sewer, gas, telephone, electricity, and cable system. By virtue of this easement, it shall be expressly permissible for the providing utility companies or municipalities supplying such utility service to erect and maintain the necessary equipment on the Property and to affix, repair and maintain water and sewer pipes, gas, electric and telephone wires, circuits, conduits and meters.

ARTICLE XII

Insurance

Association to Maintain Insurance on Common Area. The Association shall maintain insurance covering all improvements located or constructed upon the Common Area. The Association shall maintain the following types of insurance on the improvements located on the Common Area:

- (a) A policy of property insurance in an amount equal to the full replacement value (i.e., 100% of current "replacement cost" exclusive of land, excavation and other items normally excluded from coverage) of the improvements located on the Common Area with an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and if necessary, an "Increased Cost of Construction Endorsement" or "Contingent Liability from Operating of Building Laws Endorsement" or the equivalent. Such insurance shall afford protection against at least the following:
 - (1) Loss or damage by fire or other hazards covered by the standard all risk endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage; and
 - (2) Such other risks as shall customarily be covered with respect to projects similar in construction, location and use.
- (b) A comprehensive policy of public liability insurance covering all of the Common Area insuring the Association in an amount not less than \$1,000,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and, if applicable, garage keeper's liability, host liquor liability and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.
- (c) The Association shall maintain adequate fidelity coverage to protect against dishonest acts on the part of Officers, Directors, Trustees, and Employees of such Association and all others who handle or are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements:
 - (1) All such fidelity bonds shall name the Association as an obligee; and
 - (2) Such fidelity bonds shall be written in an amount at least equal to the total amount of the funds in the possession of the Association at any given time, including the reserve fund for maintenance and the working fund, but in no event less than one (1) quarter aggregate assessments on all Lots, plus the reserve fund for maintenance and the working fund; and
 - (3) Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.
- (d) All such policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Member of the Association and shall provide that the policies may not be cancelled or substantially modified without at

least ten (10) days prior written notice to all insured. Upon payment or reasonable compensation therefore, duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any first Mortgagee of any Lot upon written request. The insurance shall be carried in blanket form naming the Association as the insured, as trustee for each of the Owners.

ARTICLE XIII

Damage or Destruction to Common Area

In the event of damage or destruction to all or a portion of the Common Area due to fire or other disaster, the insurance proceeds if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Area, the Association shall present to the Members a notice of a special assessment without approval by the membership, notwithstanding the provisions of Article V, Section 5, to the contrary. The assessment as to each Owner and Lot shall be equal to the assessment against every other Owner and Lot. Such assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than sixty (60) days after written notice thereof.

Notwithstanding any provision of this Article to the contrary, the insurance proceeds may be applied in accordance with the wishes of the membership as expressed by the written consent of sixty-seven percent (67%) of the Owners.

ARTICLE XIV

Condemnation of Common Area

If at any time or times during the continuance of ownership pursuant to this Declaration all or any part of the Common Area shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Article shall apply:

- (a) Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called "Condemnation Award," shall be payable to the Association.
- (b) Complete Taking.
 - (1) In the event that all of the Common Area is taken or condemned, or sold or otherwise disposed of, in lieu of or in avoidance thereof, the Condemnation Award shall be apportioned among the Owners equally and payment of said apportioned amounts shall be made payable to the Owner.
 - (2) On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled.
- (c) Partial Taking. In the event that less than the entire Common Area is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condemnation Award shall first be applied by the Association to the rebuilding and replacement of those improvements on the Common Area damaged or taken by the condemning public authority, unless sixty-seven percent (67%) of the Owners agree otherwise. Any surplus of the award or other portion thereof not used for rebuilding and

replacement shall be used by the Association for the future maintenance of the Common Area.

ARTICLE XV

General Provisions

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by a 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 rights hereunder shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the 13th day of February, 1998, after which time said covenants shall be automatically extended for successive periods of then one (1) year. Subject to more stringent requirements found elsewhere in this Declaration but notwithstanding any provision to the contrary, the Association shall not, unless it has obtained a vote of approval by sixty-seven percent (67%) of the Members at a duly called meeting by the provisions of Article V, Section 5, add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association, which establish, provide for, govern or regulate any of the following, provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only, and further provided that this shall not apply to amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Properties or the improvements thereon:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of those portions of the Common Area which must be maintained, repaired or replaced on a periodic basis;
- (d) Insurance, including but not limited to fidelity bonds;
- (e) Rights to use of the Common Area;
- (f) Responsibility for maintenance and repair of any portion of the Properties;
- (g) Expansion or construction of the Properties or the addition, annexation or withdrawal of property to or from the Properties;
- (h) Boundaries of any Lot;
- (i) Interests in the Common Area;
- (j) Convertibility of Lots into Common Area or of Common Area into Lots; and
- (k) Leasing of Lots or dwellings constructed thereon.

This Declaration may be amended with respect to matters not set forth elsewhere in this Section 2 by a vote of approval by sixty-seven percent (67%) of the Members at a duly called meeting by the provisions of Article V, Section 5.

Section 3. Professional Management. This Property may be managed by a Professional Real Estate Management Company licensed to do business in the State of Colorado and the Association's Board of Directors shall be allowed to retain the services of such a company, provided that the term of any such contract shall not be in excess of one (1) year and shall be

terminable on thirty (30) days written notice, with or without cause or the payment of a termination fee.

Unless it has obtained a vote of approval by sixty-seven percent (67%) of the Members at a duly called meeting by the provisions of Article V, Section 5, the Association shall not effectuate any decision to terminate professional management and assume self-management of the Association.

Section 4. 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 5. Declaration Headings. All headings of the Sections of this Declaration have been inserted for convenience of reference only, and are not to be considered a part of this Declaration, and shall in no way affect the interpretation of any of the provisions of this Declaration.

Section 6. Controlling Document. In the event of any inconsistency between the terms of this Declaration of Covenants, Conditions and Restrictions and either the Articles of Incorporation or the Bylaws of Sunwest Homeowners Association, the terms and provisions of the Declaration of Covenants, Conditions and Restrictions shall be controlling.

IN WITNESS WHEREOF, the undersigned, being the duly elected Board of Directors representing the Declarant herein, have hereunto set their hand this 21st day of November, 2011.

Adopted at a duly called meeting of the Board of Directors on this the 21st day of November, 2011.

Attest: Michael Lorenzo _____
President Signature

Attest: Kelly Dermody _____
Vice-President Signature

Attest: Sandalphon _____
Treasurer Signature

Attest: Joseph Mellblom _____
ACC Chair Signature

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of Sunwest Homeowners Association, a Colorado nonprofit corporation, and,

THAT the foregoing Declaration of Covenants, Conditions and Restrictions constitute the revised Declaration of Covenants, Conditions and Restrictions of said Association, as duly adopted at a meeting of the Board of Directors thereof, held effective November 21st, 2011.

IN WITNESS WHEREOF, I have hereunto subscribed my name effective the 21st day of November, 2011.

Attest: Kristaphor Shahinian _____
Secretary Signature