The Springs at Mariana

DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

ADOPTION DATE: January 7, 2004

Printed March 13, 2005

TABLE OF CONTENTS

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FOR
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THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE SPRINGS AT MARIANA (the 'Declaration') is made as of January 7, 2004, by Timber Wind Land, LLC, a Colorado limited liability company ("TWL").

RECITALS

A. TWL is the owner of that certain real property located in Larimer County, Colorado, more particularly described on the attached Exhibit A (the "Property"). TWL desires to create thereon an exclusive residential community for the benefit of said community through the granting of specific rights, privileges, and easements of enjoyment which may be shared and enjoyed by all residents thereof.

B. TWL desires to ensure the attractiveness of the individual Lots and community facilities within the Property, to prevent any future impairment thereof, to prevent nuisances, and to preserve, protect, and enhance the values and amenities of the Property. In order to achieve this, TWL is desirous of subjecting the Property to the covenants, conditions, restrictions, easements, charges, and liens set forth herein, each and all of which are for the benefit of the Property and each owner thereof.

C. TWL further intends that any open spaces, natural areas, the islands within the public right of ways, and any recreational facilities such as the ponds and walking path owned and maintained for the benefit of the residents of the Property are hereinafter designated "General Common Properties".

D. TWL has deemed it desirable to create a legal entity in order to preserve, protect and enhance the values and amenities in the Property, and to ensure the residents' enjoyment of the specific rights, privileges, and easements in the General Common Properties, which shall be delegated and assigned the powers of owning, maintaining, and administering all or various portions of the General Common Properties, and also administering and enforcing the provisions of this Declaration, together with collecting, disbursing, and accounting for the assessments and charges herein contemplated. To this end, TWL has caused The Springs at Mariana Home Owners Association, Inc., to be incorporated under the laws of the State of Colorado as a nonprofit corporation for the purpose of exercising the aforesaid functions with respect to the Property, as hereinafter described.

E. TWL further intends to preserve the continuity of landscaping between residential lots, natural areas, open spaces, and along streets, and to provide an atmosphere of openness and spaciousness in the subdivision.

F. TWL desires to create a Planned Community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes 38-33.3-101, et seq. (the "Act") on the Property, the name of which is *The Springs at Mariana.*

ARTICLE I

DECLARATION AND SUBMISSION

TWL hereby declares that the Property shall be held, sold, and conveyed subject to the following covenants, restrictions and easements which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and be binding on all parties and heirs, successors, and assigns of parties having any right, title, or interest in all or any part of the Property. Additionally, TWL hereby submits the property to the provisions of the Act.

ARTICLE II

DEFINITIONS

Section 2.01 Definitions.

The following words when used in this Declaration or any supplemental Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

(a) "Act" means the Colorado Common Interest Ownership Act, as amended.

(b) "Articles" mean the Articles of Incorporation for The Springs at Mariana Home Owners Association, Inc. on file with the Colorado Secretary of State, and any amendments which may be made to those Articles from time to time.

(c) "Annual Assessment" means the Assessment levied annually.

(d) "Assessments" means the Annual, Special, and Default Assessments levied pursuant to Article XI below. Assessments are further defined as a Common Expense Liability as defined under the Act.

(e) "Association" means The Springs at Mariana Home Owners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns (SMHOA).

(f) "Association Documents" means this Declaration, the Articles of Incorporation, and the Bylaws of the Association, and any procedures, rules, regulations, or policies adopted under such documents by the Association.

(g) "Association Rules" means the rules and regulations adopted by the Association as provided in **Section 5.01**.

(h) "Bylaws" means the Bylaws adopted by the Association, as amended from time to time.

(i) "Common Area" means all the real property and improvements thereon, if any, in which the Association owns an interest for the common use and enjoyment of all of the Owners on a non-exclusive basis including, without limitation, those areas as shown on the Plat and designated "area to be maintained by homeowner association." Such interest may include, without limitation, estates in fee, for terms of years, or easements. Common Area is further defined as a Common Element as defined under the Act.

(j) "Common Expenses" means

(i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association;

(ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Area;

(iii) insurance premiums for the insurance carried under **Article X**; and

(iv) all expenses lawfully determined to be common expenses by the Executive Board of the Association.

(k) "TWL" means Timber Wind Land, LLC, its successors and assigns.

(l) "Declaration" means and refers to this Declaration of Covenants, Conditions, Restrictions and Easements for The Springs at Mariana.

(m) "Default Assessment" means the Assessments levied by the Association pursuant to **Article XI, Section 11.08** below.

(n) "Design Guidelines" means the guidelines and rules published and amended and supplemented from time to time by the Design Review Committee.

(o) "Design Review Committee" means and refers to the Design Review Committee defined in and created pursuant to **Article XV** below.

(p) "Executive Board" means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Property and all improvements on the Property.

(q) "First Mortgage" means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

(r) "First Mortgagee" means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

(s) "Landscaped Area" means that portion of the ground on a Lot that is not covered by a structure, deck, patio, or concrete paving.

(t) "Lot" means a plot of land subject to this Declaration and designated as a "Lot" on any subdivision plat of the Property recorded by TWL in the office of the Clerk and Recorder of Larimer County, Colorado, together with all appurtenances and improvements, now or in the future, on the Lot. Lot is further defined as a Unit as defined under the Act.

(u) "Manager" shall mean a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Executive Board may authorize from time to time.

(v) "Member" shall mean every person or member who holds membership in the Association.

(w) "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any Lot or interest therein as security for payment of a debt or obligation.

(x) "Mortgagee" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

(y) "Natural Area" shall mean and refer to any non-irrigated parcel of land within or adjacent to the Property.

(z) "Owner" means the owner of record, whether one or more persons, or entities, of fee simple title to any Lot, and "Owner" also including the purchaser under a contract for deed covering a Lot, but excludes those having such interest in a Lot merely under a contract for purchase or as security for the performance of an obligation, including a Mortgagee, unless and until such person has acquired fee simple title to the Lot pursuant to foreclosure or other proceedings.

(aa) "Person" means a natural person, a corporation, a partnership, a trustee or any other legal entity.

(bb) "Plat" means the subdivision plat of Mariana Springs First Subdivision depicting the Property subject to this Declaration and recorded in the records of the Clerk and Recorder of Larimer County, Colorado on May 28, 2003, as Reception No. 2003-0065091 and all supplements and amendments thereto.

(cc) "Property" means and refers to that certain real property described on Exhibit A attached to this Declaration.

(dd) "The Springs at Mariana" shall mean the planned community created by this Declaration, consisting of the Property, the Lots, and any other improvements constructed on the Property and as shown on the Plat.

(ee) "Roads" means all roads within the Property as shown on the Plat.

(ff) "Sharing Ratio" means the percentage allocation of Assessments to which an Owner's Lot is subject. The formula for Sharing Ratio is an equal allocation among all of the Lots benefiting from the constructed improvement. Typically, each lot owner shall be responsible to pay 1/42 (2.38%) of all assessment costs for common improvements that benefit all 42 lots within the Property. The cost of improvements that benefit only a lesser number of lots shall be assessed equally to only the benefiting lots, as determined by the Executive Board.

(gg) "Special Assessment" means an assessment levied pursuant to **Article XI, Section 11.07** below on an irregular basis.

(hh) "Special District" means a service and utility district which may be created as a special purpose unit of local government in accordance with Colorado law to provide certain community services to some or all of the Property.

(ii) "Successor" means any party or entity to whom TWL assigns any or all of its rights, obligations, or interest as TWL, as evidenced by an assignment or deed of record executed by both TWL and the transferee or assignee and recorded in the office of the Clerk and Recorder of Larimer County, Colorado, designating such party as a Successor. Upon such recording, TWL's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

Section 2.02 Capitalized Terms.

Each capitalized term not otherwise defined in this Declaration or in the Plat shall have the same meanings specified or used in the Act.

ARTICLE III

DIVISION INTO LOTS

Section 3.01 Name.

The legal name of the project is Mariana Springs First Subdivision. The common, marketing name is *The Springs at Mariana*.

Section 3.02 Association.

The name of the association is The Springs at Mariana Home Owners Association, Inc. (SMHOA). TWL has caused to be incorporated under the laws of the State of Colorado the

Association as a non-profit corporation with the purpose of exercising the functions as herein set forth.

Section 3.03 The Number of Lots.

The number of Lots to be developed on the Property is forty-two (42).

Section 3.04 Identification of Lots.

The identification number of each Lot is shown on the Plat.

Section 3.05 Description of Lots.

Each Lot shall be inseparable and may be developed exclusively for residential purposes in accordance with the restrictions applicable to a particular Lot contained in the Plat and in the Final Plat for Mariana Springs First Subdivision recorded together with and as part of the Plat. No Lot shall be further subdivided.

(a) Title to a Lot may be held individually or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Lot in which he owns an interest. For all purposes herein, there shall be deemed to be only one Owner for each Lot. The parties, if more than one, having the ownership of a Lot shall agree between themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Lot in which they own an interest.

(b) Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Lot may describe it as Lot __, Block ___, Mariana Springs First Subdivision, County of Larimer, State of Colorado, according to the Plat thereof recorded May 28, 2003, as Reception No. 2003-0065091, and this Declaration recorded January 7, 2004, as Reception No. 2004-0001648, in the records of the Clerk and Recorder of Larimer County, Colorado.

(c) Each Lot shall be considered a separate parcel of real property and shall be separately assessed and taxed. Accordingly, the Common Area shall not be assessed separately but shall be assessed with the Lots as provided pursuant to Colorado Revised Statutes Subsection 39-1-103 (10) and 38-33.3-105(2).

(d) No Owner of a Lot shall be entitled to bring any action for partition or division of the Common Area.

(e) Subject to **Section 16.03, Section 16.06**, and as provided below, each Lot shall be used and occupied solely for residential purposes. All of the above stated uses and occupancies shall be only as permitted by and subject to the appropriate and applicable governmental zoning and use ordinances, rules and regulations from time to time in effect. Notwithstanding the foregoing, TWL, for itself and its successors and assigns (which assigns may be more than one, including, without limitation, developers of certain portions

of the Property), hereby retains a right to maintain on any Lot or Lots sales offices, management offices or model residences at any time or from time to time so long as TWL, or its successors or assigns, continues to own an interest in a Lot. The use by TWL, or its successors or assigns, of any Lot as a model residence, office or other use shall not effect the Lot's designation on the Plat as a separate Lot.

ARTICLE IV

ASSOCIATION MEMBERSHIP & OPERATIONS

Section 4.01 The Association.

Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.02 Transfer of Membership.

An Owner shall not transfer his membership in the Association in any way except in connection with the sale of his Lot and then only to the Purchaser of his Lot and shall not pledge or alienate such membership in any way except upon the encumbrance of his Lot and then only to the Mortgagee of his Lot.

Section 4.03 Membership.

The Association shall have one (1) class of membership consisting of all Owners, including TWL so long as TWL continues to own an interest in a Lot. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters pursuant to this Declaration on the basis of one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised by one person or alternative persons (who may be a tenant of the Owners) appointed by proxy in accordance with the Bylaws. In the absence of a proxy, the vote allocated to the Lot shall be forfeited in the event more than one person or entity seeks to exercise the right to vote on anyone matter. Any Owner of a Lot which is leased may assign his voting right to the tenant, provided that a copy of a proxy appointing the tenant is furnished to the Secretary of the Association prior to any meeting in which the tenant exercises the voting right. In no event shall more than one vote be cast with respect to any one Lot.

Section 4.04 TWL Control.

Notwithstanding anything to the contrary provided for herein or in the Bylaws, TWL shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association to the fullest extent permitted under the Act as of the date of this Declaration. The specific restrictions and procedures governing the exercise of TWL's right to so appoint and remove Directors and officers shall be set out in the Bylaws of the Association. TWL may voluntarily relinquish such power evidenced by a notice executed by TWL and recorded in the Office of the Clerk and Recorder for Larimer County, Colorado but, in such event, TWL may at its option require that specified actions of the Association of the Executive Board as described in

the recorded notice, during the period TWL would otherwise be entitled to appoint and remove Directors and officers, be approved by TWL before they become effective.

Section 4.05 Compliance with Association Documents.

Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Association Documents. The obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Lot for the benefit of all other Lots and for the benefit of TWL's adjacent properties.

Section 4.06 Books and Records.

The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

Section 4.07 Manager.

The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

Section 4.08 Implied Rights and Obligations.

The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Association Document or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents, and every other duty or obligation implied by the express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.

Section 4.09 Association Meetings.

Meetings of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, by majority of the Executive Board or by Owners having twenty percent (20%) of the votes in the Association. Not less than ten (10) nor more than fifty (50) days in advance of any meeting, the Secretary or other officer specified in the Bylaws of the Association shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each Owner or to any other mailing address designated in writing by the Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to this Declaration or the Bylaws, any budget changes and any proposal to remove an officer or member of the Executive Board.

Section 4.10 Association Standard of Care.

The duty of care which the Association owes to the Owners is that of a landowner to a licensee, notwithstanding the interest which the Owners hold in the Common Area through their membership in the Association.

Section 4.11 Security.

The Association may, but shall, not be obliged to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. NEITHER THE ASSOCIATION, TWL, NOR ANY SUCCESSOR SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. NEITHER THE ASSOCIATION, TWL, NOR ANY SUCCESSOR SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR FOR THE INEFFECTIVENESS OF ANY SECURITY MEASURE UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS EXECUTIVE BOARD, TWL AND ANY SUCCESSOR, DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO THE DESIGN GUIDELINES ESTABLISHED BY TWL MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE , BURGLARY, THEFT, HOLD-UP, OR OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY LOT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, TO RESIDENTIAL DWELLINGS AND TO THE CONTENTS OF RESIDENTIAL DWELLINGS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS EXECUTIVE BOARD, COMMITTEES, TWL OR ANY SUCCESSOR HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

ARTICLE V

POWERS OF THE EXECUTIVE BOARD

Section 5.01 Association Rules.

From time to time and subject to the provisions of the Association Documents, the Executive Board may adopt, amend, repeal, suspend and publish rules and regulations, to be known as the "Association Rules", governing, among other things and without limitation:

(a) The use of the Common Area, including any recreational facilities which may be constructed on such property and governing the personal conduct of the Members and their guests, and the Association may establish penalties, including, without limitation, the imposition of fines, for the infraction of such rules and regulations;

(b) The voting rights of a Member during any period in which such Member is in default on payment of any Assessment levied by the Association, as provided in **Article XI**. Such rights may also be suspended after notice and hearing for a period not to exceed sixty (60) days for an infraction of published rules and regulations, unless such infraction is ongoing, in which case the rights may be suspended during the period of the infraction and for up to sixty (60) days thereafter.

(c) A copy of the Association Rules in effect will be distributed to each Member and any change in the Association Rules will be distributed to each Member within a reasonable time following the effective date of the change.

Section 5.02 Implied Rights.

The Executive Board may exercise for the Association all powers, duties, and authority vested in or delegated to the Association, including, without limitation, all powers permitted under the Act, and not reserved to the Members or TWL by other provisions of this Declaration or the Articles or Bylaws of the Association or as provided by law.

ARTICLE VI

ASSOCIATION PRIVILEGES & RESPONSIBILITIES

Section 6.01 Common Area.

Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to those portions of the Common Area for which the Association has the responsibility to maintain, subject to:

(a) This Declaration and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Executive Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(d) The right of the Executive Board to suspend the right of an Owner to use facilities within the Common Area

(i) for any period during which any charge or Assessment against such Owner's Lot remains delinquent, and

(ii) for a period not to exceed sixty (60) days for a single violation or for a longer period in the case of any continuing violation of the Declaration, any applicable Supplemental Declaration, the Bylaws or rules of the Association;

(e) The right of the Executive Board to impose reasonable membership requirements and charge reasonable membership, admission, use or other fees for the use of any facility situated upon the Common Area;

(f) The right of the Executive Board to permit the use of any facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Executive Board; and

(g) The right and obligations of the Association, acting through its Executive Board, to restrict, regulate or limit Owners' and occupants' use of the Common Area for environmental preservation purposes, including, without limitation wildlife corridors, winter wildlife ranges and natural wildlife habitat.

(h) Any owner may extend his or her right to use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Executive Board. An Owner who leases his or her residential dwelling shall be deemed to assign all such rights to the lessee of such dwelling.

Section 6.02 Maintenance.

(a) The Association shall maintain and keep the Common Area in good repair, and the cost of such maintenance shall be funded as provided in **Article XI**, subject to any insurance then in effect. This maintenance shall include the repair and replacement of all trails, landscaping, perimeter fences, timber frame pavilions, water features, signage, irrigation systems, drainage swales and concrete channels, ponds, underdrain pipe, sidewalks, driveways and improvements, if any (which shall include without limitation snow removal services), located in the Common Area. Additionally, the Association shall maintain and keep in good repair the landscaped median in Alpine Laurel Avenue and the planter are on the south side of Meadowsweet Circle at its intersection with Alpine Laurel Avenue. Furthermore, the Association shall maintain and keep in good repair the buried 6”

underdrain pipe constructed in the 20' easement at the west side of Lots 1, 2, 3 and 4 of Block 1.

(b) The irrigation system for the Common Area is designed to deliver raw water from the central pond within the Property, and is plumbed to accommodate a back-up connection to an existing 5/8" water tap and meter from the Little Thompson Water District (LTWD). The Association is responsible for the purchase or rental of raw water on an annual basis to supply irrigation water to the central pond from the Southside irrigation ditch. The Association is responsible to pay the monthly electric utility bills from the City of Loveland for the two pond pumps/lights, as well as the monthly water bill from LTWD for the irrigation water tap/meter.

(c) Sanitary sewage effluent from all Lots within the property gravity-flows to the Mariana Cove lift station where it is pumped through a pressure line up to the Mariana Butte Subdivision. Periodic maintenance costs associated with the Mariana Cove lift station building are NOT the responsibility of the City of Loveland, but are shared on a prorated basis by the benefiting individuals who own Lots in The Springs at Mariana and Mariana Cove Subdivision. The Association shall pay to the Mariana Cove Owners Association 27% (=42/(116+42)) of the annualized maintenance costs of the Mariana Cove lift station building as agreed upon jointly by the Executive Board of The Springs at Mariana Home Owners Association, Inc. and the Executive Board of the Mariana Cove Owners Association.

Section 6.03 No Dedication to the Public.

Nothing in this Declaration or the other Association Documents will be construed as a dedication to public use, or a grant to any public municipal or quasi-municipal authority or utility, or an assumption of responsibility for the maintenance of any Common Area by such authority or utility, absent an express written agreement to that effect.

ARTICLE VII

MECHANIC'S LIENS

Section 7.01 No Liability.

If any Owner shall cause any material to be furnished to his Lot or any labor to be performed therein or thereon, no Owner of any other Lot shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, material men and other persons furnishing labor or materials to his or her Lot. Nothing herein contained shall authorize any Owner or any person dealing through, with or under any Owner to charge the Common Area or any Lot other than the Lot of such Owner with any mechanic's lien or other lien or encumbrance whatever. On the contrary (and notice is hereby given) the right and power to charge any lien or encumbrance of any kind against the Common Area or against any Owner or any Owner's Lot for work done or materials furnished to any other Owner's Lot is hereby expressly denied.

Section 7.02 Indemnification.

If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Area or against any other Owner's Lot or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be canceled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

Section 7.03 Association Action.

Labor performed or materials furnished for the Common Area, if duly authorized by the Association in accordance with this Declaration or the Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law against the Common Area. Any such lien shall be limited to the Common Area and no lien may be effected against an individual Lot or Lots.

ARTICLE VIII

PROPERTY RIGHTS OF OWNERS AND RESERVATIONS BY TWL

Section 8.01 Owners' Easement of Enjoyment.

Every Owner has a right and easement of enjoyment in and to those portions of the Common Area for which the Association has the responsibility to maintain, which shall be appurtenant to and shall pass with the title to every Lot. Certain third persons will also have access to the Common Area as set forth in the Association rules. Every Owner shall have a right of access to and from his Lot over and across those portions of the Common Area on which Roads or driveways are located. No Owner shall hinder nor permit his guest to hinder reasonable access by any other Owner and his guest to the Lots and parking areas.

Section 8.02 Recorded Easements.

The Property shall be subject to all easements as shown on any recorded plat affecting the Property and to any other easements of record or of use as of the date of recordation of this Declaration. All easements and licenses to which the Property is presently subject are set forth in Exhibit B. In addition, the Property is subject to those easements set forth in this **Article VIII**.

Section 8.03 TWL's Rights Incident to Construction.

TWL, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Area, together with the right to store materials on the Common Area, to build and maintain temporary walls, and to make such other use of the Common Area as may be reasonably necessary or incident to any construction of improvements on the Property or other real property owned by

TWL, or other properties abutting and contiguous to the Property; provided, however, that no such rights shall be exercised by TWL in a way which unreasonably interferes with the occupancy, use, enjoyment, or access to the Springs at Mariana by the Owners.

Section 8.04 Utility Easement.

There are hereby reserved unto TWL, so long as TWL owns any of the Property, the Association, and the designees of each (which may include, without limitation, Larimer County, Colorado and any utility company) across, over and under all of the Lots, with the exception of building envelopes, to the extent reasonably necessary for the purpose of installing, replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, Roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas and electricity. The foregoing easements may traverse the private property of any Owner; provided, however, an easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Lot or building envelope as shown on the Plat, and any damage to a Lot resulting from the exercise of an easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of an easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall reasonable notice to the Owner or occupant.

TWL specifically reserves the right to convey to the local water supplier, electric company, natural gas supplier and cable television or communications systems supplier an easement on the Property for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on the Lot, nor shall any utilities be installed or relocated on the Property, except as approved by the Executive Board or TWL.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Executive Board shall have the right to grant such specific, descriptive easement over the Property without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Property. The Owner of a Lot subject to such easement shall cooperate with TWL and take all actions, including, without limitation, executing any documents evidencing such descriptive easement as reasonably requested by the Executive Board or TWL. In the event an Owner fails to cooperate in such matter the Association or TWL may, pursuant to **Section 8.10** below, exercise its power to act as that Owner's attorney-in-fact to execute any necessary documentation on behalf of such Owner.

The Executive Board shall have the power to dedicate portions or all of the Common Area to Larimer County, Colorado, the City of Loveland, or to any other local, state or federal governmental or quasi-governmental entity.

Section 8.05 Support Easement.

Each Lot is subject to a blanket easement for support and a blanket easement for the maintenance of the structures or improvements presently situated, or to be built in the future, on the Lots.

Section 8.06 General Maintenance Easement.

An easement is hereby reserved to TWL, and granted to the Association, and any member of the Executive Board or the Manager, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents.

Section 8.07 Association as Attorney-in-fact.

Each Owner, by his acceptance of a deed or other conveyance vesting in him an interest in a Lot, does irrevocably constitute and appoint the Association and/or TWL with full power of substitution in the Owner's name, place and stead to deal with Owner's interest in order to effectuate the rights reserved by TWL or granted to the Association, as applicable, with full power, right and authorization to execute and deliver any instrument affecting the interest of the Owner and to take any other action which the Association or TWL may consider necessary or advisable to give effect to the provisions of this Section and this Declaration generally. If requested to do so by the Association or TWL, each Owner shall execute and deliver a written, acknowledged instrument confirming such appointment. No Owner shall have any rights against the Association or TWL or any of their officers or Directors with respect thereto except in the case of fraud or gross negligence.

Section 8.08 Delegation of Use.

Any Owner, so long as the Owner retains an interest in a Lot, may delegate his right of enjoyment to the Common Area to the members of his family, his tenants, guests, licensees, and invitees, but only in accordance with and subject to the limitations of the Association Documents.

Section 8.09 Company Easement.

The Consolidated Home Supply Ditch and Reservoir Company and its successors and assigns shall have an easement and right of way across the Property for ingress and egress for maintenance of the Reservoir and temporary storm water storage.

Section 8.10 Conservation Easement.

The Property shall be subject to a conservation easement as shown on the Plat. This area shall be preserved as a wetland and no disturbance of the surface of the area contained in such easement shall be permitted.

Section 8.11 Blanket Easement.

TWL hereby reserves to successors and assigns, a blanket easement upon, across, over and under the Property, with the exception of building envelopes, for the installation, replacement, repair and maintenance of drainage, utility, service lines and systems, including but not limited to water, sewer, gas, telephone, television, cable or communication and electric lines and systems and drainage structures.

Section 8.12 Easements for Encroachments.

To the extent that any improvement constructed within the Common Area (including, without limitation, any portion of the Roads) encroaches on any Lot, a valid easement for such encroachments and for the maintenance of same, so long as they exist, shall and does exist. In the event any such improvement is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of such rebuilt improvements shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist so long as the improvements shall stand.

Section 8.13 TWL's Right of Assignment.

TWL reserves the right to assign any or all of its rights, obligations or interest, as TWL by recording an assignment or deed of record executed by both TWL and the transferee or assignee in the Office of the Clerk and Recorder of Larimer County, Colorado designating such party as a Successor. Upon such recording, TWL's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

ARTICLE IX

MAINTENANCE RESPONSIBILITY

Section 9.01 Maintenance of Lots.

(a) Subject to **Article XV**, each Owner shall be solely responsible for maintenance of all landscaping of his Lot and of the repair of the exterior and interior of his residence, including all fixtures and improvements and all utility lines and equipment therein or in, on or upon his Lot and is required to maintain the Lot and any improvements located thereon in a condition of good order and repair. This includes, but is not limited to the periodic cleaning and repainting of the home exterior as needed to maintain a pleasing appearance. No Owner shall unreasonably damage the value of other Lots such as by shoddy upkeep of such Owner's Lot or any structures located on the Lot.

(b) Owners shall be responsible for all maintenance and repairs of utility service lines, connections, facilities and related equipment providing service to such Owner's Lot, and the residence and other buildings and improvements constructed upon such Lot, with such responsibility to begin at the point where a utility provider ceases responsibility for maintenance and repair for a particular utility. The responsibility of an Owner for repair and maintenance shall include those portions of said Owner's Lot, other Lots, un-platted tracts, platted open space, platted easements, and streets and roads which are crossed by such a utility service line or other improvement. All such expenses and liabilities shall be borne solely by the Owner of such Lot, who shall have a perpetual easement in and to that part of the Property lying outside of such Owner's Lot for purposes of maintenance, repair and inspection. Each Owner shall use the utilities service easement provided herein in a reasonable manner and shall promptly restore the surface overlying such easements when maintaining or repairing a utility service line or other improvement.

(c) No Owner shall construct any structure or improvement or make or suffer any structural or design change (including a color scheme change), either permanent or temporary and of any type or nature whatsoever to the exterior of his residence or construct any addition or improvement on his Lot without first obtaining the prior written consent thereto from the Design Review Committee pursuant to **Article XV** hereto.

Section 9.02 Common Area.

The Association shall maintain the Common Area as set forth in **Section 6.02** above. Maintenance of the Common Area shall be performed at such time and in such a manner as the Association shall determine.

Section 9.03 Roads.

TWL has dedicated the Roads to the City of Loveland Colorado, who shall have the responsibility of maintaining the Roads. Notwithstanding the foregoing, the Association shall remain responsible for the landscaping, maintenance and upkeep of any roadway islands located between or inside the Roads. The Lot Owner shall be responsible to maintain all curb, gutter, and sidewalk adjacent to their Lot as set forth in the Loveland Municipal Code.

Section 9.04 Storm Drainage Improvements

The City of Loveland Public Works Department shall be responsible for the maintenance of the storm drainage inlet (in Outlot B) and the storm drainage pipe extending from the inlet to Boedecker Reservoir.

Section 9.05 Maintenance Contract.

The Association or Executive Board may employ or contract for the services an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Common Area. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power, or function so delegated by written instrument execute by or on behalf of the Executive Board.

Section 9.06 Owner's Failure to Maintain or Repair.

In the event that a Lot and the improvements thereupon are not properly maintained and repaired by an Owner, or in the event that the improvements on the Lot are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board, shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot and the buildings and other improvements thereon to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Lot, upon demand. All un-reimbursed costs shall be a lien upon the Lot until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with **Article XI** of this Declaration.

ARTICLE X

INSURANCE AND FIDELITY BONDS

Section 10.01 General Insurance Provisions.

The Association shall maintain, to the extent reasonably available:

(a) Property insurance on the Common Area for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property less applicable deductibles at the time the insurance purchased and at each renewal date, exclusive of land, excavations, foundations, paving areas, landscaping and other items normally excluded from property policies; and

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area and the Association, in an amount, if any, deemed sufficient in the judgment of the Executive Board, insuring the Executive Board, the Association, the Manager, and their respective employees, agents, and all persons acting as agents. TWL shall be included as an additional insured in TWL's capacity as an Owner and Executive Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) The Association may carry such other and further insurance that the Executive Board considers appropriate, including insurance on Lots that the Association is not obligated to insure to protect the Association or the Owners.

Section 10.02 Cancellation.

If the insurance described in **Section 10.01** is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

Section 10.03 Policy Provisions.

Insurance policies carried pursuant to **Section 10.01** must, to the extent available, provide that:

(a) Each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association;

(b) The insurer waives its rights to subrogation under the policy against any Owner or member of his household;

(c) No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 10.04 Insurance Proceeds.

Any loss covered by the property insurance policy described in **Section 10.01** must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of **Section 10.07** below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 10.05 Association Policies.

The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Association.

Section 10.06 Insurer Obligation.

An insurer that has issued insurance policy for the insurance described in **Section 10.01** shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

Section 10.07 Repair and Replacement.

(a) Any portion of the Common Area for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

(i) The regime created by this Declaration is terminated;

(ii) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

(iii) Eighty percent (80%) of the Owners vote not to rebuild; or

(iv) Prior to the conveyance of any Lot to a person other than TWL, the Mortgagee holding a deed of trust or mortgage on the damaged portion of the Common Area rightfully demands all or a substantial part of the insurance proceeds.

(b) The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Common Area is not repaired or replaced, the insurance proceeds attributable to the damaged Common Area must be used to restore the damaged area to a condition compatible with the remainder of The Springs at Mariana, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear in proportion to the Common Expense liabilities of all the Lots.

Section 10.08 Common Expenses.

Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

Section 10.09 Fidelity Insurance.

To the extent reasonably available, fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its Directors, officers, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than two months' current Assessments plus reserves as calculated from the current budget of the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bond may be obtained for the Manager and its officers, employees, and agents, as applicable. Any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 10.10 Workers' Compensation Insurance.

The Executive Board shall obtain workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 10.11 Other Insurance.

The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of Directors against any liability asserted against a Director or incurred by him in his capacity of or arising out of his status as a Director. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 10.12 Insurance Obtained by Owners.

Each Owner shall obtain and at all times maintain physical damage and liability insurance and, to the extent reasonably available, flood insurance for such Owner's benefit, at such Owner's

expense, covering the full replacement value of the Owner's Lot and residence (except to the extent any such Lot is encumbered by an easement conveyed to the Association as Common Area) and personal property, and personal liability insurance in a limit of not less than Three Hundred Thousand Dollars ($300,000.00) in respect to bodily injury or death to any number of persons arising out of one accident or disaster, or for damage to property, and if higher limits shall at any time be customary to protect against tort liability such higher limits shall be carried. In addition, an Owner may obtain such other and additional insurance coverage on the Lot and residence as such Owner in the Owner's sole discretion shall conclude to be desirable; provided, however, that none of such insurance coverage obtained by the Owner shall operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any policy maintained by the Executive Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including TWL, should TWL be the Owner of any Lot. No Owner shall obtain separate insurance policies on the Common Area.

All Owners are required to maintain on file copies of all such current policies ~~with the Association~~ to evidence their obligations hereunder and to facilitate recovery of all appropriate awards or proceeds by the Association. The foregoing requirement shall be the sole obligation of the Owner, and the Association shall not be responsible for its enforcement nor incur any liability for the failure to insure compliance with this requirement.

ARTICLE XI

ASSESSMENTS

Section 11.01 Obligation.

Each Owner, including TWL, by accepting a deed for a Lot, is deemed to covenant to pay to the Association (i) the Annual Assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Area and to perform the functions of the Association; (ii) Special Assessments for capital improvements and other purposes as stated in this Declaration, if permitted under the Act; and (iii) Default Assessments which may be assessed against a Lot for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents.

Section 11.02 Purpose of Assessments.

The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of The Springs at Mariana, for the improvement and maintenance of the Common Area and other areas of Association responsibility referred to herein, as more fully set forth in this Article below.

Section 11.03 Budget.

Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive 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 (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting seventy-five percent (75%) of all Owners 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. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

Section 11.04 Annual Assessments.

Annual Assessments for Common Expenses made shall be based upon the estimated requirements as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to **Section 11.03** above. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Area; expenses of management; taxes and special governmental assessments pertaining to the Common Area and insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds within the Common Area; routine repairs and renovations within the Common Area; wages; common water and utility charges for the Common Area; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance, repairs, and replacement of improvements within the Common Area on a periodic basis, as needed.

Annual Assessments, except for the initial annual assessment, shall be payable on a prorated basis each year in advance and shall be due on the first day of each month, calendar quarter or year, as determined by the Executive Board. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year. In the alternative, the Executive Board may elect to allocate any such excess Assessments to an Association working capital fund or to an Association reserve fund.

Section 11.05 Initial Annual Assessment.

The initial annual assessment in the amount of $360 is non-prorated. This amount shall be due and payable for the year that any Lot is purchased by an Owner. This payment is intended to cover the costs incurred by the Association for the production of Association Documents provided to the Owner and the services of a licensed architect for the house design plan and landscape plan reviews. The initial annual assessment shall be paid by the Owner at time of

closing for the purchase of a Lot, or upon submittal of a written application for design review approval to the Design Review Committee, whichever occurs first.

Section 11.06 Apportionment of Annual Assessments.

Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided among the Lots on the basis of the Sharing Ratios in effect on the date of assessment, subject to the following provisions: All expenses (including, but not limited to, costs of maintenance, repair, and replacement) relating to fewer than all of the Lots to the extent not covered by insurance shall be borne by the Owners of those affected Lots only. The formula used in establishing Sharing Ratios is an equal allocation among all of the Lots.

Section 11.07 Special Assessments.

In addition to the Annual Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments, if permitted under the Act, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Area or for any other expense incurred or to be incurred as provided in this Declaration. This **Section 11.07** shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments in **Article XI**, **Section 11.04**, subject to the requirements that any extraordinary maintenance, repair or restoration work on fewer than all of the Lots shall be borne by the Owners of those affected Lots only as reasonably determined by the Executive Board; and any extraordinary insurance costs incurred as a result of the value of a particular Owner's residence or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Notice in writing in the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. Special Assessments are currently restricted under the Act.

Section 11.08 Default Assessments.

All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

Section 11.09 Effect of Nonpayment; Assessment Lien.

Any Assessment installment, whether pertaining to any Annual, Special, or Default Assessment, which is not paid within thirty (30) days after its due date shall be delinquent. If an Assessment

installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

(a) Assess a late charge for each delinquency in such amount as the Association deems appropriate;

(b) Assess an interest charge from the date of delinquency at the yearly rate of two points above the prime rate charged by the Association's bank, or such other rate as the Executive Board may establish, not to exceed twenty-one percent (21%) per annum;

(c) Suspend the voting rights of the Owner during any period of delinquency;

(d) Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;

(e) Bring an action at law against any Owner personally obligated to pay the delinquent Assessments to collect the delinquent fees, late charges, interest charges and reasonable attorney's fees and costs caused by the delinquency; and

(f) Proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Lot shall constitute a lien on such Lot. The Association may institute foreclosure proceedings against the defaulting Owner's Lot in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

The lien of the Assessments will be superior to and prior to any homestead exemption provided now or in the future by the law of the State of Colorado, and to all other liens and encumbrances except liens und encumbrances recorded before the date of the recording of this Declaration, First Mortgages to the extent permitted under the Act, liens resulting from loans to TWL, its successors or assigns, for the development of the Property and liens for governmental assessments or charges imposed against the Lot by Colorado governmental or political subdivision or special taxing district or any other liens made superior by statute.

Section 11.10 Personal Obligation.

The amount of any Assessment chargeable against any Lot shall be a personal and individual debt of the Owner of same. No Owner may exempt himself from liability for the Assessment by abandonment of his Lot or by waiver of the use or enjoyment of all or any part of the Common Area. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney's fees in

connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 11.11 Successor's Liability for Assessments.

The provisions of the Act shall govern and control (a) the obligations of successors to the fee simple title of a Lot on which Assessments are delinquent and (b) the subordination by the lien of the Assessments provided for in this Declaration.

Section 11.12 Payment by Mortgage.

Any Mortgagee holding a lien on a Lot may pay any unpaid Assessment payable with respect to such Lot, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Lot for the amounts paid with the same priority as the lien of the Mortgage.

Section 11.13 Statement of Status of Assessment Payment.

Upon payment of a reasonable fee set from time to time by the Executive Board and upon fourteen (14) days' written request to the Manager or the Association's registered agent, any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot. Unless such statement shall be issued to the inquiring party within fourteen (14) days, the Association shall have no right to assert a lien upon the Lot over the inquiring party's interest for unpaid Assessments which were due as of the date of the request. Both the written request and the written statement of Assessments under this Section must be issued by personal delivery or by certified mail, first-class postage prepaid, return receipt requested, (in which event the date of posting shall be deemed the date of delivery).

ARTICLE XII

ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to **Article X** upon their damage or destruction as provided in **Article XIII**, or a complete or partial taking as provided in **Article XIV** below. Acceptance by a grantee of a deed or other instrument of conveyance from TWL or any other Owner conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE XIII

DAMAGE TO COMMON AREA

Section 13.01 The Role of the Executive Board.

Except, as provided in **Section 13.06**, in the event of damage to or destruction of all or part of any Common Area improvement, or other Property covered by insurance written in the name of the Association under **Article X**, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the Property insured by the Association pursuant to **Article X** is sometimes referred to as the "Association-Insured Property").

Section 13.02 Estimate of Damages or Destruction.

As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in **Article XIII** shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the Insurance Trustee, if any, determines to be necessary.

Section 13.03 Repair and Reconstruction.

As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Any repair and reconstruction of damaged or destroyed Roads shall, at a minimum, meet all standards approved by Larimer County for the Springs at Mariana project. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 13.04 Funds for Repair and Reconstruction.

The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement, and reconstruction of the Association-Insured Property.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to **Article XI, Section 11.06** but subject to applicable law, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement, or reconstruction.

Section 13.05 Disbursement of Funds for Repair and Reconstruction.

The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repairs and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Lot to the Owners as their interests appear.

Section 13.06 Decision Not to Rebuild Common Area.

If Owners representing at least eighty percent (80%) of the total allocated votes in the Association and fifty-one percent (51%) of the Mortgagees holding first Mortgages (based on 1.0 vote for each Mortgage which encumbers a Lot) and all directly adversely affected Owners agree in writing not to repair and reconstruct improvements within the Common Area and if no alternative improvements are authorized, then and in that event the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. In the event such a written agreement not to repair or reconstruct is made regarding any landscaping, such decision must additionally receive the written consent of the City of Loveland Director of Community Services. Any remaining insurance proceeds shall be distributed in accordance with the Act.

ARTICLE XIV

CONDEMNATION

Section 14.01 Rights of Owners.

Whenever all or any part of the Common Area shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Area is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 14.02 Partial Condemnation; Distribution of Award Reconstruction.

The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Area was conveyed and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty days after such taking TWL and Owners who represent at least sixty-seven percent (67%) of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available for such restoration or replacement in

accordance with plans approved by the Executive Board, and the Design Review Committee. If such improvements are to be repaired or restored, the provisions in **Article XIII** above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Lot among the Owners as their interests appear.

Section 14.03 Complete Condemnation.

If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Area shall be distributed as provided in **Article XIII, Section 13.05** above.

ARTICLE XV

DESIGN REVIEW COMMITTEE

Section 15.01 Design Review Committee and Guidelines.

There is hereby established a Design Review Committee (the "Design Review Committee"), which will be responsible for the establishment and administration of Design Guidelines to facilitate the purpose and intent of this Declaration.

Section 15.02 Purpose and General Authority.

The Design Review Committee will review, study and either approve or reject proposed improvements on the Property, all in compliance with this Declaration and as further set forth in the Design Guidelines and such rules and regulations as the Design Review Committee may establish from time to time to govern its proceedings. No improvement will be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor will any construction, repair or reconstruction be commenced until plans for the improvements shall have been approved by the Design Review Committee; provided, however, that improvements that are completely within a dwelling structure may be undertaken without such approval.

Section 15.03 Design Review.

The Owners acknowledge and consent to TWL's intention to develop The Springs at Mariana as a community of unique, custom homes which incorporate traditional, Colorado mountain architectural elements such as heavy timbers and stone, with the encouragement of front and back porches to create a feel of neighborhoods of the past. The Design Review Committee will exercise its best judgment to see that all improvements conform and harmonize with such theme and with any existing structures as to external design, quality and type of construction, seals, materials, color, location on the building site, height, grade and finished ground elevation, and the schemes and aesthetic considerations set forth in the Design Guidelines and other Association Documents. The Committee, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit

compliance with different or alternative requirements. The approval by the Design Review Committee of improvements on the Property shall carry no precedential weight when reviewing subsequent requests for approvals, and the Design Review Committee shall not be required to approve requests for the same or similar improvements.

Section 15.04 Design Guidelines.

The Design Guidelines may include, among other things, the restrictions and limitations set forth below:

(a) Procedures and necessary fees for making application to the Design Review Committee for design review approval, including the documents to be submitted and the time limits in which the Design Review Committee must act to approve or disapprove any submission.

(b) Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required under the Design Guidelines.

(c) Designation of the building site on a establishing the maximum developable area of the Lot.

(d) Minimum and maximum square foot areas of living space that may be developed on any Lot.

(e) Landscaping regulations, with limitations and restrictions prohibiting the removal or requiring the replacement of existing trees, the use of plants indigenous to the locale, and other practices benefiting the protection of the environment, aesthetics und architectural harmony of The Springs at Mariana.

(f) General instructions for the construction, reconstruction, refinishing or alteration of any improvement, including any plan to excavate, fill or make any other temporary or permanent change in the natural or existing surface contour or drainage or any installation or utility lines or conduits on the Property, addressing matters such as loading areas, waste storage, trash removal, equipment and materials storage, grading, transformers and meters.

The Design Review Committee may amend, repeal and augment the Design Guidelines from time to time, in the Design Review Committee's sole discretion. The Design Guidelines will be binding on all Owners and other persons governed by this Declaration. Notwithstanding the foregoing, the Design Review Committee is empowered in its discretion to grant variances from the requirements of the Design Guidelines under unique or unusual circumstances.

Section 15.05 Design Review Committee Membership.

The Design Review Committee will be composed of up to three persons. The Design Review Committee need not include any Member of the Association. All of the members of the Design Review Committee will be appointed, removed and replaced by TWL, in its sole discretion, until TWL no longer owns any of the Property or such earlier time as TWL may elect to voluntarily

waive this right by notice to the Association, and at that time the Executive Board will succeed to TWL's right to appoint, remove or replace the members of the Design Review Committee.

Section 15.06 Organization and Operation of Design Review Committee.

(a) The term of office of each member of the Design Review Committee, subject to **Section 15.04**, will be one year, commencing January 1 of each year, and continuing until his successor shall have been appointed. Should a Design Review Committee member die, retire or become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided below.

(b) So long as TWL appoints the Design Review Committee, TWL will appoint the chairman. At such time as the Design Review Committee is appointed by the Executive Board, the chairman will be elected annually from among the members of the Design Review Committee by a majority vote of such members. In the absence of a chairman, the party responsible for appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, an interim chairman.

(c) The Design Review Committee chairman will take charge of and conduct all meetings and will provide reasonable notice to each member of the Design Review Committee prior to any meeting. The notice will set forth the time and place of the meeting, and notice may be waived by any member.

(d) The affirmative vote of majority of the members of the Design Review Committee will govern its actions and be the act of the Design Review Committee.

(e) The Design Review Committee may avail itself of other technical and professional advice and consultants as it deems appropriate, and the Design Review Committee may delegate its plan review responsibilities, except final review and approval, to one or more of its members or to consultants retained by the Design Review Committee. Upon that delegation, the approval or disapproval of plans and specifications by such member or consultant will be equivalent to approval or disapproval by the entire Design Review Committee.

Section 15.07 Expenses.

Except as provided in this Section below, all expenses of the Design Review Committee will be paid by the Association and will constitute a Common Expense. The Design Review Committee will have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Design Review Committee from time to time, and such fees will be collected by the Design Review Committee and remitted to the Association to help defray the expenses of the Design Review Committee's operation.

Section 15.08 Other Requirements.

Compliance with the Association's design review process is not a substitute for compliance with County of Larimer, City of Loveland or other applicable governmental building, zoning and

subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction.

Further, the establishment of the Design Review Committee and procedures for architectural review will not be construed as changing any rights or restrictions upon Owners to maintain and repair their Lots and improvements as otherwise required under the Association Documents.

Section 15.09 Limitation of Liability.

The Design Review Committee will use reasonable judgment in accepting or disapproving all plans und specifications submitted to it. Neither the Design Review Committee nor any individual Design Review Committee member will be liable to any person for any official act of the Design Review Committee in connection with submitted plans and specifications, except to the extent the Design Review Committee or any individual Design Review Committee member acted with malice or wrongful intent. Approval by the Design Review Committee does not necessarily assure approval by the appropriate governmental commission for the County of Larimer or the City of Loveland. Notwithstanding that the Design Review Committee has approved plans and specifications, neither the Design Review Committee nor any of its members will be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim or expense which may arise by reason of such approval of the construction of the improvements. Neither the Executive Board, the Design Review Committee, nor any agent thereof, nor TWL, nor any of its partners, employees, agents or consultants will be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Association Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events, the Design Review Committee will be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the Design Review Committee's decisions. The Association, however, will not be obligated to indemnify each member of the Design Review Committee to the extent that any such member of the Design Review Committee is adjudged to be liable for malice or wrongful intent in the performance of his duty as a member of the Design Review Committee, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

Section 15.10 Enforcement.

(a) Any Member or authorized consultant of the Design Review Committee, or any authorized Officer, Director, employee or agent of the Association may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect improvements constructed or under construction on the Lot to determine whether the improvements have been or are being built in compliance with the Association Documents and the plans and specifications approved by the Design Review Committee.

(b) Before any improvements on a Lot may be occupied, the Owner of the Lot will be required to obtain a temporary certificate of compliance issued by the Design Review Committee indicating substantial completion of the improvements in accordance with the plans and

specifications approved by the Design Review Committee, and imposing such conditions for issuance of a final certificate of compliance issued by the Design Review Committee as the Design Review Committee may determine appropriate in its reasonable discretion. Without limiting the generality of the preceding sentence, the Design Review Committee may require that the Owner deposit with the committee such sums as may be necessary to complete the construction and landscaping on the Lot by a specified date. If the construction and landscaping are not completed as scheduled, the Design Review Committee may apply the deposit to cover the cost of completing the work and enforce such other remedies as are available to the Association for the failure of the Owner to comply with these covenants, including without limitation the remedies set forth in this Section.

(c) Upon completion of construction, the Design Review Committee will issue an acknowledged certificate of compliance setting forth generally whether, to the best of the Design Review Committee's knowledge, the improvements on a particular Lot are in compliance with the terms and conditions of the Design Guidelines.

(d) Every violation of these covenants is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against a Member will be applicable. Without limiting the generality of the foregoing, these covenants may be enforced as provided below:

(i) When a violation of these covenants is alleged to exist, the Design Review Committee shall follow the procedures described in **Article VIII NOTICE AND HEARING** of the Bylaws which generally consist of a verbal request for compliance, a written demand for compliance, or a hearing to determine if sanctions are required to remedy the violation. The Design Review Committee shall make every reasonable effort to negotiate win-win solutions that respect and balance both the needs of the Lot Owner and the needs of the Association. The Design Review Committee is charged with the duty to implement and enforce the intent of the rules and the Design Guidelines, and has the freedom to use discretion and judgment in granting exceptions or variances to the strict requirements set forth in the Documents, provided that the intent of the requirement is satisfied with no detrimental affect to any Owner or to the Association.

(ii) The Design Review Committee may adopt a schedule of fines for failure to abide by the Design Review Committee rules and the Design Guidelines, including fines for failure to obtain any required approval from the Design Review Committee.

(iii) The Association, upon request of the Design Review Committee and after reasonable notice to the offender and, if different, to the Owner, may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, and remove any improvement constructed, reconstructed, refinished, altered or maintained in violation of these covenants. The Owner of

the improvement will immediately reimburse the Association for all expenses incurred in connection with such removal. If the Owner fails to reimburse the Association within thirty (30) days after the Association gives the Owner notice of the expenses, the sum owed to the Association will bear interest at the default rate from the date of the advance by the Association through the date of reimbursement in full, and all such sums and interest will be a Default Assessment enforceable as provided in **Article XI**.

(iv) All improvements commenced on the Property will be prosecuted diligently to completion and will be completed within eighteen (18) months after commencement, unless an exception is granted in writing by the Design Review Committee. If an improvement is commenced and construction is then abandoned for more than ninety (90) days, or if construction is not completed within the required eighteen (18) month period, then after notice and opportunity for hearing as provided in the Bylaws, the Association may impose a fine of not less than $1,000 per day (or such other reasonable amount as the Association may set) to be charged against the Owner of the Lot until construction is resumed, or the improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Executive Board that such abandonment is for circumstances beyond the Owner's control. Such charges will be a Default Assessment und lien as provided in **Article XI**.

Section 15.11 Reconstruction of Common Area.

The reconstruction by the Association after destruction by casualty or otherwise of any Common Area that is accomplished in substantial compliance with "as built" plans for such Common Area will not require compliance with the provisions of this Article or the Design Guidelines.

Section 15.12 Binding Effect.

The actions of the Design Review Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted, to it or with respect to any other matter before it, will be conclusive and binding on all interested parties unless appealed as set forth below.

Section 15.13 Appeal.

Any Owner who believes the actions or determinations of the Design Review Committee are in error, or who feels there are mitigating circumstances, has the right to request a hearing before an Appeals Committee. The Appeals Committee shall consist of one Board member and two Owners appointed by the Board. To request a hearing, the Owner must contact the Association's President within seven (7) days after the effective date of receipt of decision from the Design Review Committee. The President will notify the Appeals Committee of the hearing request. The Committee Chairperson shall then set a date for the hearing within thirty (30) days of the Owner's request for a hearing. If an Owner requests a hearing, the Design Review Committee's decision shall be held in abeyance until after the Board makes a decision pursuant to the hearing. After the hearing, the Appeals Committee will make a recommendation to the Board and the Board will make the final decision.

ARTICLE XVI

DESIGN & PROPERTY USE REQUIREMENTS

Section 16.01 Protective Covenants.

(a) General. Subject to TWL's rights under **Section 16.03**, the Property will not be used for any purposes other than as set forth in these covenants, as permitted by any applicable ordinances of the County of Larimer, the City of Loveland and the laws of the State of Colorado and the United States, and as set forth in the Association Documents or other specific recorded covenants affecting all or any part of the Property. In the event of any conflict between the requirements of this **Article XVI** and the requirements of the building or zoning code of the City of Loveland, Colorado, the more restrictive of the two shall govern.

(b) Use of Lots. Subject to **Section 16.06**, which permits certain business uses of a Lot, and **Section 3.05(e),** which permits model residences and offices under certain circumstances, each Lot may be used only for residential purposes in accordance with the restrictions applicable to a particular Lot contained in the Plat, the Annexation Agreement, and the Development Agreement for Mariana Springs First Subdivision recorded therewith. No business or commercial building may be erected on any Lot and, except as noted above, no business or commercial enterprise or other non-residential use may be conducted on any part of a Lot.

(c) Excavation. No excavation will be made except in connection with improvements approved as provided in these covenants. For purposes of this Section, "excavation" means any disturbance of the surface of the land which results in a removal of earth, rock or other substance a depth of more than eighteen (18) inches below the natural surface of the land.

(d) Dwelling Size. Each single level (i.e. ranch style) residential dwelling constructed on a Lot shall be comprised of a minimum of one thousand eight hundred (1,800) square feet of finished floor space above grade level. Each multilevel residential dwelling constructed on a Lot shall be comprised of a minimum of two thousand two hundred (2,200) square feet of finished floor space above grade level with a minimum of one thousand four hundred (1,400) square feet situated on the first, or ground, level. All minimum square footages are exclusive of garages, patios, basements, or accessory buildings.

(e) Exterior Wall Finishes. The exterior walls of all structures shall be finished with an appropriate mixture of natural looking materials such as stucco, stone, synthetic stone, brick, glass, or wood. Heavy timber and/or masonry elements are encouraged and may be required by the Design Review Committee. The use of textured fiber cement siding products (such as Weatherboard or Hardipanel) or other approved materials are permitted to a maximum of no more than fifteen percent (15%) of the exterior wall surface area on each elevation view. Materials and/or architectural treatments used on any elevation of any structure constructed on a Lot shall be used on all the elevations. Lots 1, 2, 3, and 4 of Block 1 are exempt from this requirement, and may contain rear elevation treatments that

are different than the front and side elevations. All columns on a Lot, either structural or decorative, shall be architecturally compatible with the dwelling, constructed of the same materials, and shall require the approval of the Design Review Committee as to architectural compatibility and design.

(f) Roofs. Steep roof pitches (10:12 or steeper) are encouraged. Roof pitches flatter than 6:12 shall require the approval of the Design Review Committee as to architectural compatibility and design. Slate, masonry tile, and synthetic shingle roof treatments are encouraged. All fiberglass-reinforced asphalt shingles shall be an architectural grade incorporating a raised textural element and shall be warranted for a minimum service life of forty (40) years. No flat asphalt or rolled roofing may be used on the roof of any structure except where specifically approved by the Design Review Committee as a necessary, non-visible element on a dwelling with a flat roof (i.e. southwest-style architecture).

(g) Fire Protection. All homes in this development shall be equipped with an outside strobe light placed on the structure exterior in a location visible from the roadway in accordance with City of Loveland Fire Department requirements. All lots adjacent to Meadowsweet Circle have been equipped with 1.5" water taps and shall be constructed with interior residential fire sprinkler systems. Garage and attic areas in buildings constructed on all other lots shall have "Rate of Rise" heat detectors installed.

(h) Garages. Garage doors for single-family dwellings shall not comprise more than forty (40%) of the ground floor, street-facing, linear building frontage. Single-family dwellings on lots less than ninety (90) feet wide, measured at the front building setback, are not permitted to have garage doors for more than four (4) cars visible as part of the building elevation facing any adjacent street. Garage doors that are visible from the street as part of front building elevations shall be recessed behind either the front façade of the living portion of the dwelling, or behind a covered porch, by a minimum distance of four (4) feet. Covered porches, for the purposes of this requirement, shall measure at least eight (8) feet in length (across the front of the building) by six (6) feet in depth (perpendicular to the front of the building). Installation of a timber veneer over visible metal garage door surfaces, or the use of wood or Cladpanel garage doors, is encouraged.

(i) Private driveways, sidewalks, and entry steps. Decorative elements including, but not limited to, colored surface staining, integral color, sawcut patterns, or formed patterns shall be incorporated into a minimum of twenty-five percent (25%) of the concrete surface area visible from the public street right of way for all private driveways, sidewalks, and entry steps. Flagstone, slate, pavers, tile, or other decorative elements may also be used in lieu of concrete paving. Driveway widths shall not exceed twenty-four (24) feet at the back of walk or curb. Width may increase to match the garage width at the structure.

(j) Accessory Buildings. No accessory buildings (sheds, storage structures, outbuildings, greenhouses, gazebos, hot tub enclosures, secondary garages, etc.) are allowed unless the structure is permanently anchored to the ground, architecturally compatible with the primary dwelling, situated in close proximity to the dwelling, and constructed using the same materials as found in the construction of the dwelling.

(k) Building Setbacks. No dwelling or other structure may be erected upon any Lot closer to the front Lot line, side Lot line or rear Lot line than the following setback requirements:

Front Yard:	20 feet from street right of way to primary structure 20 feet from back of sidewalk (or from street right of way where no sidewalk exists) to street-facing garage doors
Rear Yard:	20 feet from Lot line to primary structure 15 feet from Lot line to deck, patio, or court yard wall
Side Yard:	10 feet (from Lot line), 15 feet (from street right of way) 20 feet from back of sidewalk (or from street right of way where no sidewalk exists) to street-facing garage doors

(l) Water and Sanitation. Each structure designed for occupancy will connect with water and sanitation facilities as are made available from time to time by the Little Thompson Water District and the City of Loveland (sanitary sewer only), or any other approved utility supplier.

(m) Wells. No well from which water, oil or gas is produced will be dug, nor will storage tanks, reservoirs, or any installation of power, telephone or other utility lines (wire, pipe or conduit) be made or operated anywhere on the Property except in connection with water wells and works operated by public agencies or duly certified public utility companies.

(n) Antennae. No exterior radio, television, microwave or other antennae or antennae dish or signal capture and distribution device larger than thirty-six (36) inches will be permitted without the prior written consent of the Design Review Committee, and appropriate screening.

(o) Signs. No permanent signs of any kind shall be displayed to the public view on or from any portion of the Property except, during the period of TWL control of the Executive Board, signs of TWL or its affiliates or assigns, signs required by law or signs approved by the Design Review Committee. Temporary signs, such as those used to announce one-time events such as a garage sale, the sale of a home, or a celebration or gathering may be erected on a Lot outside of the public street right of way, provided that such temporary signs are removed within two (2) days after the conclusion of the event. Signs containing the house address or the name of the Owner are exempt from the requirements of this subsection.

(p) Animals and Pets. No more than three (3) generally recognized domestic house or yard pets shall be allowed on any Lot. If pets are kept on a Lot, the Owner shall at all times have said pets under his or her control, whether upon the Lot or upon any other location within the Property. Pets are not allowed upon the General Common Properties or within any Natural Area unless under direct leash control by the Owner. Pet owners are responsible for the immediate cleanup and sanitary disposal of all excrement created by their pet(s). All Owners with a dog shall have an underground electric fence or wire mesh attached to a timber rail fence around that area of their Lot in which they allow their dog

freedom to move without a chain, leash, or other restraint. Unscreened chain link kennels or dog runs shall not be allowed on any Lot. A Courtyard Wall is allowable (with written Design Review Committee approval) to restrain and contain pets. Animals shall not be permitted to roam at will, or be a nuisance. Since the roaming of cats cannot be effectively controlled with restraint devices, any cat kept on a Lot by an Owner must be kept indoors as a household pet. At the option of the Executive Board, steps may be taken to control any animals that are a nuisance or are not under the immediate control of their Owners, including the right to impound animals not under such control or are a nuisance and to charge substantial fees to their Owner for their return. The Executive Board shall have the right to adopt further rules and regulations to enforce this provision.

(q) Drainage. No Owner will do or permit any work, place any landscaping or install any other improvements or suffer the existence of any condition whatsoever which will alter or interfere with the drainage pattern for the Property, except to the extent such alteration and drainage pattern is approved in writing by the Design Review Committee or of the Executive Board, and except for rights reserved to TWL to alter or change drainage patterns.

(r) Construction Regulations of the Design Guidelines. All Owners and contractors will comply with the portions of the Design Guidelines regulating construction activities. Such regulations may affect, without limitation, the following: trash and debris removal; sanitary facilities; parking areas; outside storage; restoration of damaged property; conduct and behavior of builders, subcontractors and Owners' representatives on the Property at any time; the conservation of landscape materials; and fire protection.

(s) Blasting. If any blasting is to occur, the Design Review Committee and TWL will be informed far enough in advance to allow them to make such investigation as they deem necessary to confirm that appropriate protective measures have been taken prior to the blasting. No blasting shall occur without such prior written approval. Notwithstanding the foregoing, no approval of any blasting by TWL or the Design Review Committee will in any way release the person conducting the blasting from liability in connection with the blasting, nor will such approval in any way be deemed to make TWL or the Design Review Committee liable for any damage which may occur from blasting, and the person doing the blasting will defend and hold harmless and hereby indemnifies TWL and the Design Review Committee from any such expense or liability. TWL or the Design Review Committee may impose any reasonable conditions and restrictions, including time and date restrictions, on all blasting.

(t) Temporary Structures. No temporary structures (i.e. tents, trailers, teepees, yurts, mobile homes, etc) will be permitted except as may be determined to be necessary during construction and as specifically authorized by the Design Review Committee.

(u) No Conversion. No Owner shall construct or convert any carport, garage, attic or other unfinished space, other than a basement, to finished space for use as an apartment or other integral part of the living area on any residence without approval of the Design Review Committee, the Association and the City of Loveland Building Department.

(v) Motorized Vehicles. No trucks, trail bikes, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailer, boats or boat trailers or similar vehicles other than passenger automobiles or pickup or utility trucks with a capacity of three-quarter ton or less or any other motorized vehicles will be parked, stored or in any manner kept or placed on any portion of the Property (including the public street right of way) except in an enclosed garage. This restriction, however, will not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing services to the Property or for TWL or the other Owners.

(w) Parking and Auto Repair. No automobiles or other vehicles will be parked in any street or upon any portion of the Property except within garages, carports, private driveways or designated parking areas. No work on automobiles or other vehicle repair may be performed in any visible or exposed portion of The Springs at Mariana except in emergencies.

(x) Abandoned, Inoperable, or Oversized Vehicles. No abandoned or inoperable vehicles of any kind will be stored or parked on any portion of the Property, other than within enclosed garages, except as provided below. "Abandoned or inoperable vehicle" is defined as any vehicle which has not been driven under its own propulsion for a period of three (3) weeks or longer; provided, however, this will not include vehicles parked by Owners while on vacation or residing away from The Springs at Mariana. A written notice describing the "abandoned or inoperable vehicle" and requesting its removal may be personally served upon the Owner or posted on the unused vehicle. If such vehicle has not been removed within seventy-two (72) hours after notice has been given, the Association will have the right to remove the vehicle without liability, and the expense of removal will be a Default Assessment charged against the Owner as provided in **Article XI**. All unsightly or oversized vehicles, snow removal equipment, garden maintenance equipment, and all other unsightly equipment and machinery may be required by TWL or the Board of Directors to be stored at a designated location or locations. "Oversized" vehicles, for purposes of this Section, will be vehicles which are too high to clear the entrance to a residential garage.

(y) Outside Burning. There will be no exterior fires, except barbecues, outside fireplaces, braziers and incinerator fires contained within facilities or receptacles and in areas designated and approved by the Design Review Committee. No Owner will permit any condition upon its portion of the Property which creates a fire hazard or is in violation of fire prevention regulations.

(z) Lighting. All exterior lighting of the improvements and grounds on the Property will be subject to regulation by the Design Review Committee. No light shall be emitted from any Lot or dwelling which is unreasonably bright or causes unreasonable glare.

(aa) Obstructions. There will be no obstruction of any walkways or bike paths or interference with the free use of those walkways and paths except as may be reasonably required in connection with repairs. The Owners, their families, tenants, guests and invitees are granted nonexclusive easements to use the walkways and paths within the Property. That

use will be subject to the Association rules adopted by the Executive Board from time to time.

(bb) Camping and Picnicking. No camping or Picnicking will be allowed within the Property except in those areas designated for those purposes. The Executive Board, in its discretion, may ban or permit public assemblies and rallies within the Property.

(cc) House Numbers. Each dwelling unit will have the house number clearly displayed and illuminated on a masonry or cast bronze plaque architecturally integrated into the front yard or the front exterior of the home. The design and location is to be shown on the house plans and submitted for review and approval by the Design Review Committee.

(dd) Nuisance. No obnoxious or offensive activity will be carried on within the Property, nor will anything be done or permitted which will constitute a public nuisance. No noise or other nuisance will be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other part of the Property or its occupants. Owners acknowledge and accept the individual, personal responsibility to make a reasonable, diligent, and courteous effort to bring to the attention of the offending party any obnoxious or offensive activity and resolve the issue prior to involving the Design Review Committee or the Executive Board.

(ee) Pools. No swimming pools shall be installed above ground. Pumps and related equipment and Jacuzzis and hot tubs shall be concealed so as not to be visible from the neighboring Lots and streets. The design and installation of any pool, Jacuzzi, or hot tub shall require the approval of the Design Review Committee.

(ff) Energy Conservation Equipment. No unsightly finishes, reflective surfaces (which cause glare to neighboring Lots or streets) or unsightly exposed piping and wiring are permitted on any solar energy collector panels or attendant hardware or other energy conservation equipment constructed or installed on the Property.

(gg) Air Conditioning Units. Compressors and fans for central air conditioning systems located outside the exterior of a building shall be adequately walled, fenced, or landscaped to prevent unreasonable noise and exposure. Air conditioning units extending from windows or protruding from roofs are not permitted.

(hh) Screening and Fencing. No wall, fence, hedge or similar structure shall be placed, constructed, erected or permitted on any portion of the Property unless approved by the Design Review Board. No wire or chain link boundary fence shall be permitted, except that wire mesh matching the height of the rail fence may be attached to rail fence. Additional open rail fences matching the rail fence installed by the Developer may be installed by the property owner and may extend into the front yard or side yard, including placement on the side property lines. Solid fencing is specifically prohibited along any lot line within this project except along the west boundary of Lots 1, 2, 3, and 4 of Block 1 where solid fencing, not to exceed a height of 6', may be constructed provided that such solid fencing is built with a uniform design utilizing consistent materials as approved by

the Design Review Committee. Courtyard walls are permitted to enclose patios or other areas within twenty (20) feet of the dwelling unit, provided that such walls are limited to a height of six (6) feet and shall not extend into the front or side yards any closer than the dwelling unit itself. Courtyard walls shall be custom designed wood or masonry walls that compliment the architectural style of, and are compatible with the color of, the dwelling unit. All fencing shall be located entirely within the boundaries of the lot on which they are located, and shall not block approved drainage patterns from adjacent parcels. The SMHOA shall be responsible for on-going maintenance of the rear yard timber rail fences after construction by the Developer.

(ii) Decks and Patios. No metal or fiberglass awnings or roofs shall be permitted over decks and no patio enclosures shall be allowed, on any Lot, unless approved by the Design Review Committee.

(jj) Artificial Vegetation. No artificial vegetation shall be permitted on any portion of the Property or on the residence built on the Lot.

(kk) Intersection Sight Distances. Except as may be required for traffic control equipment and postal facilities, no fence, wall, shrub, planting or other structure shall be placed or planted on any portion of the Property near a street junction, if such structure may obstruct the sight lines between two and one half feet (2 ½') and eight feet (8') above the top of the street edge, within the triangular area formed between points twenty feet (20') from the junction of such street edges.

(ll) Landscaping and Ground Maintenance.

(i) A landscape plan showing the location and identity of all proposed landscaping elements (trees, shrubs, plants, statuary, ground cover, yard ornaments, ponds, stones, etc.) shall submitted to the Design Review Committee by each Owner for review and approval prior to installation of any landscaping on a Lot. The landscape plan may be submitted concurrently with the dwelling plans, or separately at a subsequent date not later than twelve (12) months after commencement of the dwelling construction.

(ii) Within seven (7) months or before the conclusion of one (1) full growing season (defined as the period from May 1 through October 31) after substantial completion of the dwelling, but no later than eighteen (18) months after commencement of the dwelling construction, all landscaping elements, as depicted in the approved landscape plan, shall be attractively installed on the Lot. The installation of landscaping may be phased over a longer period of time if phasing is clearly indicated on the landscape plan approved by the Design Review Committee.

(iii) Minor revisions to the approved landscape design/plan can be made by the Owner without review or input from the Design Review Committee. Major revisions to the approved landscape design/plan (defined as the addition, deletion, or

relocation of twenty percent (20%) or more of the plant material described on the approved landscape plan) must be submitted to the Design Review Committee for review and approval prior to implementation of the proposed revision.

(iv) Water sprinkler systems with underground pipes shall be installed at each Owner's expense for the watering of all landscaped portions of a Lot including any adjacent right of way and tree lawn situated between the curb and the sidewalk. Lot Owners may install additional landscaping on adjacent HOA property if the additional landscaping is shown on the Lot Owner's landscape plan, approved by the Design Review Committee, and maintained/watered by the Lot Owner.

(v) Where a tree lawn exists, the surface shall be maintained by the adjacent Lot Owner with irrigated turf and the required trees as depicted in the project landscape plan on file with the City of Loveland. No Ground Covering (rock, gravel, wood chips, mulch or similar ground covering used in landscaping of a Lot) shall be allowed within the tree lawn unless specifically reviewed and approved by the Design Review Committee.

(vi) Ground Covering shall not make up more than thirty-five percent (35%) of the landscaping on any Lot. Exceptions may be granted by the Design Review Committee for attractive, professionally designed xeriscapes that are determined to enhance the character, quality, and aesthetics of the Property.

(vii) The Design Review Committee shall retain the right to require trees or shrubs on a Lot be located or trimmed so as to preserve or enhance the view from other Lots within the vicinity.

(viii) All lawns and landscaping, including grass, hedges, shrubs, vines, and mass plantings on each Lot shall be irrigated, mowed, trimmed and cut at regular intervals and maintained in a neat and attractive manner. Any trees, shrubs, vines, plants or grass which die shall be promptly removed and replaced.

(ix) All Lots and residences built on the Lots shall be kept at all times in a sanitary, attractive and safe condition. No equipment or material storage shall be allowed on any portion of the Property unless attractively screened so as not to be visible from neighboring Lots or streets. No accumulation of rubbish, except for reasonable accumulation incident to construction, shall be allowed on any portion of the Property. ~~Garage doors shall be kept closed except during ingress and egress.~~

(mm) Refuse Collection. Refuse shall be deposited in closed garbage cans or sealed garbage bags and taken to the edge of the street for scheduled collection not more than twelve (12) hours before such collection is scheduled to occur. Emptied cans shall be removed as soon as practicable following such collection and stored in a suitable storage area so as not to be visible from neighboring Lots or streets. Because of noise, safety, and street maintenance considerations, only one refuse collection company, as determined by the Executive Board,

shall be permitted to service any or all lots within The Springs at Mariana. Individual lot owners acknowledge that they willingly give up their right to select individual refuse collection service providers, and agree to abide by the selection determined by the Executive Board.

Section 16.02 General Practices Prohibited.

The following practices are prohibited at *The Springs at Mariana*:

(a) Allowing construction suppliers and contractors to clean their equipment other than at a location designated for that purpose by the Design Review Committee;

(b) Removing any rock, plant material, topsoil or similar items from any property owned by others;

(c) Public, outdoor display of firearms on the Property;

(d) Use of surface water for construction;

(e) Careless disposition of cigarettes and flammable materials;

(f) Capturing, trapping or killing of wildlife within the Property, except in circumstances posing an imminent threat to the safety of persons using the Property;

(g) Human or pet intrusion into the wetlands; or

(h) Any activity which materially disturbs or destroys the vegetation, wildlife, wetlands, or air quality within the Property or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution.

Section 16.03 Use of Property During Construction.

(a) It will be expressly permissible and proper for any Owner acting with the prior written consent of the Design Review Committee and for TWL, and their respective employees, agents, independent contractors, successors, and assigns involved in the construction of improvements on, or the providing of utility service to, the Property or other real property owned by TWL, to perform such activities and to maintain upon portions of the Property as they deem necessary such facilities as may be reasonably required, convenient, necessary or incidental to such construction and development of the Property. This permission specifically includes, without limiting the generality of the foregoing, maintaining storage areas, construction yards, model residences, sales offices, management offices and equipment and signs. However, no activity by any Owner will be performed and no facility will be maintained on any portion of the Property in such away as to unreasonably interfere with or disturb any Owner of a Lot, or to unreasonably interfere with the use, enjoyment or access of such Owner or his tenants or guests to his Lot. If any

Owner's use under this provision is deemed objectionable by the Design Review Committee, then the Design Review Committee, as applicable, in its sole discretion, may withdraw this permission.

(b) Contractor Responsibilities. Contractors performing work for Owners within the Property have a responsibility to conduct their construction activities in such a manner as to preserve and maintain the cleanliness and aesthetics of the Property. These responsibilities include, but are not limited to the following:

(i) Each contractor is required to maintain an individual dumpster on each Lot during construction to contain construction waste and prevent transport of construction waste by the wind. Recycling of unused timber materials is strongly encouraged

(ii) Motor vehicles shall be parked on paved surfaces at all times. Completion of concrete driveway slabs early in the construction process is encouraged so that clean parking areas are available throughout the construction process. Delivery of materials shall be scheduled and performed in such a manner as to eliminate tracking of dirt and/or mud onto the sidewalks and paved roadways. Should the tracking of dirt or mud occur, the Owner and the Owner's contractor will be held responsible for the clean up of such dirt or mud within forty-eight (48) hours of its occurrence.

(iii) Vacant Lots owned by TWL adjoining a Lot containing a house under construction may be used for the temporary storage of excavated soil or building materials, provided that said vacant lot is kept clean and any disturbance to the contour or vegetation is promptly restored upon completion of the construction.

(c) Design Review Committee Intervention. In the event that any Owner fails to control to conduct of their contractors to comply with the requirements of this section, the Design Review Committee is authorized to take the steps necessary to achieve compliance as set forth in **Section 15.10 Enforcement**

(d) Disposal of Excess Dirt. No dirt from the excavation of foundations shall be removed from the Property without the approval of the Board. In situations where excess dirt cannot be used on a Lot to achieve the approved drainage contours, the dirt shall be hauled by the Owner, or his designated representative, to a location within, or adjacent to the Property, as directed by the Board (acting through its Manager, if any). In the event that no suitable disposal area within the Property is identified by the Board, the Owner shall be responsible to find a suitable disposal site off site from the Property.

Section 16.04 Partition or Combination of Lots.

No part of a Lot may be partitioned or separated from any other part thereof. No Lots may be combined, but the Owner of two or more contiguous Lots may build one (1) single-family dwelling unit on the contiguous Lots, upon complying with all applicable requirements of the

appropriate governmental authorities including those of the County of Larimer and the City of Loveland, and with all applicable Design Guidelines, including without limitation procedures for adjusting building sites otherwise drawn for the Lots to accommodate a larger dwelling unit, minimum and maximum limitations of living area that may be constructed on any given number of contiguous Lots, and measures necessary to preserve any easements reserved with respect to the contiguous Lots.

The fact that two or more contiguous Lots may be owned by one person and developed with one (1) single-family dwelling unit will not affect the number of votes or the amount of Assessments allocated to the Lots. If the Owner is required by the County of Larimer, the City of Loveland or any other governmental authority or by a Mortgagee to replat the Lots in order to construct improvements on the Lots, the number of votes and the allocation of Assessments to the Lots after replatting will equal the sum of the votes and Assessments allocated to the Lots before replatting. Each Lot will be conveyed, transferred, gifted, devised, bequeathed, encumbered or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or by this Declaration, including the Owner's membership in the Association and the right to use the Common Area, and with the appropriate allocation of voting rights and liability for Assessments established for the Lot as provided in this Declaration.

Section 16.05 Leasing.

(a) The Owner of a Lot will have the right to lease his Lot, subject to the following conditions:

(b) All leases will be in writing.

(c) The lease shall be specifically subject to the Association Documents, and any failure of a tenant to comply with the Association Documents will be a default under the lease.

(d) The Owner shall be liable for any violation of the Association Documents committed by the Owner's tenant, without prejudice to the Owner's right to collect any sums by the Owner on behalf of the tenant.

Section 16.06 Businesses.

No Owner shall conduct any business, trade or similar activity on any Lot, except that an Owner or occupant residing on a Lot may conduct business activities within the residence so long as: (a) the existence or operation of the business activity is undetectable to the senses of sight, sound or smell from outside the residence; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity may be carried out within the confines of the residence and is free from regular visitation of the residence by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property.

This subsection shall not apply to any activity conducted by TWL or a builder approved by TWL with respect to the development and sale of the Property, or TWL's use of any Lot.

Section 16.07 Compliance with Laws.

Subject to the rights of reasonable contest, each Owner will promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Property.

Each Owner will abide by any wildlife regulations imposed by the Association or any agency or authority having jurisdiction over the Property. Further, no Owner will dispose or allow any person under the Owner's control or direction to release, discharge or emit from the Property or dispose of any material on the Property that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation.

Section 16.08 Enforcement.

Notwithstanding anything in the foregoing to the contrary, the Executive Board may prohibit any activity, business or otherwise, which, in the sole direction of the Executive Board, constitutes a nuisance, or a hazardous or offensive use, or threatens the security, safety, or quiet enjoyment of other residents of the Property. The Association may take such action as it deems advisable to enforce these covenants as provided in this Declaration. In addition, the Association will have right of entry on any part of the Property for the purposes of enforcing these Articles, and any costs incurred by the Association in connection with such enforcement which remain unpaid thirty (30) days after the Association has given notice of the cost to the Owner and otherwise complied with Act will be subject to interest at the default rate from the date of the advance by the Association through the date of payment in full by the Owner, and will be treated as a Default Assessment enforceable as provided in **Article XI**.

Section 16.09 Use of the Word "The Springs at Mariana" or Logo.

No Person shall use the word "*The Springs at Mariana*" or any derivative thereof or the logo of the development in any printed or promotional matter without TWL's prior written consent. However, Owners may use the term "*The Springs at Mariana*" in printed or Promotional matter where such term is used solely to specify that particular property is located within The Springs at Mariana and the Association shall each be entitled to use the words "*The Springs at Mariana*" in its name.

ARTICLE XVII

DRAINAGE, SOILS, & IRRIGATION DITCHES

Section 17.01 Acknowledgment.

The soils within the state of Colorado consist of both expansive soils and low-density soils which may adversely affect the integrity of any residence built on the Lot if the residence and the Lot on which it is constructed are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture,

thereby resulting in swelling and/or shrinking. The addition of moisture to low-density soils causes a realignment of soil grains, thereby resulting in consolidation and/or collapse of the soils.

Section 17.02 Moisture.

Each Owner of a Lot shall use his or her best efforts to assure that the moisture content of those soils supporting the foundation and the concrete slabs forming a part of the residence constructed thereon remain stable and shall not introduce excessive water into the soils surrounding such residence.

Section 17.03 Grading.

Each Owner of a Lot shall create and maintain the grading and drainage patterns of the Lot as indicated in the subdivision plans on file with the Community Services Department of Loveland, Colorado.

Section 17.04 Water Flow.

The Owner of a Lot shall not impede or hinder in any way the water falling on the Lot from reaching the drainage courses established for the Lot and the Property.

Section 17.05 Action by Owner.

To accomplish the foregoing, each Owner covenants and agrees, among other things:

(a) Not to install improvements, including, but not limited to, landscaping, items related to landscaping, walls, walks, driveways, parking pads, patios, fences, additions to the residence or any other item or improvement which will change the grading design of the Lot. The installation of such improvements is acceptable so long as the manner of installation is consistent with, and does not change, the designed grading and drainage patterns of the Lot.

(b) To fill with additional soil any back-filled areas adjacent to the foundation of the residence and in or about the utility trenches on the Lot in which settling occurs to the extent necessary from time to time to maintain the grading and drainage patterns of the Lot.

(c) Not to water the lawn or other landscaping on the Lot excessively.

(d) Not to plant flower beds (especially annuals) and vegetable gardens adjacent to or within three (3) feet of the foundation and slabs of the residence.

(e) If evergreen shrubbery and grass is used within five (5) feet of the foundation walls, to water the shrubbery and grass by controlled hand watering and to avoid excessive watering.

(f) To minimize or eliminate the installation of piping and heads for sprinkler systems within five (5) feet of foundation walls and slabs.

(g) To install any gravel beds in a manner which will assure that water will not pond in the gravel areas, whether due to non-perforated edging or due to installation of the base of the gravel bed at a level lower than the adjacent lawn.

(h) To install a moisture barrier (such as polyethylene) under any gravel beds.

(i) To maintain the gutters and down spouts which discharge water into extensions or splash blocks by assuring that (1) the gutters and down spouts remain free and clear of all obstructions and debris; (2) the water that flows from the extension or the splash block is allowed to flow rapidly away from the foundation and/or slabs; and (3) the splash blocks are maintained under sill cocks.

(j) To recaulk construction joints opening up between portions of the exterior slabs and garage slabs in order to thereby seal out moisture.

Section 17.06 Disclaimer: Soils Report.

TWL shall not be liable for any loss or damage to the residence caused by, resulting from, or in any way connected with soil conditions on any Lot. Owners are required to obtain a soils report with respect to a particular Lot prior to the commencement of construction of a residence on such Lot.

Section 17.07 Irrigation Ditch Access.

There is no right of access or use of any type, either expressed or implied, for any Owner to the Southside or Buckingham irrigation ditches, their shores, waterways, surface waters, or tributaries. No Owner shall take or use any waters in any ditch, from its shores, waterways, or tributaries without a written agreement from the ditch company. No Owner, Owner's assign, or Owner's guest, unless specifically authorized by the Southside or Buckingham ditch companies, shall enter the irrigation ditch easements except as is occasionally needed to maintain the six (6) inch pipe inlet which conveys ditch water to the Association pond. Members of the Board of Directors for the Southside Ditch Company and the Buckingham Irrigation Company, or their assigns, have the perpetual right to cross Outlots B and G as necessary to access and maintain their ditches.

Section 17.08 Release.

(a) Each Owner, for itself, its successors, assigns, guests, and invitees, agrees to release and save TWL, the Executive Board or the Design Review Committee, its incorporators, stockholders, directors, officers, attorneys, lessees, agents, successors and assigns, personally and in any corporate capacity, harmless from and against any and all liability and claims that such persons may have arising from flooding or seepage caused by the Southside Irrigation Ditch or the Buckingham Irrigation Ditch, their tributaries, or surrounding water areas.

(b) Each Owner hereby agrees on behalf of itself and its successors and assigns that the Owner shall release and save harmless TWL, the Executive Board and the Design Review

Committee, its incorporators, stockholders, directors, officers, attorneys, lessees, agents, successors, and assigns, personally and in any corporate capacity from and against any and all claims which the Owner may have or assert arising out of: washing or erosion caused by the Southside Irrigation Ditch or the Buckingham Irrigation Ditch, seeping or inundation of the Lots or the Property, percolation of water underneath said Lots or Property by reason of the Southside Irrigation Ditch or the Buckingham Irrigation Ditch being maintained at any level up to and including its high-water line; damage to property or personal injury to any of the Owners, members of their families, or their guests arising out of the use of the Southside Irrigation Ditch or the Buckingham Irrigation Ditch or the waters thereof; damage resulting from the use of the Southside Irrigation Ditch or the Buckingham Irrigation Ditch; damage resulting from ice, wind, or wave action upon or from the Southside Irrigation Ditch or the Buckingham Irrigation Ditch; damage to property or personal injury to the Owners, for themselves, their successors, assigns, guests and invitees from trespass into the ditch easements and contact with any water, rough surfaces, riprap, rock or other materials placed in the Southside Irrigation Ditch or the Buckingham Irrigation Ditch; damage from seepage, erosion, flooding, icing, or other causes arising from or out of any of the facilities which are the property of the Ditch Company, its successors or assigns, and the use and operation thereof; damage from flooding, acts of God or other matters beyond control of TWL, the Executive Board or the Design Review Committee.

(c) Each Owner hereby agrees on behalf of itself, and its successors and assigns that the Owner shall release and save harmless the Southside Ditch Company and Buckingham Irrigation Company (the "Ditch Companies") and their successors or assigns from and against any and all claims which any of them may have or assert arising out of: washing or erosion caused by the Southside Irrigation Ditch or the Buckingham Irrigation Ditch; seeping or inundation of the Lots or Property; the percolation of water underneath the Lot or Property by the reason of the ditches being maintained at any level up to and including its high-water line; damage to property or personal injury to any of the Owners, members of their families, or their guests arising out of the use of the ditches or the waters thereof; damage resulting from ice, wind, or wave action upon the ditches; damage from seepage, erosion, flooding, icing, or other causes arising from or out of any of the Ditch Companies' facilities or structures and the use and operation thereof; damage from storm, flooding, acts of God, or other matters beyond the control of the Ditch Companies. Each Owner will hold the Ditch Companies harmless from any and all loss, damages, costs and reasonable attorney fees occasioned by claims for damage to property or personal injury brought against the Ditch Companies by any of the Owners, their successors or assigns, members of their families, or their guests, and arising out of any of the above causes.

Section 17.09 Irrigation Ditch Company Easements and Rights.

The Owners acknowledge, agree and consent to those easements, rights and restrictions granted to the Buckingham Irrigation Company as set forth in the Agreement as recorded on April 21, 2003, at Reception No.2003-0065089 in the real property records of Larimer County, Colorado, including, without limitation, the easements granted to the Ditch Company for access and other work related to the ditch and the easement granted to the Ditch Company for the construction of new improvements within the Property. The Owners further acknowledge and agree that the

Association shall assume all obligations of the Landowner as defined in such Agreement and shall hold such Landowner harmless from and against any and all claims or expenses (including, without limitation, reasonable attorney fees) incurred by reason of the Association's failure to comply with or satisfy the obligations of such Agreement.

The Owners acknowledge, agree and consent to those easements, rights and restrictions granted to the Southside Irrigation Company as set forth in the subdivision plat of Mariana Springs First Subdivision recorded in the records of the Clerk and Recorder of Larimer County, Colorado on May 28, 2003, as Reception No. 2003-0065091, including, without limitation, the easements granted to the Ditch Company for access and other work related to the ditch and the easement granted to the Ditch Company for the construction of new improvements within the Property. The Owners further acknowledge and agree that the Association shall assume all obligations of the Landowner as defined in any agreement and shall hold such Landowner harmless from and against any and all claims or expenses (including, without limitation, reasonable attorney fees) incurred by reason of the Association's failure to comply with or satisfy the obligations of such Agreement.

ARTICLE XVIII

MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of First Mortgages on Lots. To the extent applicable, necessary, or proper, the provisions of this **Article XVIII** apply to this Declaration and also to the Articles and Bylaws of the Association.

Section 18.01 Approval Requirements.
Unless at least fifty-one percent (51%) of the Mortgagees holding First Mortgages against any portion of the Property (based on one vote for each Mortgage owned), and at least sixty-seven percent (67%) of the Owners (other than TWL) have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, sell, or transfer all or part of the Common Area (provided, however, that the granting of easements or rights of way for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this clause);

(b) Subject to the expansion rights of TWL set forth in **Article XV**, change the method of determining the obligations, Assessments, dues, or other charges which may be levied against an Owner;

(c) Fail to maintain insurance required to be maintained under this Declaration;

(d) Use hazard insurance proceeds for losses to improvements in the Common Area for other than the repair, replacement, or reconstruction of such property.

Section 18.02 Title Taken by Mortgagee.

Any Mortgagee holding a First Mortgage of record against a Lot who obtains title to the Lot pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for Assessments assessed against such Lot to the extent required under the Act.

Section 18.03 Right to Pay Taxes and Charges.

Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Area.

ARTICLE XIX

DURATION OF COVENANTS AND AMENDMENT

Section 19.01 Term.

The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

Section 19.02 Amendment.

This Declaration, or any provision of it, may be amended at any time by Owners holding not less than twenty-eight (28) votes (67% of the votes possible to be cast under this Declaration) at a meeting of the Owners called for that purpose, except as limited by **Article XVIII**. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. Notwithstanding the foregoing, no amendment shall be made under this Section if such amendment would affect the rights of TWL as reserved herein. TWL, acting alone, reserves to itself the right and power to modify and amend this Declaration and/or the Plat to the fullest extent permitted under the Act during the TWL Control Period as set forth in the Bylaws.

Section 19.03 Revocation.

This Declaration shall not be revoked, except as provided in **Article XIV** regarding total condemnation, without the consent of all of the Owners evidenced by a written instrument duly recorded.

ARTICLE XX

LIMIT ON TIMESHARING

No Owner of any Lot shall offer or sell any interest in such Lot under a “timesharing” or “interval ownership” plan, or any similar plan without the specific prior written approval of the Association and TWL.

ARTICLE XXI

SPECIAL DISTRICT

The Association shall have the power, and is hereby authorized, to contract with and to cooperate with the Special District in order to ensure that their respective responsibilities are discharged. The Association is further authorized to act on behalf of its Members to ensure that the level of services provided by the Special District, if created, is consistent with the community-wide standard.

Each Owner, by acceptance of his or her deed or recorded contract or sale, is deemed to covenant and consent to the creation of the Special District and to executing a separate document so consenting to the creation of the Special District, if requested to do so by TWL.

ARTICLE XXII

GENERAL PROVISIONS

Section 22.01 Restriction on TWL Powers.

Notwithstanding anything to the contrary herein, no rights or powers reserved to TWL hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 22.02 Enforcement.

Except as otherwise provided in this Declaration, the Executive Board, TWL, or any Owner (provided the Executive Board fails to take action after reasonable notice is given to the Executive Board by such 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 Executive Board of the Association, TWL, or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any legislation arising under this Declaration shall be entitled to reimbursement of all costs of such action including, without limitation, reasonable attorneys' fees.

Section 22.03 Severability.

Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 22.04 Conflict Between Documents.

In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

TIMBER WIND LAND, LLC, a Colorado limited liability company

_____

By: Gregory P. Muhonen, Manager

STATE OF COLORADO)
) SS.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this ____ day of_____, 2004, by Gregory P. Muhonen as President of Timber Wind Land, LLC, a Colorado limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

MY COMMISSION EXPIRES: _____

_____

Notary Public Signature

EXHIBIT A

PROPERTY DESCRIPTION

Lots 1 through 33 of Block 1, Lots 1 through 9 of Block 2, and Tracts A, B, C, D, E, F, and G, Mariana Springs First Subdivision, all as shown on the plat for Mariana Springs First Subdivision recorded May 28, 2003 at Reception No.2003-0065091 in the real property records of Larimer County, Colorado.

EXHIBIT B

RECORDED EASEMENTS & ENCUMBRANCES

1. The right of the proprietor of a vein or lode to extract or remove his ore, should the same be found to penetrate or intersect the premises thereby as reserved in United States patent recorded March 28, 1889 in Book 32 at Page 121, and any and all assignments thereof or interests therein.

2. Terms, conditions, provisions, agreements and obligations specified under the Decree Regarding Irrigation Laterals recorded May 27, 1964 in book 1249 at Page 169.

3. An easement for utilities and incidental purposed granted to Poudre Valley Rural Electric Association by the instrument recorded November 3, 1980 in Book 2082 at Page 941.

4. Terms, conditions, provisions, agreements and obligations specified under the Ordinance No. 4716 recorded January 21, 2003 at Reception No. 2003007620.

5. The following items as set forth on the plat of Mariana Springs Addition, to-wit:
   a. All notes.

6. Terms, conditions, provisions, agreements and obligations specified under the Notice of Conditions or Restrictions Affecting Real Property recorded January 21, 2003 at Reception No. 2003007622.

7. Terms, conditions, provisions, agreements and obligations specified under the Annexation Agreement recorded January 21, 2003 at Reception No. 2003007623.

8. Terms, conditions, provisions, agreements and obligations specified under the Agreement recorded April 21, 2003 at Reception No. 20030048196.

9. Any assessment or lien of Northern Colorado Water Conservancy District, as disclosed by the instrument recorded May 21, 2003 at Reception No. 20020062064.

10. The following items as set forth on the plat of Mariana Springs First Subdivision, to-wit:
    a. All notes.
    b. Easements for utilities and drainage

11. Terms, conditions, provisions, agreements and obligations specified under the Agreement recorded May 28, 2003 at Reception No. 20030065089.

12. Terms, conditions, provisions, agreements and obligations specified under the Agreement recorded May 28, 2003 at Reception No. 20030065092.

INDEX