

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
HIDDEN HILLS

This Declaration of Covenants, Conditions and Restrictions is made and entered into by Falcon Seaboard Diversified, Inc., a corporation whose mailing address is 1008 West Avenue, Austin, Texas 78701, ("Declarant").

RECITALS

A. Declarant is the owner of that certain real property (the "Property") located in Kerr County, Texas, consisting of approximately 1,035 acres, more or less, out of the former R.B. Nowlin land in Kerr County, Texas, which is more fully described by metes and bounds in Exhibit "A, which Exhibit is attached hereto and incorporated herein by reference for all purposes and which is a subdivision in Kerr County, Texas, per the amended plat recorded in Volume 6, Page 365, Plat Records, Kerr County, Texas ("Plat").

B. Declarant has devised a general plan of development for the entire Property which provides a common scheme of development designed to protect and preserve the character and natural beauty of the Property over a long period of time.

C. This general plan will benefit the Property in general and the parcel or tracts which constitute the Property, the Declarant and each successive owner of an interest in the Property.

D. Therefore the Declarant desires to restrict the Property according to these covenants, conditions and restrictions in furtherance of this general development plan.

NOW, THEREFORE, it is declared that all of the Property shall be held, sold, occupied, transferred and conveyed subject to the following easements, restrictions, covenants, charges, liens and conditions (collectively, these "Restrictions").

ARTICLE 1

Definitions

1. "Declarant" shall mean Falcon Seaboard Diversified, Inc., or an agent designated in writing by Falcon Seaboard Diversified, Inc., to act on their behalf as Declarant and any assignee or successor thereof.

2. "Parcel" or "Tract" shall mean each lot, tract, parcel and portion of the Property as shown, described and established by the Plat of the Property referenced herein.

3. "Owner" shall mean the record owner or owners of the fee simple title to any Tract or Parcel in the Property. Even if there are several owners of a Tract the term "Owners" shall mean all of such owners of such Tract. Owner shall not include any lienholder, secured party, mortgagee, lessee, invitee or guest, but even though an Owner may lease a Tract or permit invitees or guests, and may delegate to each tenant, invitee or guest, the right and easement of use and enjoyment in and to the Roads, such parties and such use and enjoyment by such parties shall be subject to, and as provided in, the provisions of this Declaration, and any lease or agreement shall provide that the terms thereof shall be subject in all respects to the provisions of this Declaration and any failure by the lessee, invitee or guest to comply with the terms and provisions of this Declaration shall be and constitute a default under

such lease or agreement and shall be a violation of this Declaration with the same consequences as if such Owner delegating such right and easement had violated the same.

4. "Association" shall mean an incorporated association consisting of all Owners, which shall have the duties hereinafter set forth. Each Owner of a Parcel or Tract shall become a member of the Association contemporaneously with acquiring a Parcel or Tract, without any further documentation of any kind.

5. "Board" shall mean the Board of Directors of the Association.

6. "Architectural Control Committee" shall mean that committee of persons selected in the manner and having the powers and duties set forth hereinafter.

7. "Property" shall mean and refer to the Property herein specified and described and any additional real property owned by Declarant as long as such additional real property is:

(i) contiguous or adjacent to the real property herein described or to any real property contiguous or adjacent to such additional real property; and

(ii) to be subdivided by Declarant, its successors or assigns, pursuant to a plat filed of record in Kerr County, Texas, indicating that such additional property will constitute an addition to HIDDEN HILLS; and

(iii) to be developed by Declarant in a manner consistent with the concept contemplated by this Declaration.

Such additional real property may become subject to this Declaration by Declarant who may, without the consent of any Owner, which consent is expressly waived by each Owner, at any time and from time to time, add to HIDDEN HILLS and to the concept hereof any such property which it presently owns or which it may hereafter own, by filing of record a supplement to this Declaration, which shall extend the concept of the covenants, conditions and restrictions of this Declaration to such additional real property; provided, however, that such supplement may contain such complementary additions and modifications of the different character, if any, of the added properties and as are not inconsistent with the concept of this Declaration. In no event, however, shall such supplement modify or add to the covenants established by this Declaration. Declarant may make any such addition even though at the time such addition is made, Declarant is not the owner of any portion of the property described herein. Each supplement may designate the number of separate parcels or tracts comprising the properties added or such designation may be deferred to further and subsequent supplements as herein provided. Each such separate parcel or tract shall constitute a Parcel or Tract within the meaning of this Declaration.

8. "Roads" shall mean the roads and easements for ingress and egress established, shown and created by and on the Plat of the Property, and each Owner, and such Owners' tenants, guests and invitees, shall have the right and easement of use and enjoyment in and to the Roads in common with other Owners and their guests, tenants and invitees, which right and easement shall be appurtenant to such Owner's Tract.

Architectural Control

1. Declarant shall designate and appoint an Architectural Control Committee consisting of not less than three (3) persons which shall serve at the pleasure of Declarant. After Declarant has conveyed to third parties seventy-five percent (75%) of the acreage or platted lots in the Property whichever is achieved first, the Architectural Control Committee shall serve at the pleasure of the Board. Members of the Board may serve on the Architectural Control Committee.

2. The Architectural Control Committee must review and approve in writing the construction of any building, fence or other structure and any exterior addition, change, or alteration in any building, fence or other structure.

3. To obtain approval to do any of the work described in Paragraph 2 immediately above, an Owner must submit an application to the Architectural Control Committee showing the plans and specifications for the proposed work, which plans and specifications shall detail the nature, shape, height, materials, colors and location of the proposed work.

4. The Architectural Control Committee shall review applications for proposed work in order to (i) ensure conformity of the proposal with these covenants, conditions, and restrictions, and (ii) ensure harmony of external design in relation to surrounding structures and topography. An application can be rejected for providing insufficient information. The Architectural Control Committee shall have broad, discretionary authority to interpret and apply these standards. In rejecting an application, the Architectural Control Committee should detail the reasons for rejection and suggest how the applicant could remedy the deficiencies.

5. If the Architectural Control Committee fails either to approve or reject an application for proposed work within sixty (60) days after submission, then Architectural Control Committee approval shall not be required, and the applicant shall be deemed to have fully complied with this Article.

6. The members of the Architectural Control Committee shall not be entitled to compensation for nor liable for damages, claims or causes of action arising out of, services performed pursuant to this Article. Any two members of the Architectural Control Committee may approve or disapprove any matter before the Architectural Control Committee. The Architectural Control Committee may for good cause shown approve variances as to any covenant, condition or restriction but such variance shall require approval of a majority of the members of the Architectural Control Committee. The determination and decision by the Architectural Control Committee as to whether a variance should be granted shall be final and binding on all Owners, and neither the Architectural Control Committee nor any of its members shall be liable for damages, claims or causes of action arising out of any decision or action performed or taken hereunder. The Architectural Control Committee may consider in granting or denying any variance the nature of the use of the land, the structure to be constructed, the topography of the land, land use and structures on surrounding areas, and the effect, if any, of the variance on the appearance of the completed structure. The Architectural Control Committee may impose such conditions as it deems appropriate in granting any such variance. Any such variance, if granted, shall apply only to the particular property and situation specified, and shall not amend this Declaration, or any provisions hereof nor shall it be a variance as to any other property or situation.

Exterior Maintenance/Roads/Assessments

1. If any Owner of any Tract or Parcel fails to maintain the Tract or Parcel in a neat and orderly manner, the Declarant or the Architectural Control Committee shall have the right, through its agents and employees, to enter the Tract or Parcel in order to repair, maintain, and restore the Tract or Parcel, including landscaping, and the exterior of any building and other improvements located on the Tract or Parcel, all at the expense of the Owner. Such expense shall be an assessment against such Owner and such Owner's Tract(s) to the same extent as provided in this Article 3 for other assessments.

2. The Declarant has dedicated and created the Roads under and by the Plat and upon the sale and transfer of the first Tract Declarant will convey the Roads to the Association, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility easements and mineral interests outstanding and of record in Kerr County, Texas.

3. The Roads shall be jointly used by the Owners for roadways, walkways, ingress and egress, parking of vehicles, loading and unloading of vehicles, for driveway purposes, and for the convenience and comfort of guests, invitees and tenants of the Owners and occupants of the Property, and as such shall be private roads, not dedicated to the public. Persons using the Roads in accordance with this Agreement shall not be charged any fee for such use. The Roads shall be used with reason and judgment so as not to interfere with the primary purpose of the Roads which is to provide access for the Owners and their guests, invitees and tenants for ingress and egress and for the servicing and supplying of the Property. The foregoing shall not be construed as forbidding the granting of appropriate and proper easements for installation, repair and replacement of utilities and other proper services necessary for the orderly development and occupancy of the Property and the buildings erected upon the building areas on the Property.

4. A. The Roads shall be owned and held subject to the terms hereof and shall be maintained in good condition and repair, said maintenance to include without limiting the generality of the foregoing, the following:

- i. Maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability.
- ii. Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition.
- iii. Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines.
- iv. Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as may be or have been installed by Declarant, if any, or otherwise authorized by the Association.
- v. Maintaining the front gate in a good condition and state of repair; and
- vi. Maintaining all landscaping areas and making such replacements of shrubs and other landscaping as is necessary.

All portions of the Roads shall be maintained as outlined above at the expense of the Association; provided that the Owners, as Members of the Association shall pay assessments for, and shall share in, such expenses on an equal basis ("Owner's Pro Rata Share") (i.e., divided equally among the Owners no matter the number of Tracts owned). The initial Pro Rata Share shall be \$350.00. A change in such Pro Rata Share of \$350.00 shall require a majority vote ("Owner Approval") of the Owners at a meeting of the Association Members, duly called and at which a quorum of Members shall be present in person or by proxy, as may be more particularly provided in By-Laws. Each Owner shall have one (1) vote no matter the number of Tracts owned.

B. The arrangement, improvement and location of the Roads shall not be changed except by Owner Approval at an annual or special meeting held as provided in A. above. By Owner Approval a third party may be appointed as an agent to maintain the Roads in a manner as above outlined and such third party may receive for such agency a fee to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the Owners through the Association.

C. Each Owner hereby covenants and agrees and shall be deemed to covenant and agree to pay such maintenance assessments and charges for the improvement, repair and maintenance of the Roads, and as may be fixed, established and collected from time to time pursuant to the provisions hereof. The assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person or persons who owned the Property at the time when the assessment fell due.

D. Subject to Owner Approval the Board shall make an estimate of the net charges and maintenance expenses to be paid during subsequent years including a portion of anticipated repair and maintenance costs in the future (the "Estimated Cash Requirement"). The Estimated Cash Requirement shall be submitted to the Owners at a meeting of Members of the Association and upon Owner Approval shall be assessed to each Owner according to the Pro Rata Share of such Owner. If said sum estimated proves inadequate for any reason, including nonpayment of any Owner's assessment, a further assessment may be assessed which shall be assessed to the Owner's in the same manner as the Estimated Cash Requirement. Each Owner shall be obligated to pay assessments made pursuant to this paragraph. All funds collected hereunder shall be expended for the purposes designated herein. The time and place for payment of assessments shall be established by the Board. There is created by recordation of this Declaration a present and continuing lien upon each part and parcel of the Property to secure the payment of all assessments levied pursuant to the terms hereof. Each assessment shall be a separate, distinct and personal debt and obligation of the Owner against whom the same is assessed. Any delinquent assessment shall, after thirty (30) days' delinquency, bear interest from original due date at the highest lawful rate. In the event of a default or defaults in payment of any assessment or assessments, and in addition to any other remedies herein or by law provided, any non-defaulting Owner may enforce each such obligation as follows:

(i) By suit or suits at law by the Association to enforce each assessment obligation; each such action to be authorized by a the Board and any judgment rendered in any such action to include a sum for reasonable attorneys' fees.

(ii) At any time an Owner is in default in paying such assessments, the Board may give a notice to the defaulting Owner, which notice shall state the date of the delinquency and the amount of the delinquency, and make a demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the notice of assessment may be recorded against the Tract(s) of such delinquent Owner. Such notice of assessment shall state (1) the name of the record Owner, (2) a

description of the Tract(s) against which the assessment is made, (3) the amount claimed to be due and owing, (4) that the notice of assessment is made pursuant to the terms of this Declaration (giving the date of execution and the date, book and page references of the recording hereof in the County of Kerr), and (5) that a lien is claimed against the described Tract(s) in an amount equal to the amount of the stated delinquency. The lien herein specified shall attach to such delinquent Owner's Tract(s). Each default shall constitute a separate basis for a notice of assessment or a lien. Any such lien may be enforced by action in court and attorneys' fees shall be payable in connection therewith.

(iii) For value received and to secure payment of said assessment, each Owner by acceptance of a conveyance of such Owner's Tract(s) subject to this Declaration conveys such Owner's Tract(s) to David L. Jackson, Trustee, and grants to said Trustee a power of sale, in trust for the benefit of the Association under and pursuant to the terms hereof. If such Owner defaults in the payment of any assessment and the default continues after the Association gives such Owner notice of the default and the time within which it must be cured, as may be required by law, then the Association may request the Trustee to foreclose this lien by non-judicial foreclosure under and in accordance with the Texas Property Code, as amended; in which case they or their agent shall give notice of the foreclosure sale as provided by the Texas Property Code, as then amended, and the Association may purchase the Tract(s) of such delinquent Owner at any foreclosure sale by offering the highest bid and then have the bid credited on the delinquent assessment. In case of any sale hereunder, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder, all statements of facts, or other recitals therein made as to the nonpayment of money secured, or as to the request to the Trustee to enforce this trust, or as to the proper and due appointment of any substitute trustee, or as to the advertisement of sale, or time, place, and manner of sale, or as to any other preliminary fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true. At the option of any non-defaulting Owner with or without any reason, a successor substitute trustee may be appointed without any formality other than a designation by the Association in writing of a successor or substitute trustee, who shall thereupon become vested with and succeed to all the powers and duties given to the Trustee herein named, the same as if the successor or substitute trustee had been named original Trustee herein; and such right to appoint a successor or substitute trustee shall exist as often and whenever the Association desires. The delinquent Owner will pay all reasonable attorney's fees and expenses which may be incurred by the Association and any non-defaulting Owner or Trustee, in enforcing the terms hereof, or in any suit to which they may become a party where this Declaration is in any manner involved and all expenses incurred in presenting a claim against the estate of a decedent or a bankrupt.

4. The Association shall obtain public liability insurance with limits of not less than \$100,000/\$300,000 covering the Roads.

5. Each and every change or burden imposed or that may be imposed upon the Tracts or any part thereof pursuant to any provision of this Declaration, is, and shall at all times be senior and prior to the lien or charge of any mortgage or deed of trust affecting the Property or any part thereof, or any improvements now or hereafter placed thereon except as provided in subparagraph 12 in this Article; but a breach of any of the covenants or conditions hereof shall not defeat or render invalid the lien or charge of any such mortgage or deed of trust.

6. If any Owner shall sell or transfer or otherwise terminate his interest as owner in a Tract, then from and after the effective date of such sale, transfer or termination of interest, such party as the case may be shall be released and discharged from any and all personal obligations, responsibilities and liabilities under this Declaration as to such Tract, except those which have already accrued as of such date.

7. It is expressly understood that the parties are not dedicating the Roads for use by the general public, but only for the Owners, but by Owner Approval the Roads may be dedicated.

8. Declarant, for each Tract owned by it within the Property, hereby covenants and agrees, and each purchaser of any Tract by acceptance of a deed therefor, whether or not it be deemed to covenant and agree, to pay to the Association the assessments and charges specified in this Declaration.

9. Written notice of the assessment shall be delivered or mailed to every Owner subject thereto.

10. The Board shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer or agent of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

11. Assessments shall be due on the date specified in the notice by the Board. If any assessment or part thereof is not paid within 30 days after the delinquency date, the unpaid amount of such assessment shall bear interest from the date of delinquency at the rate of 12% per annum, and the Association may, at its election, bring an action at law against the Owner personally obligated to pay the same in order to enforce payment and/or to foreclose the lien against the Tract(s) subject thereto and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action.

12. The lien of the assessments provided for herein shall be subordinate and inferior to the lien or equivalent security interest of any first mortgage or deed of trust now or hereafter placed upon a Tract subject to assessment if the mortgage or deed of trust is placed upon the Tract at a time when no default has occurred and is then continuing in the payment of any portion of the assessment for such Tract; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the time when the holder of any first mortgage or deed of trust comes into possession of a Tract under the provisions of the mortgage, by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure or the time when a purchaser at any such foreclosure sale comes into possession, except for claims for a share of such charges or assessments resulting from a reallocation of such charges or assessments to all Tracts including the mortgaged Tract in question. Such sale shall not relieve such Tracts from liability for the amount of any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

13. The omission of the Board, before the expiration of any year, to give notice of the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, for that or any subsequent year, but the assessment shall continue until notice is given.

#### ARTICLE 4

##### Use Restrictions and Architectural Standards

1. All Tracts and Parcels shall be used exclusively for single-family residential purposes and the other associated uses permitted hereunder. No planes, trailers, boats, campers, abandoned cars or trucks shall be parked or housed outside garages or in carports and parking spaces, except as otherwise provided in this Article.

2. No professional, business or commercial activity to which the general public is invited shall be conducted on any Tract or Parcel.

3. No building shall be erected on any Tract other than a single-family dwelling, a guest home, a detached garage and such appurtenant structures as may be approved from time to time by the Architectural Control Committee. All buildings and other structures shall be of new construction. In no event shall any prefabricated buildings, mobile home, modular home, or existing residences or garages be moved onto any Tract. Modular, trailers, campers, recreational vehicles or mobile homes shall be prohibited.

4. No guest home or other structure designed to be used a residential structure shall be constructed prior to the construction of the main residential dwelling.

5. The main residential dwelling constructed on any Tract must have a ground floor area of not less than 2400 square feet, exclusive of open or screened porches, terraces, patios, driveways, enclosed swimming pools, carports, and garages. The exterior building design shall be ranch and all exterior colors, textures, and materials must be compatible not only with this specified design motif, but also with adjacent and surrounding Tracts and the over-all appearance of the Property. The exterior walls of all residential buildings shall be constructed with masonry, rock, stucco, brick or masonry veneer for at least 75% of the total exterior wall area or other materials as may be approved by the Architectural Control Committee, in its sole discretion. Wall materials used on all Tracts shall be restricted to those types and colors approved by the Architectural Control Committee. The surface of all roofs of principal and secondary structures including garages, guest houses, and barns shall be of slate, stone, concrete tile, clay tile or other tile of a ceramic nature or they may be of a metal of a style and design and color approved by the Architectural Control Committee. All composition, wood-shingle or built-up roofs are strictly prohibited.

6. No structure shall be built closer to any perimeter property line of any Tract or Parcel than one hundred (100) feet. Notwithstanding the foregoing, no structures on any Tract or Parcel shall be located within two hundred (200) feet from the Roads to such Tract or Parcel.

7. No Parcel or Tract may be subdivided in any manner that would result in any portion thereof consisting of less than twenty-five (25) acres.

8. No noxious or offensive activity shall be conducted on any Tract that may be or may become an annoyance or nuisance to other Owners within the Property.

9. Unless approved for residential use by the Architectural Control Committee, no structure other than a main residential dwelling or guest home shall be used on any Tract at any time as a residence, either temporarily or permanently.

10. No signs of any type shall be allowed on any Tract which can be seen from the Roads unless the same shall have been approved by the Architectural Control Committee.

11. No oil well drilling, development, or refining and no mineral quarrying or mining operations of any kind shall be permitted on any Tract.

12. No Tract shall be used or maintained as a dumping ground for rubbish or trash. All garbage and other waste shall be kept in sanitary containers. There shall be no burning or incineration of trash or garbage. Leaves, brush or other debris may be burned only in proper containers and in

accordance with the rules and regulations promulgated from time to time by the Architectural Control Committee and the Fire and Brush Committee.

13. No individual sewage-disposal system shall be permitted on any Tract or Parcel unless the system is designed, located and constructed in accordance with the requirements, standards, and recommendations of the designated official of the governmental agency or body having jurisdiction. Written approval of the system as installed shall be obtained from such official.

14. In the interest of public health and sanitation, and so that the above-described Property and all other land in the same locality may be benefited by a decrease in the hazards of stream pollution and by the protection of water supplies, recreation, wild life, and other public uses of such property, no Tract or Parcel may be used for any purpose that would result in the pollution of any waterway that flows through or adjacent to such Tract or Parcel by refuse, sewage, or other material that tends to pollute the waters of any such stream or streams or otherwise impair the ecological balance of the surrounding lands.

15. The raising or keeping of swine or hogs on the Property is prohibited. Cattle, sheep, goats or other livestock or their offspring may be kept on the Property in accordance with such reasonable rules and regulations as may be promulgated from time to time by the Architectural Control Committee. Owner may not keep more than three (3) horses for each twenty-five (25) acres owned by Owner. All cattle, sheep, goats, horses or other livestock allowed on the Property under the terms of these Restrictions must be maintained within proper fences, pens, corrals and/or barns, and under such conditions as may be designated and approved by the Architectural Control Committee. Domestic pets may be kept on the Property provided that the same are maintained within an approved enclosure or controlled on a leash or similar-restraint.

16. Hunting shall be prohibited on Tracts of less than 150 acres. The only exception shall be in accordance with the game management program if established by the Association and that will be regulated and strictly controlled by the Game Management Committee as same may be established by the Association to administer the game management program.

17. Berms, dams, other impoundment structures, low water bridge crossings and the like may be constructed provided the same do not impede the flow of water in creeks or streams on the Property and otherwise comply with all applicable governmental laws and regulations, if any.

18. After the completion of construction of each residential dwelling on a Tract the Owner of such Tract shall have 90 days after the completion date to construct the driveway from the Roads for a minimum of 200 feet. The driveway shall be paved with the same or superior materials as the Roads.

19. No chain link or barbed wire fences shall be erected on any Tract. All perimeter fencing shall be of stock type with steel post net wire and smooth wire on top with all corners and braces to be painted green to match all T Posts. High fences will only be permitted around interior areas and not visible from any of the Roads. All fencing materials and styles must be approved by the Architectural Control Committee.

20. Interior access gates to a Tract shall be allowed and all materials, designs and styles shall be compatible with the overall appearance of the Property and shall be approved by Architectural Control Committee.

21. No mercury vapor security lights shall be allowed. All exterior landscape and decorative lighting shall be approved by Architectural Control Committee. Nothing shall be done in any part of the Property, nor shall any outside lighting or loudspeakers or other sound-producing devices be

used, which, in the judgment of the Architectural Control Committee, may be or become an unreasonable annoyance or nuisance to the other Owners. Said Architectural Control Committee's decision as to all such matters shall be conclusive and binding on all parties.

## ARTICLE 5

### Creation

1. The Owners shall be members of the Association. Each Owner of a Tract or Parcel, including Declarant, shall automatically be a member of the Association. Association membership shall be appurtenant to ownership of a Tract or Parcel.

### Transfer of Membership

2. Association membership shall only be transferred upon the conveyance of a Tract or Parcel in fee by an Owner and membership shall not be assigned, pledged, or transferred in any other way. Any attempt to make a transfer prohibited hereby shall be void.

### Management of Association

3. The Association may be incorporated as a nonprofit corporation. The Association shall be managed by the Board pursuant to the procedures set forth in the Association's Articles of Incorporation and Bylaws, subject to the provisions of this Declaration.

### Membership Voting, Elections, and Meetings

4. Each Owner shall have one vote for all of the land owned by such Owner, e.g., if an Owner owns several Tracts such Owner shall have only one vote. All owners of undivided interests in any Tract or Parcel shall be considered as a single Owner for the purposes of exercising voting rights hereunder with the designated "voter" being authorized in writing by a majority of such Owners. There shall be at least one meeting of the membership each year. At that meeting, the Owners shall elect a Board consisting of three (3) or more directors, vote on any other matters the Board chooses to place before the membership, and discuss any matter of Association business that the Board or any Owner wishes to bring before the entire membership. Quorum and notice requirements for the Association meetings shall be as set forth in the Bylaws of the Association. Notwithstanding any contrary provision contained herein, until such By-Laws are enacted or the Declarant has conveyed to third parties 75% of the acreage or platted lots, whichever shall last occur, Declarant shall appoint the Directors who need not be Members of the Association.

### Duties and Power of Board

5. Through the Board, the Association shall have the following powers and duties:
- a. To adopt Bylaws, rules and regulations to implement this Declaration;
  - b. To enforce this Declaration and/or the Bylaws, rules and regulations of the Association;
  - c. To elect officers of the Board and select members of the Architectural Control Committee when that power devolves to the Board;
  - d. To delegate its powers to committees, officers, or employees;

- e. To prepare a balance sheet and operating income statement for the Association and deliver a report to the membership at its annual meeting;
- f. To assess an Owner for costs incurred or to be incurred by the Association in enforcing this Declaration and any rules and regulations promulgated by the Association;
- g. To file liens against Owner's Tract or Parcel because of nonpayment of any assessment duly levied and to foreclose on those liens;
- h. To receive complaints regarding violations of this Declaration and/or the Bylaws, the rules and regulations of the Association;
- i. To hold hearing(s) to determine whether to discipline Owners who violate this Declaration and/or the Bylaws, the rules and regulations of the Association;
- j. To give reasonable notice (or such notice as may be otherwise provided in the By-Laws) to all Owners of all annual meetings of the membership and all discipline hearings;
- k. To hold regular meetings of the Board at least annually.
- l. To pay for repair and maintenance charges for the Roads, taxes, and other charges which shall properly be assessed or charged against the Roads, legal and accounting services, policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or guests, invitees or tenants), incident to the operation of the Association and the use of the Roads in the amount prescribed by the Board, and any other costs and expenses incurred under the terms of this Declaration; and
- m. To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association.

## ARTICLE 6

### General Provisions

#### Enforcement

1. The Declarant or the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations imposed by this Declaration. Failure to enforce any covenant or restriction shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. All waivers must be in writing and signed by the party to be bound.

#### Severability

2. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

#### Covenants Running With the Land

3. These easements, restrictions, covenants, and conditions are for the purpose of protecting the value and desirability of the Property. Consequently, they shall run with the Property and shall be binding on all parties having any right, title, or interest in the Property in whole or in part.

and their heirs, successors, and assigns. These easements, covenants, conditions, and restrictions shall be for the benefit of the Property, each Tract or Parcel, and each Tract or Parcel Owner.

#### Duration and Amendment

4. The covenants, conditions, and restrictions of this Declaration shall be effective for a term of twenty (20) years from the date this Declaration is recorded, after which period the covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years unless terminated by Owner Approval in writing. Declarant shall have and hereby reserves the right, at any time and from time to time, before it has conveyed to third parties 75% of the acreage or platted lots in the Property, which is achieved first, without joinder or consent of any Owner or other party, to amend this Declaration, by an instrument in writing, duly executed and acknowledged by Declarant only, and recorded in the office of the County Clerk of Kerr County, for the purpose of correcting any typographical or grammatical error, or any ambiguity or inconsistency appearing herein as determined solely by Declarant, in its sole discretion to be deemed necessary or appropriate for the benefit of the overall development. The covenants, conditions, and restrictions of this Declaration may be amended by Owner Approval. Neither any amendment nor any termination shall be effective until recorded in the Real Property Records of Kerr County, Texas, and all requisite governmental approvals, if any, have been obtained.

#### Attorney's Fees

5. If any controversy, claim, or dispute arises relating to this instrument, its breach, or enforcement, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees, and costs.

#### Liberal Interpretation

6. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the Property.

#### Headings

The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

#### Notices

Any notice required to be given to any Member or Owner or otherwise under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mails, postage prepaid, addressed to the last known address of the person to whom it is addressed, as appears on the records of the Association at the time of such mailing.

#### Disputes

In the event of any dispute, disagreement, controversy or claim arising out of, or related to, this Declaration and/or any act or omission of any party hereto, the parties agree that such dispute, disagreement, controversy or claim shall be determined by arbitration under the commercial arbitration rules of the American Arbitration Association, which shall be commenced at any time by either party by filing a demand for arbitration upon the other party or parties. The arbitrator shall be selected by the mutual approval of the parties and if no mutual approval is achieved within thirty (30) days, any party may petition a District Judge sitting in Kerr County, Texas, to appoint such arbitrator. The decision of

the arbitrator shall be final and binding on all parties. The statute of limitations, estoppel, waiver, laches and similar doctrines which would otherwise be applicable in any action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes

This Declaration is executed this 28<sup>th</sup> day of April, 1998.

FALCON SEABOARD DIVERSIFIED,  
INC.

BY: Kenneth A. Barfield  
Name: Kenneth A. Barfield  
Title: Ex. Vice President

"DECLARANT"

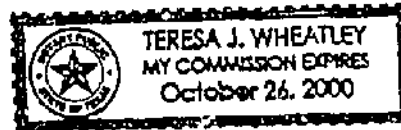
THE STATE OF TEXAS §

COUNTY OF Texas §

This instrument was acknowledged before me on April 28, 1998, by KENNETH A. BARFIELD, on behalf of FALCON SEABOARD DIVERSIFIED, INC., a corporation, on behalf of said corporation.

Teresa J. Wheatley  
Notary Public, State of Texas

RE\FALCON DECLARATION



Return to:  
✓ Mike Lindley The Land Company  
601 Main St.  
Kerrville, TX 78028

FILED FOR RECORD  
at 11:45 a'clock .....A.....M

APR 29 1998

BILLIE G. MEEKER  
Clerk County Court, Kerr County, Texas  
Billie G. Meeker Deputy

RECORD Real Property  
VOL 948 PG 381  
RECORDING DATE

APR 30 1998



*Belle G. Meeker*  
COUNTY CLERK, KERR COUNTY, TEXAS

Provisions here which restrict the sale, rental or use of the described prop-  
erty because of color or race is invalid and unenforceable under Federal Law  
THE STATE OF TEXAS }  
COUNTY OF KERR }  
I hereby certify that this instrument was FILED in the File Number Sequence  
on the date and at the time stamped hereon by me and was duly RECORDED  
in the Official Public Records of Real Property of Kerr County, Texas on

APR 30 1998



*Belle G. Meeker*  
COUNTY CLERK, KERR COUNTY, TEXAS

RECORDER'S NOTE

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