

**DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
FALCON HIGHLANDS FILING NO. 1**

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**DECLARATION  
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FOR  
FALCON HIGHLANDS FILING NO. 1**

Tamlin Ventures, Limited Liability Company, a Colorado limited liability company (called the "Declarant" in these Covenants) is the sole owner of property described as follows:

Falcon Highlands Subdivision Filing No. 1.

Declarant desires to place protective covenants, conditions, restrictions, reservations, liens and charges upon the Subdivision to protect the Subdivision's high quality mountain residential living environment and also to protect its desirability, attractiveness and value. Consequently, the Subdivision is hereby subjected to the following easements, covenants, restrictions and conditions (collectively referred to as "Covenants"), all of which shall run with the Subdivision and shall be binding upon all parties having or acquiring any right, title or interest in it or any part thereof, and shall inure to the benefit of each Owner thereof.

**ARTICLE I**

**COVENANTS TO PRESERVE THE RESIDENTIAL  
CHARACTER OF THE SUBDIVISION**

Section 101. Property Uses. All Lots and Building Sites in the Subdivision shall be used exclusively for private residential purposes. No dwelling erected or maintained within the Subdivision shall be used or occupied for any purpose other than for a single-family dwelling. No business, profession or other activity conducted for gain shall be carried on or within any Lot or Building Site. One caretaker unit per Lot shall be permitted if approved by the Approving Authority.

Section 102. Structures. No Structure shall be erected within the Subdivision except single-family dwellings and those Accessory Buildings and accessory Structures which have been approved by the Approving Authority. No Structure shall be erected within the Subdivision other than a dwelling with an attached garage for a minimum of two cars. No Accessory Building, trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. No other Structure may be placed on any Lot or Building Site before completion of the dwelling upon such Lot or Building Site except with the permission of the Approving Authority.

Section 103. Construction Type. All construction shall be new. No building previously used at another location nor any building or

Structure originally constructed as a mobile dwelling or Structure may be moved onto a Lot or Building Site except as expressly hereinafter provided in Section 107 for temporary construction, sales or administration buildings.

Section 104. Storage. No building shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement.

Section 105. Completion of Work. A Structure shall not be occupied in the course of original construction until substantially completed. All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 106. Construction Completion. The exterior of all buildings or other Structures must be completed within one year after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. For purposes of this Section 106, "commencement of construction" for a single-family dwelling is defined as the obtaining of necessary building permits and the pouring of a foundation, and for all other Structures is defined as the undertaking of any visible exterior work. If construction is not completed within one year after commencement, or if construction shall cease for a period of sixty (60) days without permission of the Approving Authority, the Approving Authority will give the Owner thereof Due Notice of such fact, and if construction on such Structure is not diligently commenced within thirty (30) days after such notice, the unfinished Structure or unfinished portion thereof shall be deemed a nuisance and shall be removed forthwith by and at cost of the Owner.

Section 107. Construction or Sales Offices. Temporary buildings for construction or administration purpose or for sales offices may be erected or maintained only by Declarant or with the permission of the Approving Authority. Model homes may be used and exhibited only by Declarant or with the permission of the Approving Authority. Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for these purposes.

Section 108. Drilling Structures. No derrick or other Structure designed for use in or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of any Lot, nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under any Lot. Declarant and the Falcon Highlands Metropolitan District ("District") reserve the right to construct such utility structures and drill for water as is necessary for providing utilities to the property serviced by the District.

Section 109. Easements. There are hereby reserved to Declarant

and District, its successors and assigns, perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the seven and one half (7-1/2) foot strips along and adjoining each rear Lot Line of each Lot, and each of the seven and one half (7-1/2) foot strips along and adjoining each side Lot line of each Lot for use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes.

Section 110. Underground Utilities. All utilities except lighting standards and customary service devices for access, control or use of utilities shall be installed underground.

Section 111. Landscaping and Common Area. The Approving Authority may require Owners of Lots to perform maintenance in such a way as to preserve the uniform and harmonious visual appearance of the Maintenance Area. There are hereby reserved to Declarant and granted to the District, their successors and assigns, perpetual, alienable and divisible easements over, under, in and across all Maintenance Area for the purpose of Landscaping pursuant to this Section 111.

**ARTICLE II**

**DENSITY, SETBACK AND QUALITY STANDARDS**

Section 201. Limitation on Dwellings. No more than one dwelling unit shall be erected or maintained within any Lot or Building Site.

Section 202. Setback Areas. Except with approval of the Approving Authority no building, porch, eaves, overhang, projection or other part of a building shall be located as follows:

- a. as to front Lot Line, within twenty-five (25) feet of a front Lot Line; except Cul-de-sac Lots 2 through 5, 22 through 24, 27 through 29, 32 through 34, 70 through 74, 117 and 118 shall have a setback area as set forth on the Subdivision plat map,
- b. as to rear Lot Line, within fifteen (15) feet for one-half-acre Lots (Lots 1 through 35, 67 through 82, and 105 through 126) and within ten (10) feet for one-quarter-acre Lots (Lots 36 through 66, and 83 through 104) of a rear Lot Line,
- c. as to side Lot Line, within ten (10) feet for one-half-acre Lots (Lots 1 through 35, 67 through 82, and 105 through 126) and within five (5) feet for one-quarter-acre Lots (Lots 36 through 66, and 83 through 104) of any side Lot Line.

All construction must also conform to the building code, zoning code,

and subdivision regulations of El Paso County, which regulations may vary from the provisions of this Section and other Sections of these Covenants.

Section 203. Dwelling Area Requirements. No dwelling shall be erected which, exclusive of basements below garden level, porches, patios, covered but unenclosed areas, garages and any attached Accessory Building, has a gross livable floor area of less than 1,800 square feet if a single-story dwelling, or less than 2,200 square feet if a multi-level dwelling.

Section 204. Height Restrictions. No dwelling shall be allowed to exceed the thirty-five (35) feet in height. No dwelling or other Structure shall be more than two stories in height except with the prior written permission of the Approving Authority. Height shall be measured from the highest original ground contour at any point adjoining the foundation perimeter of the Structure to the highest point on the Structure exclusive of standard chimneys. Original ground contour shall mean the ground contour established during development of the Lots and existing immediately prior to commencement of construction (as defined in Section 106) of any dwelling or other Structure. The foregoing is expressly intended to permit a two-story dwelling with a walkout basement.

Section 205. Roofs. All roof areas shall be of composite shingles or other material approved by the Approving Authority. The recommended choice of the Approving Authority shall be all roofing materials shall be fireproof, unless the Lot Owner requesting a variance which can provide wildfire mitigation to the satisfaction of the Approving Authority.

Section 206. Accessory Buildings. Any Accessory Building or Structure shall be of the same colors and shall harmonize in appearance with the dwelling situated on the same Lot. Approval of all Accessory Buildings and Structures must be obtained from the Approving Authority before commencement of construction.

Section 207. Antennae and Roof Projections. No aerial, antenna, satellite dish or microwave system for reception or transmission of radio, television or other electronic signals, or other roof projection, shall be maintained on the roof or any other exterior location of a building or Lot unless approved by the Approving Authority. Digital satellite system dishes not to exceed eighteen inches (18") shall be permitted at locations approved by the Approving Authority.

Section 208. Owner Maintenance. Each Owner shall maintain the exterior of the dwelling, any Accessory Building and all other Structures, lawns and Landscaping, walks and driveways, in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Exterior building surfaces and trim



shall be repainted periodically and before the surfacing becomes weather-beaten or worn off.

Section 209. Rebuilding or Restoration. Any dwelling or building which may be destroyed in whole or in part by fire, windstorm or from any other cause or act of God must be rebuilt or all debris must be removed and the Lot restored to a sightly condition, such rebuilding or restoration to be completed with reasonable promptness and in any event within six (6) months from time the damage occurred.

Section 210. Design Standards. Declarant may, from time to time, adopt Design Standards further defining the architectural and development criteria for the Subdivision, the approval processes and other related matters. All Accessory Buildings, Structures and other improvements in the Subdivision must also comply with these Design Standards.

Section 211. Fences. No fences or other barriers shall be constructed unless previously approved by the Approving Authority. Any fencing approved by the Approving Authority shall be in accordance with the Design Standards.

### ARTICLE III

#### **AMENDMENT AND DEVELOPMENT RIGHTS**

Section 301. Interpretation. Recording of amendments to these Covenants in the office of the Clerk and Recorder of El Paso County shall automatically:

(a) Vest in each existing Lot Owner any additional rights or interest appurtenant to his Lot; and

(b) Vest in each existing First Mortgagee a perfected security interest in the additional rights or interest appurtenant to the encumbered Lot.

Upon the recording of an Amendment to the Covenants, the definitions used in these Covenants shall automatically be extended to encompass and to refer to the Subdivision or Property. Reference to these Covenants in any instrument shall be deemed to include all Amendments to the Covenants without specific reference thereto.

Section 302. Maximum Number of Lots. The maximum number of Lots in the Subdivision shall not exceed the greater one hundred twenty six (126) or the maximum number of Lots allowed by any governmental entity having jurisdiction over the Development.

Section 303. Transfer of Expansion and Development Rights. The Declarant rights created or reserved under this Covenants for the

benefit of Declarant may be transferred to any person by instrument describing the rights transferred or recorded in the records of El Paso County, Colorado.

#### ARTICLE IV

#### **PROTECTIVE COVENANTS**

Section 401. Water and Sewer. Dwelling units constructed upon the Lots within the Subdivision shall be served by the Falcon Highlands Metropolitan District. The location of such water and sewer lines shall be subject to review and approval by the Falcon Highlands Metropolitan District.

Section 402. Landscaping. All surface areas disturbed by construction shall be returned promptly to their natural condition. Any and all landscaping, other than returning surface areas to their natural condition, must be consented to in writing by the Approving Authority. A minimum of twenty five percent (25%) of each Lot shall be revegetated in material approved in the landscape plan within one year of completion of construction or within six (6) months after closing with the first Owner, whichever occurs first. All landscaping shall comply with Section 408 and 418 below.


Section 403. Trade Names. No word, name, symbol or combination thereof shall be used to identify for commercial purposes any structure, business or service located on or conducted in connection with a Lot or the Development, unless the same shall have been first approved in writing by the Approving Authority.

*Archery?*  
Section 404. Natural State. No hunting, target practice, discharge of firearms or disturbance of the natural state of the Development, including the removal of living trees, plants, shrubs, bushes, sagebrush, grass or topsoil, is permitted without the consent in writing of the Approving Authority.

Section 405. Restrictions on Use. No part or parcel of the Lots shall be used except for residential purposes by a single family equivalent group residing in a detached, single-family dwelling and for purposes incidental or accessory thereto, except for sales and/or construction trailers and model homes used by Declarant or its assigns. Determination as to whether uses are incidental or accessory to single-family residential purposes shall be made by the Approving Authority, but under no circumstances shall such incidental or accessory use be construed to permit the carrying on of any trade, business, profession or employment (other than a home occupation as may be permitted under applicable zoning codes).

Section 406. Fireplaces. Wood or coal burning fireplaces or stoves are discouraged on any Lot. Natural gas fireplaces are permitted.

Section 407. Driveways. Driveway design, location, and construction methods shall be approved by the Approving Authority. Driveway surfacing material shall be concrete. The design and construction of driveways shall comply with El Paso County standards and specifications governing driveways. All access driveways shall be constructed at the expense of the Owner whose Lot is served by that particular driveway. Owners shall remain responsible for the maintenance and repair of access driveways to their individual Building Site.

 Each Lot shall be limited in the amount of irrigated landscaping. No Lot shall be permitted to irrigate more than twenty-five hundred (2,500) square feet of lawn area. The westerly one hundred (100) feet of the Subdivision is designated as a "no irrigation" zone in which no irrigation can take place; said no irrigation zone touches a portion of Lots 2 through 4 and 121 through 126.

Section 409. Building and Grounds Conditions. Each Owner shall maintain the exterior of the Structure, any Accessory Building, fence and all other Structures, lawns and Landscaping, walks and driveways, in first class condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. If the Owner fails to properly perform such maintenance, the Approving Authority may, after giving thirty (30) days' written notice, effect such repairs and maintenance as it deems necessary in its judgment to maintain the standards of the Subdivision.

Section 410. Garage Doors. Garage doors shall be kept closed except when being used to permit ingress or egress to or from the garage.

Section 411. Maintenance Equipment. All maintenance equipment shall be stored in an enclosed Structure or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets, which screening must be approved by the Approving Authority.

Section 412. Clotheslines. No outdoor clothes poles, clotheslines and other facilities for drying or airing of clothing or household goods shall be placed within a Lot or Building Site.

Section 413. Swingsets and Play Areas. All swingsets, jungle gyms, slides, sports and play Structures and other similar Structures shall not exceed a height of ten (10) feet and must be approved by the Approving Authority prior to construction or installation of such Structures, and shall be situated on the Lot so as not to obstruct the view from neighboring Lots. The Approving Authority must also approve the design, color and placement of such Structures. All such Structures must be maintained in good repair, including but not

limited to painting, the color of which must be approved by the Approving Authority. No more than one (1) basketball poles shall be permitted on any Lot.

Section 414. Refuse. No unsightly objects or materials, including but not limited to ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefor, shall be stored accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during refuse collections. After a period of two (2) weeks of continued violation of this Section 414, the Approving Authority shall have the right to enter upon the Lot involved and removed such unsightly objects or materials at the expense of the Owner. Such an entry shall not be deemed a trespass and the Owner shall be liable for all costs incurred relative thereto.

Section 415. Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on any Lot or in any living unit or Accessory Building. No annoying lights, sounds or odors shall be permitted to emanate from any living units or Accessory Buildings.

Section 416. Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes shall be located, used or placed on any Structure or within any Lot unless approved by the Approving Authority.

Section 417. Restoration of Lots. Upon completion of any construction on any Lot, the Owner shall restore the portion of the Lot, which will not be landscaped, to the condition which existed prior to such construction (taking into account such construction). The Lot (including the Improvements thereon) shall be in harmony with the surrounding unimproved property. If a certificate of occupancy is issued or actual occupancy of any Lot occurs prior to July 1 of any calendar year, the Owner must complete restoration prior to issuance of the certificate of occupancy or actual occupancy of the Lot, whichever is earlier. If a certificate of occupancy is issued or actual occupancy of the Lot occurs after July 1 of any given year, the Owner must complete the restoration of the Lot on or before July 1 of the following year. If restoration is not completed within the applicable time period, Declarant or the District shall have the right, but not the obligation, to complete said restoration at the expense of the Owner.

Section 418. Weeds. All yards and open spaces and the entire area of every Lot on which no building has been constructed shall be kept free from weeds infected with noxious insects or plant diseases and from weeds which in the reasonable opinion of the Approving

Authority are likely to cause the spread of infection or weeds to neighboring property and free from brush or other growth or trash which in the reasonable opinion of the Approving Authority causes undue danger of fire.

Section 419. Mowing and Pruning. In order to effect insect, weed and fire control and to prevent and remove nuisances, the Owner of any Lot upon which a building has not been constructed shall mow, cut, prune, clear and remove from the premises unsightly brush, weeds and other unsightly growth and shall remove any trash which may collect or accumulate on the Lot.

Section 420. Grading Patterns. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original finish grading except after first obtaining the prior consent and approval of the Approving Authority. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture.

Section 421. Transmitters and Receivers. No satellite disk, electronic or radio transmitter of any kind other than garage door openers and remote control devices for televisions, stereos, video cassette recorders, cellular telephones and similar equipment shall be operated in or on any Structure or Lot, except that a DSS disk shall be permitted if reasonably screened from view and approved by the Approving Authority.

Section 422. Animals. No animals except domesticated birds or fish and other small domestic animals permanently confined indoors and except an aggregate of four (4) domesticated dogs or cats shall be maintained in or on any Lot within the Subdivision and then only if kept as pets. No animal of any kind shall be permitted which in the opinion of the Approving Authority makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Subdivision for any commercial purposes. All pets must be kept under an Owner's control at all times inside or outside Owner's Lot.

Section 423. Trailers, Campers, etc. No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor home, any towed trailer unit or truck shall be parked overnight on any street or within any Lot or Building Site except if screened from view and approved by the Approving Authority.

Section 424. Inoperative Vehicles. No unused, stripped down, partially wrecked or inoperative motor vehicle or part thereof shall be permitted to be parked on any street or on any Lot except in a completely enclosed Structure such as a garage. An unused vehicle shall be any vehicle which is not properly licensed or registered or has remained immobile for more than one week as determined by the

Approving Authority.

Section 425. Vehicle Repairs. No maintenance, servicing, repair, dismantling, sanding or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed structure which screens the sight and sound of the activity from adjoining streets and from neighboring property.

Section 426. Signs. The only signs permitted on any Lot or Structure shall be:

- (a) One sign of a customary size for offering the signed property for sale;
- (b) Identification of the address of any dwelling consistent with the approval of the Approving Authority;
- (c) Multiple signs for sale and administration purpose installed by, or with the permission of Declarant during development;
- (d) Signs as may be necessary to advise of rules and regulations or to caution or warn of danger; and
- (e) Such signs as may be required by law.

Except for permitted signs and during marketing of new homes in the Subdivision, there shall not be used or displayed on any Lot or Structure any signs or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental. All permitted signs must be professionally painted, lettered and constructed.

#### ARTICLE V

#### **APPROVING AUTHORITY**

Section 501. Composition of the Approving Authority. Declarant shall act as the Approving Authority until such time as Declarant elects to appoint a committee referred to below. At such time as Declarant chooses, Declarant shall appoint a committee of three (3) to five (5) individuals, each of whom owns a real property interest in a Lot within the Subdivision, to act as the Approving Authority. Thereafter, whenever a member of the Approving Authority shall resign, die or be unwilling or unqualified to act, the remaining members or remaining member, if only one, shall appoint a successor who owns, or successors who own, a real property interest in a Lot or Lots within the Subdivision as members of the Approving Authority, so as to fill the existing vacancies. Notwithstanding the foregoing, after such time as Declarant appoints a committee to serve as the Approving Authority, a majority of the record Owners of Lots in the Subdivision may, through a duly recorded, written instrument executed by such

Owners, change the membership of the Approving Authority, so long as the members of the Approving Authority all own a real property interest in a Lots or Lots within the Subdivision. Any appointment, removal or replacement of residents as members of the Approving Authority shall be by written instrument signed and acknowledged by Declarant or other person or persons above authorized to make appointment, removal or replacement and filed for record with the Clerk and Recorder of the County of El Paso, State of Colorado.

Section 502. Liability. Members of the Approving Authority shall not be liable to any party whatsoever for any act or omission unless the act or omission is in bad faith and amounts to fraud.

## ARTICLE VI

### ARCHITECTURAL CONTROL

Section 601. Building Approval. No Structure shall be commenced, erected, placed, permitted to remain on any Lot or altered in any way so as to materially change the Lot's previously existing exterior appearance, except in accordance with plans, specifications and other information submitted to the Approving Authority and approved by the Approving Authority no more than one year before start of the construction, alteration or installation. Matters which require the approval of the Approving Authority include but are not limited to: the exterior appearance, material, color, height and location of each Structure, covering, driveway, walkway, fencing and grading of the Lot. In granting or withholding approval, the Approving Authority shall consider among other things: the adequacy of the materials for their intended use; the harmonization of the external appearance with the surroundings; the proper relation of the Structure or covering will cause intrusions of sound, light or other effect on neighboring sites beyond those reasonable to be expected in a quality urban residential area from considerate neighbors.

Section 602. Plans Submissions. All plans, samples and other materials to be submitted to the Approving Authority shall be submitted in duplicate. The minimum scale of these plans shall be one-twentieth inch equals one foot. The plot plan in this minimum scale shall show the location of all buildings, driveways, walks, fences and any other Structures. Proposed new contours through the Lot and abutting street elevations on all sides shall be shown. Structure plans shall show all exterior elevations and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples. No building shall be permitted outside of the designated building envelope on each Lot in order to protect the privacy and views of the adjacent buildings.

Section 603. Approval Process. All action required or permitted to be taken by the Approving Authority shall be in writing and any

such written statement shall establish the action of the Approving Authority and shall protect any person relying on the statement. If the Approving Authority does not execute and acknowledge such a statement within sixty (60) days after delivery of all the required materials to the members of the Approving Authority, the materials so delivered shall be deemed approved for the purpose of these Covenants.

The Approving Authority may charge reasonable fees to cover expenses incurred in review of plans, samples and materials submitted pursuant to these Covenants, exclusive of reimbursement to the members of the Approving Authority for their services. The Approving Authority shall be entitled to retain one copy of all approved plans as part of its files and records.

Section 604. Variances. The Approving Authority shall have the authority to grant for a Lot or Building Site a variance from the terms of one or more of Sections 106, 107, 108, 110, 201, 202, 203, 204, 205, 206, 207, 209, 210, 405, 406, 407, 408, 409, 412, 413, 416, 417, 421, 422, 423, 426, 602 and 603 subject to terms and conditions which may be fixed by the Approving Authority and will not be contrary to the interest of the Owners and residents of the Subdivision where owing to exceptional and extraordinary circumstances, literal enforcement of all of those sections will result in unnecessary hardship. Following an application for a variance:

(a) The Approving Authority shall within sixty (60) days after the request for the variance was delivered, determine whether to grant or deny the variance. If the Approving Authority fails to act on the request for the variance within sixty (60) days, the variance shall be deemed denied.

(b) Whether or not anyone appears at the meeting in support of or in opposition to the application for variance, the Approving Authority shall within one week after the meeting either grant or deny the variance.

(c) The Approving Authority shall determine whether or not a variance granted hereunder shall run with the Lot or Building Site may not be made for a period of one year.

(d) If a variance is denied, another application for a variance for the same Lot or Building Site may not be made for a period of one year.

(e) A variance shall not be granted unless the Approving Authority shall find that all of the following conditions exist:

(i) the variance will not authorize operation of a use other than private, single-family residential use;

(ii) owing to the exceptional and extraordinary circumstances, literal enforcement of the sections above enumerated will result



- in unnecessary hardship;
- (iii) the variance will not substantially or permanently injure the use of other property in the Subdivision;
  - (iv) the variance will not alter the essential character of the Subdivision;
  - (v) the variance will not weaken the general purposes of these Covenants;
  - (vi) the variance will be in harmony with the spirit and purpose of these Covenants; and
  - (vii) the circumstances leading the applicant to seek a variance are unique to the Lot or Building Site or its Owner and are not applicable generally to Lots in the Subdivision or their Owners.

#### ARTICLE VII

##### GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS

Section 701. Definitions. The following words and expressions as used in these Covenants have the meanings indicated below unless the context clearly requires another meaning:

- (a) Accessory Building. Detached garages patios, gazebos, swimming pools, covers, enclosures, dressing rooms or other similar Structures, recreation facilities, separate guest houses, separate servants' quarters and other building customarily used in connection with the single-family residence.
- (b) Building Site. A Lot as established by the recorded plat or the combination of two or more Lots or portions thereof as approved by Declarant and aggregating not less than 65,000 square feet.
- (c) Common Area. Common Area shall mean Tract A, Tract B, Private Park Tract, and any portion of Parcel E which is designated for the common use of Lot Owners or the District by Declarant.
- (d) Covenants. This Declaration and the provisions contained in it.
- (e) District. Shall mean the Falcon Highlands Metropolitan District.
- (f) Design Standards. The guidelines for uses and architectural approvals which Declarant or the Approving Authority may, from time to time, adopt.

(g) Development. The Falcon Highlands Filing No. 1 is a portion of the Falcon Highlands sketch plan as approved by El Paso County.

(h) Due Notice. Due Notice means written notice delivered in accordance with the requirements of these Covenants at least ten (10) days prior to the action required by the notice.

(i) First Mortgage. First Mortgage shall mean a Mortgage upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgagee" means a mortgagee whose encumbrance is a First Mortgage.

(j) Gender and Number. Whenever the context permits, Owner and Owners shall be deemed to refer equally to persons of both sexes and to corporations, singular to include plural and plural to include singular.

(k) Landscape. The treatment of ground surface with live plant materials, wood chips, crushed stone, decorative rocks or mulch materials, or other decorative surfacing materials approved by the Approving Authority. For purposes of this definition, the word "Landscape" shall include all other forms of the word Landscape, such as Landscaped and Landscaping.

(l) Lot. Each area designated as a Lot in the recorded plat of the Subdivision.

(m) Lot Lines. Front, side and rear Lot Lines shall be the same as defined in the zoning regulations of El Paso County in effect from time to time. In the absence of such a definition, a front Lot Line is any boundary line which meets and forms an angle with a public street except that for a corner Lot with two front Lot Lines, the side Lot Line is the boundary which forms an angle with the street which affords the principal access to the Lot.

(n) Maintenance Area. All Common Area and improvements therein, if any, on all common areas as reflected on the Falcon Highlands Filing No. 1 subdivision plat or other areas accepted by the District for maintenance.

(o) Owner. Person having fee simple legal title to a Lot. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an Owner through such one of them as they may designate from time to time.

(p) Structure. Any thing or device other than trees and Landscaping, the placement of which upon any Building Site might affect its exterior appearance, including by way of illustration and not limitation, any dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, swimming pool, tennis court, fence, wall, outdoor lighting and lawn ornamentation. Structure shall also mean an excavation or fill, the volume of which exceeds five (5) cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

(q) Subdivision. The area identified as Falcon Highlands Filing No. 1.

Section 702. Captions. Captions, titles and headings in these Covenants are for convenience only and do not expand or limit the meaning of the section and shall not be taken into account in construing the section.

Section 703. Approving Authority Resolves Questions of Construction. If any doubt or questions shall arise concerning the true intent or meaning of any of these Covenants, the Approving Authority shall determine the proper construction of the provision in question and shall set forth in a written instrument duly acknowledged by the Approving Authority and filed for record with the Clerk and Recorder of El Paso County, the meaning, effect and application of the provision. These determinations will thereafter be binding on all parties so long as it is not arbitrary or capricious. Matters of interpretation involving Declarant shall not be subject to this Section 703.

Section 704. Covenants Run With the Land. These Covenants shall run with the land and shall inure to and be binding on each Lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any Lot in the Subdivision.

Section 705. Covenants are Cumulative. Each of these Covenants is cumulative and independent and is to be construed without reference to any other provisions dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

Section 706. Waivers. Except as these Covenants may be amended or terminated in the manner hereinafter set forth, they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these Covenants. Every person bound by these Covenants is deemed to

recognize and agree that it is not the intent of these Covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them nor operate as an impediment to their subsequent enforcement and each such person agrees not to plead as a defense in any civil action to enforce these Covenants that these Covenants have been waived or impaired or otherwise invalidated by a previous failure or neglect to enforce them.

Section 707. Enforcement. The Declarant, Approving Authority and their agents shall have the right to enter upon any Lot in the Subdivision when necessary and shall not be deemed a trespass for the purposes of:

(a) inspection of property to determine compliance with the Covenants;

(b) to deliver notification of breach of Covenants; or

(c) upon the failure by an Owner to cure a breach within thirty (30) days of written notification, the Approving Authority may at its option make repairs or perform maintenance or otherwise undertake action to cure the breach to restore the appearance of the property involved to a reasonable attractive condition or otherwise bring such property into compliance with the Covenants.

In the event Declarant elects to make repairs, perform maintenance or take other action pursuant to this Section 707, Declarant will submit to the Owner or persons responsible for the property upon which or for whose benefit such notice. If Declarant's costs have not been paid after expiration of this thirty (30) day period, Declarant may thereafter record a lien against the Lot (including improvements thereon) for all costs (including reasonable attorney's fees) incurred by the Declarant in performing the maintenance and in collecting such costs and foreclosing upon the lien. This lien shall be junior to all other liens or encumbrances of record with respect to the Lot on the date this lien is recorded. This lien may thereafter be foreclosed upon in the manner provided by Colorado law for foreclosing upon real estate mortgages. This lien shall provide all sums expended by Declarant (including reasonable attorney's fees) shall be additional indebtedness secured by the lien.

These Covenants are for the benefit of the Owners, jointly and severally, the Declarant and of the Approving Authority and may also be enforced by action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, the Approving Authority or any combination of the two. Until fifteen (15) years after these Covenants are filed of record, or when Declarant owns no property within the Subdivision, whichever is later, Declarant may also enforce

these Covenants in any of the manners permitted above. All costs, including reasonable attorney's fees, incurred by the Approving Authority in connection with any successful enforcement proceeding initiated by the Approving Authority (alone or in combination with Owners) or, during the period it is permitted to enforce these Covenants, incurred by Declarant, shall be paid by the party determined to have violated the Covenants. Any party exercising its right to enforce these Covenants shall not be required to post any bond as a condition to the granting of any restraining order, temporary or permanent injunction or other order. Their rights and remedies for enforcement of these Covenants shall be cumulative, and the exercise of any one or more of such rights and remedies shall not preclude the exercise of any of the others.

Section 708. Duration of Restrictions. Unless sooner terminated as provided in Section 709, the restrictions and other provisions set forth in these Covenants shall remain in force until the year 2016 and shall be automatically renewed for successive periods of ten (10) years unless before the year 2016 or before the end of any ten-year extension, there is filed for record with the Clerk and Recorder of El Paso County an instrument stating that extension is not desired, signed and acknowledged by the Owners of a majority of the Lots in Subdivision.

Section 709. Amendment or Termination. All sections of these Covenants (except Section 109) may be terminated at any time, and from time to time any section or sections of these Covenants (except Section 109) may be amended or new sections may be added to these Covenants, by an instrument signed and acknowledged by Declarant until January 1, 2002, and the Owners of at least one-half of the Lots in the Subdivision and filed for record with the Clerk and Recorder of El Paso County. Declarant reserves the right to make minor amendments to these Covenants to correct mistakes or clarify inconsistencies in the Covenants without the consent of additional Owners of Lots.

Section 710. Partial Amendments. These Covenants may be amended for only a portion of the Subdivision by a written instrument executed by Declarant and one hundred percent (100%) of the then Owners of such portion of the Subdivision if:

- (a) the portion of the subdivision affected by such amendment contains at least ten (10) contiguous Lots;
- (b) no improvements have been erected on any such Lots; and
- (c) Declarant reasonable determines that amendments will not materially adversely affect the general living environment contemplated by these Covenants for the remaining Lots in the Subdivision.

Section 711. Severability. If any of these Covenants shall be

held invalid or become unenforceable, the other Covenants shall not be affected or impaired but shall remain in full force and effect.

Section 712. Action in Writing. Notices, approval, consents, applications and other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, application or other action.

Section 713. Notices. Any writing, including but not limited to any communication from the Approving Authority to an Owner, shall sufficiently be served if delivered by mail or otherwise: (a) to the dwelling situated on the Lot owned by that Owner; or (b) if there is no dwelling, then to the address furnished by the Owner to the address, then to the most recent address of which the Approving Authority has a record.

Section 714. Falcon Highlands Metropolitan District. Declarant has filed for inclusion of the Lots within the Falcon Highlands Metropolitan District for purposes of providing water and sewer service to the Lots. Each Owner of a Lot hereby consents to the inclusion of the Lots into the Falcon Highlands Metropolitan District. Upon inclusion of the Lots into the Falcon Highlands Metropolitan District, the Falcon Highlands Metropolitan District which currently provided sewer services to the Lots will discontinue sewer service to the Lots and the Lot Owner shall be required to pay any and all normal service fees and tap fees if not previously paid to the Falcon Highlands Metropolitan District based on the Falcon Highlands Metropolitan Districts normal rates and charges.

IN WITNESS WHEREOF, the Declarant has executed these Covenants this 7<sup>th</sup> day of March, 2005.

[Signatures on next page.]

