

**BY-LAWS  
OF  
FALCON POINTE HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I - NAME AND LOCATION; APPLICATION**

Section 1. The name of the corporation is Falcon Pointe Homeowners Association, Inc. hereinafter referred to as the "Association." The principal office of the Association shall be as specified in the corporate Charter filed with the Secretary of State of Tennessee.

Section 2. All present and future Owners, Mortgagees, (Lessees), and Occupants of residential units and their employees, and any other person who may use the Properties in any manner, are subject to these By-Laws, and any Rules and Regulations made pursuant hereto, and any amendment to these By-Laws upon the same being passed and fully recorded.

The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a residential unit shall constitute an agreement that these By-Laws (any Rules and Regulations made pursuant hereto) are accepted, ratified, and will be complied with.

**ARTICLE II - DEFINITIONS**

Section 1. The "Association" shall mean the Falcon Pointe Homeowners Association, Inc. its successors and assigns. The Association shall be formed maintained as a Tennessee not-for-profit corporation.

Section 2. The "Declarations" shall mean the subdivision restrictions, covenants and easements set forth in that certain "Amended and Restated Declaration of Restrictions, Covenants and Easements and Establishment of Homeowners Association for Falcon Pointe Subdivision", undated in August, 2006, recorded August 25, 2006 as Instrument 200608250018077, as amended by that certain Amendment to Amended and Restated Declaration of Restrictions, dated May 6, 2008, recorded as Instrument 200805060083277, each in the Knox County Register of Deeds.

Section 3. The "Properties" shall mean that certain real property known as Falcon Pointe Subdivision Units 1, 2, 3 and 4, the maps of which are of record in those certain Map Cabinets and Slides, in the Register's Office for Knox County, Tennessee, as identified and described on Exhibit A hereto.

Section 4. "Lot" shall mean any numbered plot of land shown upon any of the recorded maps of the Properties which is not a common area.

Section 5. "Common Areas" shall mean any and all Lots or Properties, with or without improvements, as to which the Association possesses ownership interests, rights of use, or

maintenance responsibilities, which are held or dedicated in the Declarations for the common use and enjoyment of the Owners, including without limitation detention basins on any Lots, as well as any security and street lights, gazebos, recreational areas, and all related improvements and appurtenances.

Section 6. "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot situated upon the Properties, but shall not mean a mortgagee, the Developer or a designed Builder, or any successor.

Section 7. "Member" shall mean an Owner (and the Developer prior to a Conveyance Event), but not any owner which is an entity or an organization. Class A or Class B (Condo Unit) Members shall be entitled to the same number of votes at Association meetings as the number of Lots or Condo Units in the Properties owned by that Member. When more than one person holds an interest in any Lot or Condo Unit, all such persons shall be Members. However, the vote for such Lot or Condo Unit shall be exercised as they among themselves determine, but in no way or event shall more than one vote be cast with respect to any Lot or Condo Unit.

### ARTICLE III- MEETING OF MEMBERS

Section 1. Meetings. Regular membership meetings shall be held bi annual, upon at least Thirty (30) days written notice to all Members, at such time and place as specified by the Board of the Association.

Section 2. Annual Meetings. One of the regular membership meetings, known as the Annual Meeting, shall be held during the *calendar month of March/first quarter of each calendar year* for the purpose of electing Board Members, adopting an annual budget and Assessments, and for the transaction of other Association business as indicated in the meeting notice or as otherwise brought before the membership at the meeting.

Section 3. Special Meetings. Special meetings of the Members may be called by the Board. Also, upon the written request of 55% Members to the Secretary, a special membership meeting may be called by the Secretary within thirty (30) days of the request.

Section 4. Notice. All Members shall be given at least ten (10) days written notice of any special meeting. The notice shall state the purpose for which the special meeting is called and shall indicate any other business to be transacted at the meeting. \*that requires member vote

Section 5. Voting. Only Members shall be entitled to vote at membership meetings. Proxies must be written and filed with the Secretary before voted and can be voted only by another Member or by a non-property owner resident of the Properties on behalf of a non-resident owner who is a Member. The record date for determining the Members entitled to notice of and to vote at any such meeting shall be set by the Board. At any meeting of Members at which a quorum is present, all elections of directors shall be determined by a plurality vote and all other matters shall be approved when the votes cast approving the action exceed the votes cast opposing the action, unless the matter is one which, by express provision of statute, the charter or these by-laws, a different vote is required, in which case such express provisions shall govern and control the determination of such



matter. Every proxy must be executed in writing by the Member or his duly authorized attorney in fact and tendered to the Secretary at the commencement of the meeting of Members. No proxy shall be valid after the expiration of eleven months from its effective date, as determined by Tennessee law, unless a longer period is provided for in the proxy. Every proxy shall be revocable at the pleasure of the person executing it, or his legal representatives or assigns, unless the appointment form conspicuously states it is irrevocable and the appointment is coupled with an interest.

Section 6. Quorum. Except as otherwise provided by statute or the Charter, *ten percent (10%)* of the Members in good standing, present in person or represented by proxy, shall be necessary to and shall constitute a quorum for the transaction of business at all meetings of members. A quorum which is present to organize a meeting shall not be broken by the subsequent withdrawal of one or more Members. If however, such quorum shall not be present at any meeting of the Members, the Members entitled to vote thereat present in person or represented by proxy, shall have the power to adjourn the meeting from time to time without further notice other than by announcement at the meetings, and thereupon the Members present in person or by proxy shall constitute a quorum for such meetings and, any business may be transacted which might have been transacted at the meetings as originally noticed; provided, that it after any such adjournment, a new record date is or must be set for the adjourned meeting, a notice of the adjournment shall be given to each Member entitled to vote thereat.

#### ARTICLE IV - BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 1. Number. The business of the Association shall be managed by a Board composed of seven (7) Directors, all of whom must be Members of the Association. The number of Board Members may be increased or decreased upon approval of the membership, which change shall require a 2/3 majority vote. The Board may not be smaller than three (3) members.

Section 2. Term of Office. Directors shall be elected at the annual meeting of the Association. The term of office shall begin upon being elected and end when a successor is duly elected. The term of office shall not prevent the Association from setting a different fiscal year, Individuals may, if nominated and elected, serve additional terms as directors. Members of the Board of Directors shall serve for a term of two (2) years, provided, however, that initially three (3) of the members of the first Board of Directors elected shall serve for one (1) year terms, and four (4) members of the first Board elected shall serve two (2) year terms. At the expiration of the term of each initial Director, his successor shall serve for a two (2) year term. The members of the Board of Directors shall serve until their respective terms expire and their successors are elected, or until their death, resignation, or removal.

Section 3. Vacancies. Any director may be removed from the Board, with or without cause, by a two-thirds (2/3) majority vote of the Members of the Association present at a meeting of members. In the event of death, resignation or removal of a director, or in the event a director ceases to be a Member, his/her eligible successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his/her predecessor. Any member of the Board may resign at any time by giving written notice thereof to the President and/or the Board of the Association. Any

duly elected Board Member who is absent from 3 or more consecutive duly called and noticed meetings of the Board may be removed by, and his/her successor appointed, vote of the Board.

Section 4. Compensation. No director shall receive compensation for any service he/she may render to the Association. However, any director may be reimbursed for his/her actual expenses incurred in the performance of his/her duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### **ARTICLE V - NOMINATION AND ELECTION OF DIRECTORS**

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at an annual meeting. The Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors, and two or more additional Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to the annual meeting to serve until the close of the next annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations shall be made from among Members. The names of the nominees shall be included in the notice of the annual meeting.

Section 2. Election. Election of the Board of Directors may be by voice or secret written ballot. At such election, each Member or his proxy may cast, in respect to each vacancy, one vote. In the event that there are more nominees than Board vacancies, persons receiving the largest number of votes shall be elected. In the event of a tie vote on the last Board vacancy a run-off vote will be held to fill that vacancy.

#### **ARTICLE VI - MEETINGS OF DIRECTORS**

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held upon notice, at such place and hour as may be fixed from time to time by resolution of the Board.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any three (3) directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as an action of the Board.

Section 4. Participation in Meetings through Differing Means of Communication. Any



one or more members of the Board of Directors or of any committee of the Board may participate in a meeting of the board or any committee by any means of communication by which all persons participating in the meeting may simultaneously hear each other during the meeting. Participation by such means shall constitute presence in person at a meeting.

Section 5.     Consents. Whenever, by any provision of law or of the Charter, the vote of the Board of Directors or any committee thereof at any meeting thereof is required or permitted to be taken in connection with any corporate action, the meeting and the vote of the Board of Directors or such committee may be dispensed with, if (a) all of the members of the Board of Directors or such committee who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such corporate action being taken without a meeting; and (b) the action shall have received the affirmative vote of the number of directors that would be necessary to authorize or take such action at a meeting. The written consent, which may be signed in counterparts, shall indicate each signing director's vote or abstention on the matter, and shall be included in the minutes or filed with the corporate records reflecting the action taken.

## **ARTICLE VII - POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 1.     Powers. The Board of Directors shall have the power to

(a) Exercise for the Association of all powers, duties and authority vested in or delegated to this Association under the Declarations of Restrictive Covenants and not reserved to the Members or Owners by other provisions of these By-Laws, the Charter, or the Declarations of Restrictive Covenants covering the Properties as amended and/or restated, including without limitation, to protect and preserve the rights and interests of the Association, Members and Owners, and to maintain the Common Areas;

(b) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors, subject to approval of any submitted excuse for such absence satisfactory to the Board;

(c) Appoint officers and directors to fill unexpired terms of officers and directors who are removed, resign, or are otherwise disqualified from service prior to the expiration of their term;

(d) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties;

(e) Enter into contracts on behalf of and for the benefit of the Association; however, the Board shall not have the power to make any contracts nor to be performed within or extending beyond a period of one (1) year.

(f) Suspend the enjoyment of rights of a Member or Owner during a period in which such Member or Owner shall be in default in the payment of any Assessment levied by the Association.

(g) Foreclose the lien of any unpaid Assessment against any Property for which dues assessments are not paid after the due date, or to bring an action at law against the Owner personally obligated to pay the same.

(h) Set, collect, or charge use fees regarding any Common Area Improvements.

(i) Enforce uniformly, or within that discretion of the Board of Directors and the Advisory Committee designated in the Declarations, the use restrictions applicable to the Lots and/or Owners, and the rules and decisions of the Advisory Committee, pursuant to the Articles VI and VII of the Declarations.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) Cause to be kept a complete record of its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members;

(b) Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) Recommend to the membership Annual Assessments, and any changes in the amount of the Annual Assessments consistent with the requirements of the Declaration; set and collect special assessments, lawn and leaf service assessments, fees or fines, in accordance with the provisions of these By-Laws and the Declarations of Covenants and Restrictions;

(d) Send written notice/invoices of Assessments dues payable to every Owner at least thirty (30) days in advance of the due date;

(e) Cause to be maintained the General and Condominium Common Areas and any improvements, lights, equipment, thereon;

(f) Collect and account for the Initiation Fee due from Owners.

(g) Appoint an Advisory Committee of not less than three (3), nor more than five (5) Members or Directors, charged with organizing and performing the duties thereof in Article VII and XI of the Declarations.



Section 3. Spending Powers and Authority: The Board of Directors, for the benefit of the Association, Members and Owners, shall enforce the provisions of the Declarations, the By-Laws and any rules and regulations governing the Properties and may acquire and pay for, out of the funds of the Association the following:

(1) Water, sewer, electrical, telephone, and gas and other necessary utility services for the Common Areas;

(2) Maintenance, Replacement or Repair of Common Areas and Property thereon. The Association shall beautify and maintain, in the event of damage to or destruction of any part of the improvements to the Common Area, the Association shall repair or replace the same from the insurance proceeds available or the funds of the Association.

(3) Public Liability and Property and Casualty Insurance. Limits of liability insurance shall not be less than Five Thousand DOLLARS (\$ 5,000) for any one person injured, for any one accident, and shall not be less than 1,000,000 DOLLARS (\$) for property damage for each occurrence (such limits and coverage to be reviewed at least annually by the Board of Directors and increased or decreased at its discretion). Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects, his, her or their action against another named insured. The Board may obtain at its discretion other types of insurance as it may deem advisable to insurer against loss or damage to the improvements and the Common Areas.

(4) Legal and accounting services necessary or proper in the conduct and operation of the Association business;

(5) A fidelity bond naming the Treasurer, and such other persons as may be designated by the Board of Directors as principals and the Owners as obligees, in an amount determined by the Board;

(6) Painting, maintenance, beautification, improvement, repair and all landscaping of the Common Areas, and such furnishings and equipment for the Common Areas as the Board of Directors shall have the exclusive right and duty to acquire for the Common Areas improvements; provided, however, that the Owner of each residential unit and/or Lot, together with any private improvements thereon shall be painted, maintained, and repaired by the Owner thereof, all such maintenance to be at the sole cost and expense of that particular Owner;

(7) Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurances, taxes or assessments which the Board of Directors is required to secure or pay for pursuant to the terms of these By-Laws or which, in its opinion, shall be necessary or proper for the operation of the Association and/or Common Areas.

## ARTICLE VIII - OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a president, a vice-president, a secretary, and a treasurer, and such other officers as the Board may from time to time establish by resolution. All officers shall be members of the Board of Directors.

Section 2. Appointment of Officers. The officers of the Association shall be appointed at the first meeting of the Board of Directors following each Annual Meeting of the Members.

Section 3. Term. Each officer of the Association appointed by the Board shall hold office for one (1) year, unless he or she resigns, is removed, or is otherwise disqualified from service during the term of office. Officers shall not be subject to term limits unless adopted by super majority vote of the Board.

Section 4. Special Appointments. The Board may appoint such other officers and/or committees as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. President. The President shall preside over all meetings, appoint all committees (with approval of the Board), and shall perform such other duties as may properly devolve upon the presiding office.

Section 6. Secretary. The Secretary shall attend all meetings of the Board and of the Members and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for any committees of the Board when required. He or she shall give, or cause to be given, notice of special meetings of the Members or of the Board of directors, and shall perform such other duties as may be prescribed by the Board of directors or President, under whose supervision he or she shall oversee the recording of the proceedings of all meetings and shall present at each meeting a report of the transactions of the previous meeting. He shall keep in safe custody such other books and records as the Board may direct and shall perform all other duties incident to the office of secretary.

Section 7. Treasurer. The Treasurer shall have the care and custody of the Association's funds, and other valuable effects, and shall keep full and accurate accounts of receipts and disbursements in books belong to the Association and shall deposit all monies in the name and to the credit of the Association in such depositories as may be designated by the Board of directors. The Treasurer shall disburse the funds of the Association as may be directed by the board, taking proper vouchers for such disbursements, and shall render to the president and directors, at the regular meetings of the board, or whenever they may require it, an account of all transactions as Treasurer and of the financial condition of the Association. If required by the board of directors, the Treasurer shall give the Association a bond for such term, in such sum and with such surety or sureties as shall be satisfactory to the board for the faithful performance of the duties of his office and the restoration to the Association, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of



whatever kind in his possession or under his control belonging to the Association. The Treasurer shall oversee the handling of all funds and collections, and payment of bills, which the Association may owe. At each annual meeting and Board of Director's meeting, the Treasurer shall present an itemized statement of the receipts and expenditures of the previous year or period.

Section 8. Secretary and Treasurer. The Secretary and Treasurer shall transact the business of mailing, typing, notifying, correspondence, correlating, compiling and maintaining the rolls of Association membership and shall notify members of delinquency in the payment of Assessments, dues as directed by the President. The Treasurer shall pay bills owed by the Association as directed by the President.

Section 9. Resignation and Removal. Any officer may be removed from office with or without cause by majority vote of the Board. Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

#### **ARTICLE IX: ASSESSMENTS; INTEREST AND LIENS**

Section 1. The Association acting through the Board of Directors shall set, provide timely notice of payment, and collect the Assessments and fees from Owners, in the amounts and manner provided for in the Declarations, including without limitation, initiation fees, annual assessments, special assessments, lawn and leaf service assessments (as to Unit 1 and Unit 2, if any) and fines, which are necessary to satisfy the expenses of construction, repair, operation and maintenance of improvements of the Common Areas, lighting, equipment, and the beautification thereof. In accord with the Declarations, Unit 1 annual dues were set by the Developer in the Declarations at \$650.00, and Unit 2 Annual Assessments at \$850.00, until adjusted, due and payable annually.

Section 2. Assessments and fees provided in the Declarations shall be due on the date set by the Board in such annual or special notice of Assessments delivered to Owners, and shall become delinquent if not timely paid. Interest on delinquent Assessments shall accrue as of the thirtieth (30<sup>th</sup>) day following the due date set in the notice. Assessments which become delinquent shall constitute a lien on the real property of the Owner of whom such Assessments are due and payable. In addition, late charges to defray the additional cost of pursuing delinquent accounts may be assessed by the Board, as well as any costs of collection, court costs and reasonable attorneys' fees, with the same becoming a continuing lien on the Property of the Owner, which shall bind such property in the hands of the Owner, his heirs, devisees, personal representatives and assigns. The obligation to pay such Assessments, however, shall remain such Owner's personal obligation for the statutory period.

In the event that it becomes necessary for the Board of Directors to authorize of legal action against an Owner, Member of the Association, or Properties for infractions of the By-laws, Rules of the Association, or the Declarations, said Member/Owner shall be responsible for reimbursement of all attorneys' fees and expense incurred by the Association as a result thereof.

Any Member or Owner who willfully or wantonly destroys or injures any of the Association's Property, Common Areas or improvements thereto, shall be compelled to make good, at his own expense,

the injury or loss occasioned by the Member/Owner, and shall be liable for cost of collection, including reasonable attorneys' fees and court costs, incurred by the Association in any action brought to enforce such liability. Members and Owners are directly responsible for the conduct of their invitees, agents and family members.

#### **ARTICLE X: NOTICE**

Section 1. Form. Notice shall be in writing, except that oral notice is effective if it is reasonable under the circumstances.

Section 2. Effective Time. Written notice by the Association to a director or member, if in a comprehensible form, is effective when mailed, if mailed post-paid and correctly addressed to the director's or Member's address shown in the Association's current record of directors or Members, or by electronic means that is subject to verified delivery. In all other cases, written notice, if in a comprehensible form, is effective at the earliest of (a) when received, (b) five days after deposit in the United States mail, if mailed post-paid and correctly addressed, or (c) on the date shown on the return receipt requested, and the receipt is signed by or on behalf of the addressee. Oral notice is effective when communicated, if communicated in a comprehensible manner.

Section 3. Waiver of Notice. Whenever a notice is required to be given by statute, the charter or these by-laws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to such notice. In addition, a director's or Member's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director or Member at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 4. Record Date. For the purpose of determining the Members entitled to notice of a meeting, to demand a special meeting, to vote or to take any other action, the Board of directors may fix, in advance, a date as the record date for one or more voting groups. Such date shall be not more than thirty (30) days before the date of any such meeting or action requiring a determination of Members entitled to notice of or vote at a Members meeting is effective for any adjournment of the meeting unless the Board of directors fixes a new record date, which the board of directors must do if the meeting is adjourned to a date more than thirty (30) days after the date fixed for the original meeting. If no record date is fixed, the record date for determining the Members entitled to notice of or to vote at a meeting shall be at the close of business on the date before the first notice is delivered to Members, or, in the case of a distribution to Members, the date on which the board authorizes the distribution.



## ARTICLE XI: INDEMNIFICATION

Section 1. Authority to Indemnify. The Association may indemnify any person who was or is a party or is threatened to be made a defendant or respondent to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, by reason of the fact that he is or was a director or is or was an officer or serving at the request of the Association, against judgments, settlements, penalties, fines or reasonable expenses (including counsel fees), incurred with respect to a proceeding if (a) he conducted himself in good faith and (b) he reasonably believed (i) in the case of conduct in his official capacity with the Association, that his conduct was in its best interest; and (ii) in all other cases, that his conduct was at least not opposed to its best interest; and (c) with respect to any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not meet the standard of conduct described in this section.

Section 2. Mandatory Indemnification. Consistent with the provisions of Section 1, the corporation shall indemnify any director if he/she was wholly successful, on the merits or otherwise, in the defense of any proceeding to which she was a party because she is or was a director of the corporation against reasonable expenses incurred by his in connection with the proceeding.

Section 3. Other Determination of Rights. No indemnification under Section 1 of this Article (unless ordered by a court) shall be made by the Association unless authorized in the specific case upon a determination that indemnification of the director is proper in the circumstances because he/she has met the applicable standard of conduct set forth in Section 1 hereof. Such determination shall be made:

- (a) by a majority vote of a quorum of directors who are not at that time parties to the proceeding;
- (b) If such a quorum is not obtainable, then by a majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors who are not at that time parties to the proceeding; or
- (c) by independent special legal counsel (compensated by the Association) selected by the board of directors or a committee thereof in the manner described in subsections (a) or (b), said determination by written opinion; provided however that if the requirements of neither (a) nor (b) can be met, then by a majority vote of the full board of directors.

**EXHIBIT A**

Unit 1: Instrument No: 200612220052102

Unit 2: Instrument No: 200802010057740

Unit 3: Instrument No: 201108170002111

Unit 4: Instrument No: 201301110045652