

u *1/1/98* *Revised*

Prepared by *Shall Wheatley*

THE BYLAWS OF THE
FALLS CREEK PROPERTY OWNERS ASSOCIATION, INC. 000436 161
Revised August 1, 1998

ARTICLE I

NAME, MEMBERSHIP, AND APPLICABILITY

Section 1. Name. The name of the Association shall be Falls Creek Property Owners Association, Inc. a non-profit (not-for-profit) corporation (hereinafter referred to as the Association).

Section 2. Membership. Membership in the Association is mandatory for all property owners in the development known as the Falls Creek Subdivision (hereinafter Falls Creek). The membership of each property owner shall terminate when he/she ceases to be a property owner. Upon the sale, transfer, or other disposition of his/her ownership in the property, his/her membership in the Association shall automatically be transferred to the new property owner succeeding to such ownership tenants.

Section 3. Applicability. These Bylaws apply to all property owners of the development known as the Falls Creek Subdivision, and these Bylaws are binding on all property owners, their lessees, grantees, heirs, executors, administrators, devisees, successors, and assigns, and on all other persons occupying or using said property in any manner. The ownership, rental, or occupancy of any residence unit shall constitute acceptance and ratification of these Bylaws.

ARTICLE II

ASSOCIATION: MEETINGS, QUORUM, VOTING, AND PROXIES

Section 1. Place of Meetings. Meetings of the Association shall be held in Transylvania County, North Carolina, at such suitable place convenient to the members as may be designated by the Board of Directors.

Section 2. Annual Meetings. The Annual Meeting of the Association shall be held on the first Saturday of August of each calendar year, unless such day is a public holiday, in which event the meeting shall be held on the next succeeding Saturday.

Section 3. Special Meetings. The President may call a special meeting of the Association at any time. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by voting members representing at least fifty-one per cent (51%) of the total votes of the Association and presented to the Secretary.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of any meeting, stating the day, time, and place it is to be held, to each property owner at least thirty (30) days prior to such meeting.

In the case of a Special Meeting, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

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The notice of any meeting shall be deemed to have been mailed when deposited in the United States Mail, addressed to the property owner(s) at their address as it appears on the records of the Association, with postage thereon prepaid.

Section 5. Waiver of Notice. Any member may waive notice of a meeting by written waiver executed before, at, or after the meeting, and such waiver shall be deemed the equivalent of proper notice. Any member attending a regular or special meeting shall be deemed to have waived notice of such meeting, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

Section 6. Voting. The owner(s) of each lot shall be entitled to one vote. If more than one owner is present, only one vote may be cast for that lot. Owners of multiple lots shall be entitled to one vote for each lot. Note: Votes may not be cast by owners of lots for which the payment of the annual assessment is in arrears.

Section 7. Proxies. A voting member unable to attend an Association meeting may designate another Association member to cast votes in his/her place. Such proxies must be signed in the presence of a Notary Public, and delivered to a member of the Board or mailed to the Association at P.O. Box 1191, Pisgah Forest, NC, 28768, in time to be picked up prior to the day on which the meeting is to be held.

Section 8. Quorum. The presence of voting members, including proxies, representing at least one-quarter (1/4) of the Association lots shall constitute a quorum at all meetings of the Association. If a quorum is not present, the Board of Directors shall be authorized to act on matters before the Association, except in those cases where the Bylaws require action by the membership of the Association.

Section 9. Absentee Ballots. At the discretion of the Board, absentee ballots may be made available for voting on major proposals about which information has been distributed at least 30 days in advance of the meeting at which the vote is to be taken. Such ballots must be signed in the presence of a Notary Public, and delivered to a member of the Board or mailed to the Association at P.O. Box 1191, Pisgah Forest, NC, 28768, in time to be picked up prior to the day on which the meeting is to be held.

Section 10. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and transactions approved at the meeting.

Section 11. Order of Business and Rules of Order. The order of business at all annual meetings shall be as follows:

- A. Call to order, introductions, and establishment of a quorum.
- B. Reading and approval of the minutes of the preceding meeting.
- C. Reports of officers.
- D. Reports of Committees, if any.
- E. Election of an inspector of elections.
- F. Election of Directors.
- G. Old Business.
- H. New Business.
- I. Adjournment.

The conduct of all meetings of the Association shall be in accord with Roberts Rules of Order.

ARTICLE III

BOARD OF DIRECTORS

Section 1. Number. The affairs of the Association are governed by a Board of Directors (hereinafter, the Board), composed of six persons, all of whom must at all times during their service as Directors be owners of Falls Creek lots, or spouses thereof, or officers of a corporation owning one or more properties or residence units. No person and his/her spouse may serve as Directors at the same time.

Section 2. Election and Term of Office. Directors shall serve for three-year terms, staggered so that two terms expire at each annual meeting. Assuming that a quorum is present, election shall be by simple majority of those voting. Directors shall be limited to two consecutive terms.

Section 3. Vacancies. A vacancy in the Board caused by any reason, excluding the removal of a Director by vote of the Association, shall be filled by a majority vote of the remaining Directors, even though less than a quorum, at any meeting of the Board. Each person so elected shall serve the unexpired portion of the vacated term.

Section 4. Removal of Directors. At any regular or special meeting at which a quorum is present, a Director may be removed with or without cause by a simple majority of those voting, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed shall be given an opportunity to be heard at the meeting prior to the vote on removal.

Section 5. Meetings. The first meeting of the Board following each annual meeting of the Association shall be held within ten (10) days thereafter, at such time and place as shall be fixed by the Board, for the purpose of electing officers for the coming year.

Subsequent meetings will be called by the President, at least once every quarter. Should the President ascertain, by querying the Directors, that there is no business to be conducted, a quarterly meeting may be omitted.

Section 6. Quorum. At all Board meetings, a majority of the Directors shall constitute a quorum for the transaction of business. The acts of that majority shall be the acts of the Board. If a quorum is not present, the majority of those present may adjourn the meeting to another time. Any business which might have been transacted at the meeting as originally called may be transacted at any adjourned meeting at which a quorum is present, without further notice.

Section 7. Powers. The Board shall be responsible for the affairs of the Association and shall have all the powers and duties necessary to carry out that responsibility. As provided by law, the Board may act in all matters in which authority is not by the Declaration, Articles of Incorporation, or these Bylaws assigned exclusively to the membership of the Association.

In addition to the duties imposed by these Bylaws or by any resolution of the Association which may hereafter be adopted, the Board shall have the power to and be responsible for the following, by way of explanation, but not limitation:

- a. serving as the Architectural Control Committee, reviewing and approving site and house plans, as provided in the Declaration.

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- b. levying and collecting annual assessments, and administering those funds through standard financial procedures.
- c. providing for the operation, care, upkeep, and maintenance of all roads and rights of way.
- d. designating, hiring, and dismissing the personnel necessary for the maintenance of all common property, providing where appropriate for their compensation, and for the purchase of equipment, supplies and material to be used by them in the performance of their duties.
- e. making or contracting for the making of repairs, additions, and improvements to all roads and rights of way.
- f. enforcing by legal means the provisions of the Declaration and these Bylaws, and bringing any proceedings which may be instituted on behalf of or against the Association.
- f. keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred.

ARTICLE IV

OFFICERS

Section 1. Number, Names, and Limitations. The officers of the Association shall also be the officers of the Board of Directors, and shall consist of a President, Vice President, Secretary, and Treasurer. No two offices may be held by the same person.

Section 2. Election, Term of Office, and Vacancies. The officers shall be elected from the Board at its first meeting following each annual meeting, for a one-year term. A vacancy in any office arising for any reason may be filled by the Board for the unexpired portion of the term.

Section 3. Removal. Any officer or Director may be removed by a majority vote of the remaining members of the Board, whenever in their judgment the best interests of the Association will be served thereby.

Section 4. Duties. The officers shall have such powers and duties as generally pertain to their respective offices, including the following:

- a. The President shall be the chief executive officer of the Association and the Board, with general powers as such, including the power to appoint committees from among Association members and their spouses.
- b. The Vice President shall assume the duties of the President upon the request or absence of the President.
- c. The Secretary shall keep and maintain minutes of meetings and other records of the Association, and shall perform such other duties as the Board may direct.

d. The Treasurer shall be responsible for Association funds, including approval of all invoices to the Association, the keeping of full and accurate fiscal records and accounts, and shall perform such other duties as the Board may direct.

The Board may require that the Treasurer and all other persons handling or responsible for Association funds be covered by fidelity bonds, at Association expense.

Section 5. Compensation. No Director or officer shall receive any fee or compensation for services performed on behalf of the Association.

Section 6. Indemnification. Each Director/officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him/her in connection with any proceedings to which he/she may be a party, or become involved, by reason of having been a Director or officer of the Association, whether or not a Director or officer at the time such expenses are incurred.

However, no indemnification shall be paid to a Director/officer who is adjudged guilty of willful malfeasance or malfeasance in the performance of his/her duties.

Notwithstanding the foregoing, in the event of a settlement of any such proceeding, the indemnification provided for herein shall apply only in the event that such settlement and reimbursement is determined by the other members of the Board to be in the best interests of the Association.

ARTICLE V

DUTIES OF MEMBERS

Section 1. Payment of Assessments. The annual road maintenance fee shall be due and payable each year on August 1 for the following fiscal year. Written notice of the amount and due date shall be mailed to each lot owner at least 30 days in advance.

Section 2. Interest, Collection Costs and Lien. If not paid on or before August 1, interest will begin to accrue at the maximum annual rate provided by law. If not paid within 90 days, a lien will be filed with the County Recorder of Deeds in the amount of the assessment, together with interest, costs of collection if any, and filing fees. This provision for the assessment of interest, collection costs, and filing fees shall take effect with the mailing of the annual fee notices for the 1999-2000 fiscal year.

Section 3. Removal of Lien. Upon payment of the assessment and all charges, the Association shall, within a reasonable time, cause a further notice to be recorded stating the satisfaction and release of said lien.

ARTICLE VI

AMENDMENTS

These Bylaws may be amended only at a duly constituted annual or special meeting of the Association, the notice of which states that consideration of such proposed amendment is one of the purposes of the meeting.

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Assuming the presence of a quorum, these Bylaws may be amended by a simple majority of the votes cast. Forms for Absentee Ballots and Proxies will be included with the notice of meeting. These forms must be signed in the presence of a Notary Public and delivered to a member of the Board or mailed to the Association at P.O. Box 1191, Pisgah Forest, NC, 28768, in time to be picked up prior to the day on which the meeting is to be held.

FALLS CREEK PROPERTY OWNERS ASSOCIATION, INC.

Ira M. Wheatley President Date August 25, 1998
Madrid Zimmerman Secretary Date August 25, 1998

STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA

This is to certify that on the 25 day of August 1998, before me, a notary public, personally appeared Ira M. Wheatley and Madrid Zimmerman, who I am satisfied are the persons named in, and who have signed the above bylaws as officers of the Falls Creek Property Owners Association, Inc. in my presence. In testimony whereof I have hereunto set my hand and

affixed my official seal, this 25 day of August, 1998.

Lorraine Y. Dupon
Notary Public

My commission expires on My Commission Expires 8-16-2003

STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA

The foregoing certificate of Lorraine Y. Dupon Notary Public, is certified to be correct. This instrument was presented for registration and duly recorded in this office in

Book 436, Page 161 this 25 day of Aug., 1998, at 11:00 o'clock. AM

Walter P. Edwards
Register of Deeds

By: Cindy M. Dworky, Asst.

