

FALCON TRACE PROPERTY OWNERS' ASSOCIATION, INC.

**AMENDED RULES AND PROCEDURES ADOPTED BY THE BOARD OF
DIRECTORS
FOR THE LEVYING OF FINES
AND
THE ESTABLISHMENT OF A
FINING COMMITTEE**

Effective September 1, 2019

PREAMBLE

WHEREAS, in accordance with the authority contained in the Declaration of Covenants, Conditions, and Restriction and Easements for Falcon Trace, recorded in Official Records Book 5308, Page 991, Public Records of Orange County, Florida (hereinafter referred to as the "Declaration" or as the "Declaration of Covenants and Restrictions"), and in accordance with the authority contained in applicable provisions of Chapter 720, Florida Statutes, as amended, the following rules and procedures are being adopted by the Board of Directors of Falcon Trace Property Owners' Association, Inc. (hereinafter referred to as the "Association") in an effort to implement certain additional methods of compelling compliance with the Declaration.

WHEREAS, Section 720.305, Florida Statutes, as amended, contains provisions regarding, among other things, the obligations of Association members, remedies at law or in equity, and the levy of fines.

WHEREAS, Section 720.305(2), Florida Statutes, as amended, including paragraph (b) of subsection (2) thereof, provides as follows:

(2) The association may levy reasonable fines. A fine may not exceed \$100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than \$1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney's fees and costs from the nonprevailing party as determined by the court . . .

(b) A fine or suspension may not be imposed by the board of administration without at least 14 days' notice to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it

may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the board of administration imposes a fine or suspension, the association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

WHEREAS, Article XIV, Section D of the Declaration provides that the Board of Directors has the authority to impose monetary fines of \$50.00 per violation, except that no fine shall exceed \$1000.00 per violation in the aggregate per Florida Statute, which must be approved by a Fining Committee at a noticed committee meeting.

WHEREAS, Article XIV, Section D of the Declaration authorizes the Board to amend the fining amount, and the Board wishes to amend the amount to match the current statutory amount of \$100.00 per violation.

WHEREAS, the Association wishes to create a fining policy that reconciles the requirements of Florida Statutes and its Declaration.

AUTHORIZING RESOLUTIONS ADOPTED BY THE BOARD OF DIRECTORS

NOW, THEREFORE, by the affirmative vote of at least a majority of the Board of Directors of the Association at a duly convened regular meeting of the Board of Directors at which a quorum is present and established, it is:

RESOLVED, that the Board of Directors hereby establishes a compliance hearing committee (hereinafter sometimes referred to as the “Fining Committee”) for the purpose of conducting hearings to review proposed fines for alleged non-compliance with the Declaration, the Association’s Bylaws, or reasonable rules adopted by the Association (collectively referred to as “Governing Documents”).

RESOLVED, that, in accordance with the authority of the Board of Directors to adopt reasonable rules with regard to the Association levying fines against Members and their tenants, guests, licensees, and invitees for non-compliance with the Declaration, and in accordance with the Board’s authority to adopt the procedures by which such fines will be implemented by the Association, in accordance with the Declaration, **the Board of Directors hereby adopts the following rules and procedures which are effective on September 1st, 2019, and hereby order that notice and a complete copy of these rules shall be immediately delivered to all Members of the Association.**

RULES AND PROCEDURES ADOPTED BY THE BOARD OF DIRECTORS

ARTICLE I.

Rules for Proposing, Reviewing and Levying Fines

Section 1. Proposed Fines. Acting for and on behalf of the Association, the Board of Directors may propose the imposition of fines against any Member of any Member's tenant, guest, or invitee for the failure of the Owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the Declaration, the Association's Bylaws, or reasonable rules of the Association (such failure to comply is sometimes in these rules referred to as either "non-compliance" or as a "violation"). The Board of Directors may propose such fine of up to \$100.00 per violation per day for each day of a continuing violation of any such provision, except that the fine may not exceed \$1,000 in aggregate. The Association must provide at least fourteen (14) day written notice of the proposed imposition of such fine or suspension by mail or hand delivery to the parcel Owner/Member with a notice of hearing before the Fining Committee.

Section 2. The Fining Committee. The Fining Committee is hereby established by the Board of Directors and shall be comprised of at least three committee members who must not be officers, directors or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee of the Association. The Board of Directors may from time to time determine the number of committee members who shall serve on the Fining Committee, but in no event shall the number of committee members be less than three (3). The Board of Directors may appoint the committee member to the Fining Committee and may appoint committee members to fill any vacancies on the Fining Committee by the majority vote of the directors who are present at a duly convened meeting of the Board of Directors at which a quorum is present, or by the unanimous written consent of all the Directors taken in lieu of a meeting in accordance with the Bylaws of the Association. Committee members of the Fining Committee shall serve a term of one year or until their earlier resignation, or their earlier removal by the Board of Directors.

Section 3. Hearing Conducted by the Fining Committee. All proposed fines by the Board of Directors must be imposed by the Fining Committee. The Fining Committee shall convene on the date and at the place and time specified in the written notice of hearing in order to conduct a hearing (or hearings) for the person(s) sought to be fined and to review each proposed fine. The Board of Directors from time to time shall establish or approve the manner for determining dates, times and places that the Fining Committee will convene. At least three (3) incumbent committee members who have been duly appointed by the Board of Directors to the Fining Committee must be present to conduct the hearing(s) and may appoint a committee chairman, from among the three (3) committee members, to preside over the hearing(s). At each hearing, the Fining Committee must ensure that the required written notice of hearing regarding the proposed fine or fines was delivered to the person who is sought to be fined more than fourteen (14) days in advance of the date scheduled for the hearing, and that the written notice of hearing complies with the requirements set forth herein. If necessary, any director or officer of the Association or any representative of the community management company of the Association will have the reasonable opportunity during the hearing to present testimony and evidence of the alleged violation or non-compliance to the Fining Committee. The Fining Committee will afford to the person who is sought to be fined the reasonable opportunity (as determined in the judgement of the Fining Committee) to present testimony and evidence during the hearing either that (a) there is no violation or (b) that the proposed fine is not reasonable. The Fining Committee may adopt its own procedural rules for the conduct of the hearing and for the orderly and efficient presentation of evidence at the hearing. However, the Fining Committee is not bound by any procedures or rules of evidence of any court, arbitration or similar tribunal. Members of the Fining Committee

are entitled to ask questions and to elicit answers from participants of the hearing. At the conclusion of the testimony and presentation of the evidence including any rebuttals (when the Fining Committee determines in its judgment that the person sought to be fined has been afforded a reasonable opportunity to present testimony and evidence), then the Fining Committee members will vote by secret ballot, and, by the majority vote of its members, the Fining Committee will make a determination or ruling, based on its findings of fact, as to whether the Fining Committee will confirm the fine in its entirety OR reject the fine in its entirety. If the notice of hearing has been properly delivered to the person sought to be fined and such person does not appear for the hearing on the date and at the place and time set forth in the notice of hearing, then the Fining Committee may review the Association's proposed fine ex parte in the absence of the person sought to be fined, including any testimony and evidence delivered to or presented before the Fining Committee, and, by the vote of a majority of its members, make its findings of fact, determination or ruling and confirm or reject the proposed fine. The Fining Committee, in its discretion, may or may not announce its determination or ruling immediately after its vote. It may also continue the matter to the next meeting to allow for compliance prior to making a determination on the fine. After the hearing is adjourned, the Fining Committee shall prepare a report to the Board of Directors containing: (a) the Fining Committee's written findings of the facts that it found to be true, (b) its written determination or ruling as to whether the proposed fine is confirmed or rejected by the majority vote of the Fining committee, and (c) its written reasons for its determination or ruling. Within a reasonable time following the hearing, the Fining Committee will issue and deliver its written findings and written determination or ruling to any officer of the Association for delivery to the Board of Directors. The Fining Committee must impose or reject the fine in its entirety, and may not modify the proposed fine amount.

Section 4. Imposition of the Fine by the Association. If the Fining Committee, by majority vote, confirms the proposed fine, then the fine may be levied or imposed by the Board of Directors. If the Fining Committee rejects the proposed fine, the proposed fine shall not be levied or imposed. If the Fining Committee by majority vote, has determined that the proposed fine is approved, then the Association may then impose or levy the fine within a reasonable time following delivery of the report from the Fining Committee (not to exceed 21 days). The Association, must provide written notice of the levy of such fine by mail or hand delivery to the parcel Owner/Member and, if applicable, to any tenant, licensee, or invitee of the parcel Owner/Member, together with a copy of the written findings, determination and/or recommendation of the Fining Committee. Fines shall be paid not later than thirty (30) days after notice is delivered regarding the imposition of the fine.

Section 5. Rules Not Exclusive of Any Other Rights or Remedies. These Rules for proposing, reviewing, and levying fines as set forth in shall not alter, amend or supersede any other rights or remedies available to the Association, its Members, or the Board of Directors, either at law or in equity or under the governing documents of the Association, including the Association's recorded Declaration of Covenants and Restrictions, and duly adopted and recorded amendments, and the Association's Articles of Incorporation and Bylaws, and any duly adopted amendments thereto.

Section 6. Collection of Fines. Pursuant to Article XIV, Section D of the Declaration, the fines levied may be collected in the same fashion as assessments are collected. A fine of less

than \$1,000.00 may not become a lien against a parcel, unless otherwise provided by Florida Statutes. A fine equal to or exceeding \$1,000.00 may become a lien against a parcel as provided in the same fashion as assessments are or become liens.

ARTICLE II.

Miscellaneous

Section 1. Construction. It is the intent in adopting these Rules that any court of competent jurisdiction shall each reasonably construe and interpret each provision of these Rules to be limited or expanded in meaning only to the extent necessary that each such provision may be determined, by a court of competent jurisdiction, to be a reasonable, authorized, valid and enforceable provision of these Rules.

Section 2. Severability. Notwithstanding applying the provisions of Article II, Section 1 of these Rules, if any provisions of these Rules are determined to be invalid or unenforceable by any court of competent jurisdiction by reason of being unreasonable or unauthorized or for any other reason whatsoever, then the remaining provisions of these Rules shall nevertheless remain valid and in full force and effect.

Section 3. Captions and Headings. Any captions and heading appearing in the Articles of Section numbers set forth are for convenience of reference only and are not to be used in interpreting these Rules.

Section 4. Amendment or Repeal. The Board of Directors may repeal or amend any or all of the foregoing rules and procedures and other provisions from time to time, including but not limited to the preamble and resolutions.

This Resolution was adopted by a majority vote of the Board of Directors of Falcon Trace Property Owners' Association, Inc. on the __th day of _____, 2019.

**FALCON TRACE PROPERTY OWNERS'
ASSOCIATION, INC.**

EFFECTIVE

September 1, 2019

BY THE BOARD OF DIRECTORS

Director and Chairman of the Meeting

Director

Director

Director

Director

Acknowledgement and Acceptance of Delivery

I, _____, the undersigned duly appointed and incumbent Secretary of Falcon Trace Property Owners' Association, Inc. (the "Association"), hereby acknowledge my receipt of foregoing Resolutions and the above Rules adopted pursuant to these Resolutions by the affirmative vote of a majority of the Directors at a duly convened meeting of the Board of Directors of the Association, held this ____ day of _____, 2019 at which a quorum was present, and I hereby place these Resolutions and Rules of the Board of Directors with the official records of meeting minutes, actions, and governing documents of the Association on this day. A copy of these Rules shall be mailed to each and every Member of the Association.

Print Name - Secretary of the Association