

Falls Run Governance

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In order to understand the structure and function of governance in Falls Run, and to make sense of the complexities of its sometimes conflicting principles, one must be familiar with the governing documents that prevail. A recounting and explanation of the relevant documents, primarily in chronological order, is offered below.

I. Introduction

Falls Run, a common interest community located in Stafford County, Virginia, was developed by Del Webb as an active adult, age restricted community providing “housing primarily for persons 55 years of age or older.”

Organizationally, Falls Run has two important characteristics; it is (1) a **common interest community** and (2) it is subject to a **two-tiered hierarchy of governance**.

Del Webb, one of the largest developers of active adult communities in the country, was acquired by Pulte Homes, Inc. effective July 31, 2001. As a component of Pulte Homes, the “Del Webb Group of Pulte Homes” is responsible for the development of large-scale active adult communities across the United States. The founder of Del Webb, Delbert E. Webb, developed the concept in 1960 for the self-contained retirement community named Sun City located near Phoenix, Arizona.

Created initially as a residential community for 582 property owners residing in “detached” dwelling units, the community evolved in size and complexity as the developer, Del Webb, elected to proceed. Although it is not widely known, a large majority of the 582 “detached” houses built by Del Webb are actually duplex (multi-family) dwelling units. The duplex dwelling units were built on common foundations, have the appearance of free standing structures, and were constructed with the approval of Stafford County. Del Webb elected to construct numerous duplex houses in order to increase the density and number of dwelling units on the available land.

II. The Property

In 2001, Del Webb, acting through its subsidiary Trovas Construction Company, acquired the first piece of land on which the Falls Run community was eventually built from Silver Retirement Communities, LLC. The land, Parcel 7A, containing about 57.6 acres, was purchased for \$3.333 million. In short order, additional property in Land Bays 4A, 4B, and 7 in England Run North were also acquired, amounting to the 228.33 acres that today comprise Falls Run.

III. 2002 Incorporation of the FRCA

The Falls Run Community Association, Inc., (abbreviated FRCA) was created on June 21, 2002 by “Del Webb Communities of Virginia, Inc., an Arizona corporation.” On that date, the FRCA was incorporated by W. Allen Ames. The registered agent of the Association was Christopher J. Ryan, “Vice President of Del Webb Communities of Virginia, Inc., an Arizona corporation.” The Articles of Incorporation enabled the formation of a Board of Directors for the Association and specified the purposes of the Association.

The initial FRCA Board of Directors was appointed by Del Webb and consisted of Christopher J. Ryan, Omar A. Badawi, and Channon E. Rickard. The FRCA was incorporated for the “management, maintenance and care of the Common Area and Neighborhood Facilities and the provision of services to Owners.”

IV. 2002 FRCA Declaration

Falls Run was created by Del Webb as a **property owners’ association** community. The community was created in conformity with provisions found in the Code of Virginia, Title 55, Property and Conveyances, Chapter 26, *Property Owners’ Association Act*.

On August 21, 2002, Del Webb executed a “Declaration of Covenants, Conditions, and Restrictions for Falls Run” (hereafter, 2002 FRCA Declaration). The 2002 FRCA Declaration was signed by “Christopher Ryan, Vice President of Del Webb Communities of Virginia, Inc., an Arizona corporation,” as Declarant. The 2002 FRCA Declaration was legally recorded as Land Record LR020024438 in Stafford County, Virginia on August 23, 2002.

A. Amending the 2002 FRCA Declaration

During the Declarant's "Development Period," the 2002 FRCA Declaration could be amended unilaterally by the Declarant. Subsequently, the 2002 FRCA Declaration could only be amended by a two-thirds affirmative vote by the entire Association membership, which eventually consisted of 582 members.

B. Purposes of the 2002 FRCA Declaration

The purposes of the 2002 FRCA Declaration are many and varied. Some of the most relevant purposes, not listed in priority, are to:

- Specify that the FRCA is the Master Association for Falls Run
- Specify that the property is a common interest community
- Specify the real estate under the jurisdiction of the Association
- Specify the qualifications for Association membership
- Specify the responsibilities of the Association to its members and the benefits of Association membership
- Specify the rules and regulations incumbent on members of the Association
- Specify procedures and covenants of the Association
- Specify the Board's authority to levy assessments on its members

V. 2001 FRCA Bylaws

The original 2001 FRCA Bylaws were prepared by Del Webb as Declarant. Curiously, the original FRCA Bylaws are dated December 17, 2001, which makes them approximately eight months "younger" than the original 2002 FRCA Declaration and written prior to incorporation. Perhaps the FRCA Bylaws were simply modified by Del Webb from some other community and adapted for Falls Run.

The Bylaws of the FRCA are not included in the Declaration and are not required by law to be recorded as a Land Record. In addition, the FRCA Bylaws can be amended by Board action, without the need to obtain approval by the Association.

VI. Expandable Condominium

The 2002 FRCA Declaration included provisions whereby the Declarant could elect to enlarge the Falls Run community through the creation of an "expandable" condominium. The specific provisions may be found in: (1) **Article I**, Section 1.24 Local Area Association, Section 1.25 Local Area

Declaration, and Section 1.48 Supplemental Declaration or Supplement; (2) **Article VII**, Annexation and Withdrawal of Property; and (3) **Article XV**, Condominium and Other Homeowners Associations.

VII. Villas at Falls Run Condominium

In early March 2005, Del Webb elected to act on **Article XV** of the 2002 FRCA Declaration to create an “expandable” condominium in Falls Run, eventually totaling 199 dwelling units contained in 55 buildings. The condominium was created by “Del Webb Communities of Virginia, Inc., an Arizona corporation,” on land that had been acquired previously by Trovas Construction Company, a subsidiary of Del Webb, from Silver Retirement Communities II, L.L.C. The land transaction (Parcels 4A and 4B) was recorded as LR020039257 on December 27, 2002, and consists of approximately 33.2 acres contained within the 228.33 Falls Run acres.

A. 2005 Villas Declaration

On March 21, 2005, Del Webb filed Land Record LR050009485 in Stafford County, Virginia, titled “Declaration of The Villas at Falls Run Condominium,” (hereafter, referred to as the 2005 Villas Declaration). This Declaration had been signed on March 11, 2005, by “Dennis A. Ouellette, General Manager and Vice President of Operations for Del Webb,” as Declarant. The 2005 Villas Declaration complied with provisions of law found in the Code of Virginia, Title 55, Property and Conveyances, Chapter 4.2, *Condominium Act*.

B. 2005 Villas Bylaws

The Villas Bylaws are actually contained within the 2005 Villas Declaration in compliance with Section 55-79.73 of the Virginia *Condominium Act*. The Villas Bylaws are contained in *Exhibit C* of the 2005 Villas Declaration (LR050009485). Even though the Villas Bylaws are contained within the 2005 Villas Declaration, they will be referred to as the 2005 Villas Bylaws.

C. 34 Phases of Construction

The expandable condominium was actually built by Del Webb in 34 phases, each phase consisting of one or more buildings (a building contained either three or four dwelling units). The condominium was completed after a total of 55 buildings, containing 199 dwelling units, had been constructed.

VIII. Villas Condominium Association (VCA)

The 2002 FRCA Declaration, **Article XV**, stipulated that a “Local Area Association” must be created to manage the affairs of a condominium if one were to be built. The 2005 Villas Bylaws fulfilled this requirement by creating a Local Area Association named “The Villas at Falls Run Condominium Unit Owners Association” (abbreviated VCA), and the Villas Board of Directors. The VCA exists as a Local Area Association under the authority and jurisdiction of the FRCA, the Master Association.

IX. Purposes of the 2005 Villas Declaration

The purposes of the 2005 Villas Declaration are similar to the purposes of the 2002 FRCA Declaration, with the exception that as a Local Area Association it has (1) secondary jurisdiction under the primary jurisdiction of the FRCA, and (2) its jurisdiction applies only to the 199 members of the VCA.

X. Amending the 2005 Villas Declaration and 2005 Villas Bylaws

During the Declarant’s Control Period, which ended in early 2006, the 2005 Villas Declaration and the 2005 Villas Bylaws could be amended unilaterally by the Declarant. Once the Control Period was ended, the process of amending either the 2005 Villas Declaration or the 2005 Villas Bylaws must follow provisions found in the *Condominium Act*.

As phases of the condominium project were completed, Del Webb filed separate amendments to the 2005 Villas Declaration as Land Records in Stafford County to legally include the property in the condominium’s Declaration and to include the dwelling unit owners in VCA membership. **A total of 30 amendments to the 2005 Villas Declaration were recorded in 2005 by Del Webb in order to complete the condominium project.**

No other changes to the 2005 Villas Declaration or the 2005 Villas Bylaws were made by the 30 amendments filed by Del Webb.

Once the Declarant’s Control Period was completed, provisions in the *Condominium Act* stipulate that the 2005 Villas Declaration (and, therefore, the 2005 Villas Bylaws) could only be amended by a two-thirds affirmative vote of the entire membership (199 dwelling unit owners) in the condominium, coupled with the prior written approval of 51% of all institutional holders of First Mortgages. When the condominium was completed in 2006, it contained 199

dwelling unit owners and 133 affirmative votes are now needed to amend the Villas Declaration and the Villas Bylaws.

XI. 30 Supplementary Declarations (2005) to the 2002 FRCA Declaration

At about the same time that each of the individual 30 Amendments to the 2005 Villas Declaration were filed, Del Webb filed a Supplementary Declaration **annexing** the completed portion of the condominium property to the FRCA and **subjecting** both the condominium property and unit owners to the 2002 FRCA Declaration and to the Master Association. The 30 Supplementary Declarations brought each newly completed portion of the condominium under the jurisdiction of the FRCA and made the dwelling unit owners in the condominium full members of the FRCA, entitled to all of the services, benefits, privileges, rights, and responsibilities of such membership.

Importantly, the Supplemental Declarations also extended the primary jurisdiction of the FRCA, as the Master Association, over the entire property on which the condominium had been built and it expanded the responsibilities of the FRCA to include the condominium. A total of 30 Supplementary Declarations were recorded by Del Webb in 2005 to (1) complete annexation of the property to the FRCA and (2) include all 199 VCA members of the condominium in the FRCA, which increased the total FRCA membership from 582 to 781 dwelling unit owners.

XII. 2006 FRCA Amended Declaration

The 2002 FRCA Declaration was amended by Del Webb in early 2006. The relevant document is titled “Amended Declaration of Covenants, Conditions, and Restrictions for Falls Run.” The new document, hereafter referred to as the 2006 FRCA Amended Declaration, was recorded on February 14, 2006, as Land Record LR060005387 in Stafford County, Virginia. The document was signed on February 13, 2006, by Dennis Ouellette, Vice-President of Del Webb Communities of Virginia, Inc., as Declarant.

The 2006 FRCA Amended Declaration is actually not an amendment of the 2002 FRCA Declaration. Instead, it is a restatement and replacement of the 2002 FRCA Declaration in its entirety. Curiously, the 2006 FRCA Amended Declaration begins by stating “This Declaration of Covenants, Conditions, and Restrictions is made this 10th day of January, 2002, by Del Webb Communities of Virginia, Inc., an Arizona corporation (the ‘Declarant’).”

It is indeed curious that the 2006 FRCA Amended Declaration would include a statement that it was “made this 10th day of January, 2002,” especially since it was signed on February 13, 2006, by Dennis Ouellette.

XIII. Amending the 2006 FRCA Amended Declaration

The 2006 FRCA Amended Declaration can only be amended by a two-thirds affirmative vote by the entire Association membership (at least 521 out of 781 dwelling unit owners).

XIV. Articulation of the FRCA Declaration and the Villas Declaration

Although the 2002 FRCA Declaration required the Villas condominium as a Local Area Association to have its own separate declaration and bylaws, the 2006 FRCA Amended Declaration is now the primary and controlling document for all of Falls Run. Because the FRCA is the Master Association, its jurisdiction applies throughout all of Falls Run and its services, benefits, privileges, rights, and responsibilities of membership apply equally to all members of the FRCA.

Furthermore, neither the 2005 Villas Declaration nor the 2005 Villas Bylaws can contradict or negate any portion of the 2006 FRCA Amended Declaration. While it is permissible for the 2005 Villas Declaration and the 2005 Villas Bylaws to be more “restrictive” than the 2006 FRCA Amended Declaration, neither can be more permissive or contradictory. Importantly, the scope of applicability of the 2005 Villas Declaration and 2005 Villas Bylaws extends only to the 199 dwelling unit owners in the condominium.

XV. 2006 Amended FRCA Bylaws

On March 22, 2006, the original Bylaws of the FRCA, dated December 17, 2001, were amended by the FRCA Board of Directors (hereafter, referred to as the 2006 Amended FRCA Bylaws). The FRCA Board, in conformity with provisions in the *Property Owners’ Association Act*, has the authority to amend the Bylaws without submitting the amendment to the entire Association membership for approval.

XVI. 2009 Amended FRCA Bylaws

On April 22, 2009, the FRCA Board restated and amended the 2006 Amended FRCA Bylaws once again. This document is hereafter referred to as the 2009 Amended FRCA Bylaws. The 2009 Amended FRCA Bylaws are the most current version of the FRCA Bylaws.

XVII. Falls Run Design Guidelines

The Falls Run Design Guidelines, as promulgated by the FRCA, are authorized by the 2006 FRCA Amended Declaration, **Article VIII**, Architectural Standards, Section 8.3, Guidelines and Procedures. The guidelines apply to all 781 dwelling unit owners in Falls Run and responsibility for assuring compliance with the Design Guidelines is vested in the FRCA's Modifications Committee.

Over the years, the Falls Run Design Guidelines were issued periodically by the FRCA and revised as necessary. According to records available, the Falls Run Design Guidelines were re-written by the FRCA Board of Directors in July 2006, revised on October 22, 2008, and re-issued in 2013. The most current version of the Design Guidelines is titled "2013 Falls Run Design Guidelines – Amended February 25, 2015."

XVIII. FRCA Administrative Resolutions

From time to time the FRCA Board of Directors has adopted policies and procedures that are binding on all members of the Association, as authorized by the 2006 FRCA Amended Declaration, **Article IV**, Rights and Obligations of the Association/Various Disclosures and Disclaimers, and especially Section 4.3, Rulemaking and Enforcement. Authority to make such policies and procedures, is granted by Section 4.3, (a) Rulemaking: "The Association, through the Board, may make, modify, amend, cancel, limit, create exceptions to and enforce reasonable rules governing the use of the Properties, consistent with the rights and duties established by the Governing Documents...".

The authority to enforce such policies and procedures is granted by **Article IV**, Section 4.3, (b) Enforcement: "Subject to the limitations and requirements of Virginia Code Ann. Section 55-513B, the Board or the covenants committee established pursuant to the Bylaws, may impose sanctions for violations of the Governing Documents ...".

XIX. 2015 Amendment to the 2005 Villas Declaration

On July 24, 2015, the 2005 Villas Declaration and the 2005 Villas Bylaws (*Exhibit C* of the 2005 Villas Declaration) were amended in proper fashion by the VCA membership. This transaction was legally recorded as Land Record LR150012889 in Stafford County, Virginia. The amendment clarified ambiguities and omissions that were present in Attachment A, "Schedule of Maintenance Responsibilities," to the original 2005 Villas Bylaws.

Hereafter, the most currently amended 2005 Villas Declaration is referred to as the 2015 Amendment to the 2005 Villas Declaration and the most currently amended 2005 Villas Bylaws, which are contained in the amended Declaration as *Exhibit C*, is referred to as the 2015 Amendment to the 2005 Villas Bylaws.

XX. VCA Administrative Resolutions and Rules and Regulations

From time to time the VCA Board of Directors has adopted policies and procedures that are binding on all members of the VCA, as authorized by the 2015 Amendment to the 2005 Villas Declaration and the 2015 Amendment to the 2005 Villas Bylaws, **Article III**, Board of Directors, and especially Section 2, Powers and Duties.

The 2015 Amendment to the 2005 Villas Declaration, **Article III**, Section 2 states, “The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association and may take any and all actions that are not by the *Condominium Act* or the Condominium Instruments required to be taken by the Association.” And, in Section 2, Paragraph (f), “Adopt and amend any rules and regulations; provided, however, that such rules and regulations shall not be in conflict with the Condominium Act or the Condominium Instruments.” As a Local Area Association, all Administrative Resolutions, rules, and regulations adopted by the VCA apply only to the 199 members of the VCA.

Authority to enforce such policies and procedures is granted by **Article III**, Section 2, Paragraph (i), “Enforce by legal means the provisions of the Declaration, these Bylaws and the rules and regulations...”. Once again, it is important to note that this VCA enforcement power as a Local Area Association extends only to the 199 members of the VCA.

XXI. Summary

The 2002 FRCA Articles of Incorporation stipulated the purpose of the Association and specified that a Board of Directors was to be created to manage the affairs of the Association. The Articles of Incorporation declare that the FRCA was incorporated for the “management, maintenance and care of the Common Area and Neighborhood Facilities and the provision of services to Owners.”

A comprehensive review of the entire collection of governing documents leads to the following conclusions and facts.

A. The FRCA is the Master Association for all of Falls Run. Its domain encompasses the entire Falls Run property and **its primary jurisdiction applies equally to all 781 members of the FRCA.**

B. The FRCA governing documents consist of the following items:

- Articles of Incorporation (2002)
- 2002 FRCA Declaration (superseded in 2006)
- 30 Supplemental Declarations (all recorded in 2005)
- 2006 FRCA Amended Declaration
- FRCA Amended Bylaws (2009)
- 2013 Falls Run Design Guidelines (Amended February 25, 2015)
- FRCA Administrative Resolutions (various dates)

C. The VCA is a Local Area Association operating under delegation of authority from the 2002 FRCA Declaration. It is subordinate to the Master Association.

The VCA was created by the 2005 Villas Declaration and by the 2005 Villas Bylaws. Its rules and regulations may be more restrictive but not more permissive or in conflict with those of the FRCA. The VCA has secondary jurisdiction to the FRCA, and **its jurisdiction applies only to the 199 members of the VCA.**

D. The VCA governing documents consist of the following items:

- 2005 Villas Declaration (which contains the 2005 Villas Bylaws)
- 30 Amendments to the 2005 VCA Declaration and 2005 Villas Bylaws (all recorded in 2005)
- 2015 Amendment to the 2005 Villas Declaration
- 2015 Amendment to the 2005 Villas Bylaws
- VCA Administrative Resolutions (various dates)
- VCA Rules and Regulations (various dates)

E. Complications Arising From Multiple Associations

While the FRCA governing documents apply equally to all 781 members of the Association, the presence of a condominium within the Falls Run community potentially complicates interpretation of how the two Associations actually relate to one another. This potential complication

is clarified and eliminated, however, by simply turning to the guidance found in the 2006 Amended FRCA Declaration.

The 2006 Amended FRCA Declaration addresses the rights of membership in the FRCA, such as the provision of services, benefits, and privileges, as well as the responsibilities of membership in the FRCA, and assures that they are extended equally to all 781 members of the Association.

Thus, regardless of whether one has chosen to live in the condominium or in a single family house, identical services, benefits, privileges, and rights of membership in the FRCA are extended to all dwelling unit owners in Falls Run. Furthermore, all 781 dwelling unit owners have an identical obligation to fulfill those responsibilities to which they are bound through membership in the FRCA.

F. FRCA Monthly Assessments and Member Benefits

The 2006 Amended FRCA Declaration states in **Article VII, Assessments, Section 7.1, Creation of Assessments**, that the Association may levy assessments against each dwelling unit under the condition that “(a) Base Assessments to fund Common Expenses for the **general benefit of all Dwelling Units**” (emphasis added).

In some ways, this provision is similar to the "equal protection" clause in the 14th Amendment to the U.S. Constitution because it serves as a yardstick against which a determination can be made as to the legitimacy of the assessment levy. In addition, it clarifies the obligations and responsibilities of the FRCA as they apply to its 781 members.

For example, if a specific service or benefit of the Association isn't extended equally to all 781 members of the Association, the cost of that specific service or benefit is not legitimate and may not be assessed against all members of the Association. Conversely, an assessed levy is legitimate if, and only if, the specific service or benefit it provides is distributed equally or applies equally to all 781 members of the FRCA.

Stated another way, if all of the services, benefits, privileges, rights, and responsibilities of membership afforded by the FRCA are not extended equally to all 781 members of the Association, the FRCA may not assess

all 781 members equally. Therefore, it is irrelevant where one lives in Falls Run, whether in the condominium or in a single family house, because the FRCA is legally obligated to provide identical services, benefits, privileges, and rights to all 781 of its members.

The potential complications arising from multiple Associations within Falls Run is eliminated by simply turning to and adhering to the guidance found in the 2006 Amended FRCA Declaration, Article VII, Section 7.1.

G. FRCA Monthly Assessments Paid by VCA Members

Ever since the 30 Supplemental Declarations were filed and recorded in 2005, all 199 dwelling unit owners in the condominium have been full members of the FRCA and subject to the 2002 FRCA Declaration and its successor, the 2006 FRCA Amended Declaration. Ever since 2005, the 199 dwelling unit owners in the condominium have paid the same monthly assessment to the FRCA as all other dwelling unit owners in Falls Run. As such, they are entitled to the same services, benefits, and rights of membership in the FRCA, just as they are extended to all other members of the FRCA, and to fulfill those responsibilities to which they are obligated by membership in the FRCA.

The 2002 FRCA Articles of Incorporation make this obligation clear and unambiguous; the Association is responsible for the “management, maintenance and care of the Common Area and Neighborhood Facilities and the provision of services to Owners.” The Articles of Incorporation do not distinguish where the “Owners” in Falls Run have chosen to reside and they apply equally to all owners residing in the condominium.

H. Implications of Common Assessments

Since 2005, the 199 dwelling unit owners in the condominium have been charged by the FRCA, and paid to the FRCA, the exact same base assessment as the other 582 dwelling unit owners in the Association. Consequently, the 199 dwelling unit owners in the condominium are **entitled** (2006 Amended FRCA Declaration, **Article VII**) to receive identical services, benefits, privileges, and rights, and to fulfill responsibilities of membership as they are extended by the FRCA and its management team to all members of the FRCA.

Furthermore, the FRCA and its management team have an **obligation** to provide to the 199 dwelling unit owners in the condominium the identical services, benefits, privileges, and rights of membership that all other members of the FRCA receive and to fulfill those responsibilities to which they are obligated by membership in the FRCA.

I. Entitlement to FRCA Benefits

Because the 199 dwelling unit owners in the condominium comprise approximately 26% of the FRCA membership, and contribute about 26% of the annual FRCA assessment income, it is not unreasonable to conclude that the 199 FRCA members residing in the condominium are entitled to receive approximately $\frac{1}{4}$ of all services and benefits associated with membership in the FRCA.