

Falcon Heights Condominium Association
Resolution # 2025-003
Partition Fences in Exclusive Use Areas

WHEREAS Falcon Heights Condominium Association Declaration Stage 1, 2 and 3 Article 5.1, defines General Common Elements as *the land, roads, fences and all grounds except those which are designated as Limited Common Elements by Article 6.*

WHEREAS Falcon Heights Condominium Association Declaration Stage 1, Article 6.1, Stages 2 and 3 Article 7 define Limited Common Elements as *all walkways, patios, and driveways, each of which shall pertain to the unit which adjoins as shown on the plat. And the backyard area accessed from the back door of each unit shall be a limited common element reserved for the exclusive use of the unit to which it pertains.*

WHEREAS Falcon Heights Condominium Association Declaration Stage 1 Article 11.1 states that *the necessary work to maintain, repair or replace the common elements shall be the responsibility of the Board of Directors of the Association and shall be carried out as provided in the bylaws. All maintenance shall be charged as a common expense.*

WHEREAS Falcon Heights Condominium Association Declaration Stage 1 Article 11.2 states that *the limited common elements of the driveways, walkways, patios and backyards all of which pertain to such owner's unit, shall be the responsibility of the unit owner to maintain in a neat, clean and sanitary condition on a regular basis as described in these articles and in the bylaws. In the event that the need for maintenance, repair or replacement is caused through a willful or negligent act, misuse or neglect of the condominium unit owner, their family or guests or invites, the cost of such maintenance or repairs shall be added to and become part of the assessment to which the condominium unit is subject.*

WHEREAS Article 7.1 of the Falcon Heights Bylaws states that, *Except as otherwise provided in section 7.3 for damage or destruction caused by casualty:*

A. Units. All maintenance of and repairs to any unit's exclusive use area, glass portions of the windows and glass doors shall be made by the owner of such unit, who shall keep the same in good order, condition and repair and shall do all things necessary which at any time may be necessary to maintain the good appearance and condition of the unit. In addition, each unit owner shall be responsible for the maintenance, repair, or replacement of the glass portions of the windows and doors and any plumbing, heating or air conditioning fixtures, telephones, water heaters, fans, lighting fixtures and lamps, fireplaces, refrigerators, dishwashers, ranges or other appliances and accessories that may be in or connected with such owner's unit. Each owner shall be responsible for the maintenance of the back yard exclusive use area. Each owner shall be responsible for the maintenance and repair of all exterior siding of the unit, the dry wall and interior walls of their respective units. This area must be kept clean, sanitary and in attractive condition, and shall be kept free of rubbish and litter and maintained in good condition and repair including all improvements located within.

B. Common Elements and Limited Common Elements. All maintenance, repairs and replacements to the general common elements and limited common elements shall be made by the association and shall be charged to all the unit owners as a common expense. Each unit owner, however, shall keep the limited common elements, and exclusive use areas which pertain to such owner's unit in a neat, clean and sanitary condition.

WHEREAS Article 11.1 (O) of the Bylaws, Conditions, Covenants and Restrictions states *Each unit is purchased with a partition fence pre-built by the developer.* There shall be no painting, alterations or construction of additional fences upon the common elements or upon each unit's exclusive use area without prior approval of the board of directors. Any additional fences proposed must be in conformance with existing fences and shall be approved by the Board of Directors.

WHEREAS there is no specific mention of the fences that partition the exclusive use area of the units in the Declaration; and that the Declaration allows for the Bylaws to determine the responsibility of the repair and maintenance of improvements within the exclusive use area; and the Bylaws state that each unit is purchased with a partition fence.

WHEREAS the backyard of each unit is an exclusive use area, for the sole use of the unit owner to enjoy, and, within the limits of the Bylaws, to use, improve or alter at their own expense and discretion.

WHEREAS the inability to ensure proper use, and the prevention of misuse, of a partition in an exclusive use area would require undo oversight by the Association and be a violation of the unit owners' rights to an exclusive use area and privacy.

WHEREAS it is fiscally irresponsible for the Association to assume costs for repairs, maintenance or replacement of an improvement they have no ability to regulate, that is solely for the exclusive use of the unit owners.

NOW THEREFORE the Falcon Heights Board of Directors determines that the partition fences dividing the backyards of each unit is the responsibility of the unit owner(s) to repair, replace and maintain. All public facing fences such as street and alley facing fences are the responsibility of the Association to repair, replace and maintain. In the event that a partition fence needs to be repaired or replaced and is not the direct result of damage by one owner, the owners of both units on each side of the partition should jointly share the expense.

Accepted this 8th day of May 2025 by a Board of Directors majority vote.

Anthony Anghinetti, President

 5/8/25

Robert Stroope, Secretary

