

FIFTH AMENDED BYLAWS OF THE FAIR OAKS RANCH HOMEOWNERS ASSOCIATION, INC.

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**ARTICLE I
NAME AND LOCATION**

The name of the corporation is Fair Oaks Ranch Homeowners Association, Inc. (“FORHA”) The principal office of the corporation shall be located at 7286 Dietz Elkhorn, Fair Oaks Ranch, Texas 78015, but the meetings of the members and Directors may be held at such places within the State of Texas as may be designated by the Board of Directors.

ARTICLE II DEFINITIONS

- (1) “Annual Assessment” shall mean the total amount Members are charged annually by the Association in accordance with these Bylaws, which is the sum of the minimum assessments as defined in section XI(c)(1) and the additional assessments as defined in section XI(c)(2).
- (2) “Association” shall mean and refer to Fair Oaks Ranch Homeowners Association, Inc., its successors and assigns.
- (3) “Common Area” shall mean all real property owned by the Association for the common use and enjoyment of the Owners.
- (4) “Developer” shall mean and refer to Fairco, Inc., its successors and assigns.
- (5) “Lot” shall mean and refer to any plot of land (with the exception of any common area) shown on the recorded subdivision plats of Fair Oaks Ranch Bexar County Unit No. 1, and on plats of any additional subdivisions which may hereafter be brought into the Association.
- (6) “Member” shall mean and refer to those persons entitled to membership in the Association as provided in the Articles of Incorporation.
- (7) “Owner” shall mean and refer to the record Owners, whether one or more persons or entities, of the title to any Lot or condominium which is in a part of the subdivision, including contract purchasers, but excluding those holding title merely as security for the performance of an obligation.
- (8) “Proxy” shall mean and refer to a written authorization empowering another person to vote or substitute for a member.
- (9) “Subdivision” shall mean and refer to that certain tract of real property described in the Articles of Incorporation, and such additions thereto as may be brought within the jurisdiction of the Association.
- ~~(9) “Cumulative Voting” shall mean a system of voting in an election in which each voter is allowed as many votes as there are candidates and may give all to one candidate or varying numbers to several.~~

ARTICLE III MEETING OF MEMBERS

- (a) Annual Meetings. Annual meetings of Members shall be held in November each year starting at 7:00 or 7:30 p.m. on a date designated by the Board of Directors.
- (b) Special Meetings. Special meetings of Members may be called at any time by the President or

by the Board of Directors, or on written request of Members who are entitled to vote one-fourth of all votes of the ~~Class A~~ membership.

(c) Notice of Meetings. Written notice of each meeting of Members shall be given by or at the direction of the Secretary or other person authorized to call the meeting by mailing a copy of such notice, postage prepaid, **and/or sending it to the registered email address of a Member**, at least ten (10) but not more than **sixty (60)** days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of receiving notice. Such notice shall specify the day, hour and place of the meeting and in case of the special meeting the purpose of the meeting.

Notice to a Member by email must be sent to the registered email address provided to the Association in writing by that Member. The Association may provide notice to the Owner by email, even though another method of notice is prescribed by law, if the Owner has affirmatively stated in writing that the Association can send all notices to the Owner by email. If emailed, the notice of meeting shall be deemed to be delivered as of the date and time shown on a confirmation that the email was successfully transmitted.

(d) Quorum. The presence at the meeting in person or by proxy of Members entitled to cast ten percent (10%) of the votes of the ~~Class A~~ membership shall constitute a quorum for authorization of any action, except as may otherwise be provided in the Articles of Incorporation or these Bylaws. The affirmative vote of the majority of a quorum shall be required for action to be taken by the Members **unless otherwise provided for in the Articles of Incorporation or these Bylaws**. If a quorum is not present at any meeting, Members entitled to vote thereat shall have power to adjourn the meeting from time to time without notice other than an announcement at the meeting, until a quorum is present. **At any reconvened meeting that has to be called, because a quorum was not present, the proxies and electronic ballots from the original meeting can be used to establish quorum and to vote.**

(e) Proxies. At all meetings of Members, each Member may vote in person or by proxy **or electronic ballot**. All proxies shall be in writing and filed with the Secretary. Proxies shall be revocable, and the proxy of an Owner shall be automatically terminated on conveyance **by him** of **his** the Lot.

ARTICLE IV
BOARD OF DIRECTORS – TERM OF OFFICE AND REMOVAL
~~FIRST ELECTION; REMOVAL~~

(a) Number. The affairs of the Association shall be managed by a Board of nine (9) Directors, who shall be ~~Class A~~ Members of the Association, or other persons designated by ~~Class A~~ Members. **All Directors do not have to reside in the Subdivision; however, no more than one (1) Director may be a non-resident of the Subdivision.**

If a Board is presented with written, documented evidence from a database or other record

maintained by a governmental law enforcement authority that an individual who wants to be a Director or someone who is already a Director was convicted of a felony or crime involving moral turpitude not more than 20 years before the date the Board is presented with the evidence, that person is immediately ineligible to serve on the Board of the Association, and if they are already on the Board they are automatically considered removed from the Board, and prohibited from future service on the Board.

(b) Term of Office. At each annual meeting the Members shall elect three (3) Directors for a term of three years. Any Board Member whose term has expired must be elected by the Members. Each Board Member is limited to two (2) consecutive terms. An unexpired term that someone has been appointed to fill does not count against a term. Term limits for the individuals who are on the Board of Directors when this Bylaw Amendment passed commence upon the expiration of the current term of each Board of Director's seat. After a Member serves two (2) consecutive terms, they can be appointed or be elected to the Board of Directors after they have sat out one term. This will be done in open meeting after prior notice was given to the Members.

(c) Removal. Any Director may be removed from the Board with or without cause by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, ~~his~~ a successor shall be selected by the remaining Members of the Board and shall serve for the unexpired term of ~~his~~ the predecessor.

ARTICLE V BOARD OF DIRECTORS – NOMINATION AND ELECTION

(a) Nomination. Nomination for election to the Board of Directors shall be by nominating committee. However, nomination may also be made from the floor at any annual meeting of the Members. The nominating committee shall consist of a Chairman who shall be a Member of the Board of Directors, and two (2) or more Members of the Association. The committee shall be appointed by the Board of Directors prior to each annual meeting to serve from the close of such meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the Board of Directors as names that it received from eligible candidates. ~~, but in no event shall it nominate less than the number of vacancies to be filled.~~

At least ten (10) days before the date the Association disseminates proxies, absentee ballots, or other ballots to Association Members for purposes of voting in a Board Member election, the Association must provide notice to the Association Members and solicit candidates interested in running for a position on the Board. The notice must contain instructions for an eligible candidate to notify the Nominating Committee of the candidate's request to be placed on the ballot and the deadline to submit the candidate's request. The deadline cannot be earlier than the 10th days after the date the Nominating Committee provides this notice.

The notice must be mailed to each Owner; or provided to them by: a) posting the notice in a conspicuous manner reasonably designed to provide notice to Association Members in a place

located on the Association's common property or, with a property Owner's consent, on other conspicuously located privately owned property within the subdivision; or on any Internet website maintained by the Association or other Internet media; and b) by sending the notice by e-mail to each Owner who has registered an e-mail address with the Association.

The Nominating Committee shall include on each absentee ballot, electronic ballot, proxies, or other ballot for a Board Member election, the name of each eligible candidate from whom the Nominating Committee received a request to be placed on the ballot.

(b) Election. Election to the Board of Directors shall be by written ballot. Written ballot may be submitted, prior to the applicable meeting of Members, by mail, or by facsimile transmission to the Association's principal office. Written ballots may also be submitted in person, or by electronic ballot, or by proxy at the applicable meeting of Members. In connection with such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles of Incorporation. Persons receiving the largest number of votes shall be elected. Cumulative voting for Directors shall not be permitted. Written and signed ballots are not required for uncontested races. In any election for the Board of Directors, each candidate may name one person to observe the counting of the ballots, provided that this does not entitle any observer to see the name of the person who cast any ballot, and any disruptive observer may be removed.

(c) Tabulation of Ballots. A person who is a candidate in an election or who is otherwise the subject of an association vote, or a person related to that person in the third degree of consanguinity or affinity, as determined by Chapter 573, Government Code, which is: spouse, parent/child, brother, sister, grandparent, great-grandparent, aunt/uncle, or nephew/niece may not tabulate or otherwise be given access to the ballots cast on the election or vote.

A person who tabulates votes or who performs a recount may not disclose to any other person how an individual voted.

Only a person who tabulates votes or conducts a recount may be given access to the ballots cast in the election or vote.

(d) Recount of Votes. Not later than the fifteenth (15th) day after the later of the date of any meeting of Members at which the election or vote was held or the date of the announcement of the results of the election or vote, any Member may require a recount of the votes. A demand for a recount must be submitted in writing either:

- (1) By verified mail or by delivery by the United States Postal Service with signature confirmation service to the Association's mailing address as reflected on the most recent management certificate filed in the Real property Records; or
- (2) In person to the Property Owners' Association's managing agent as reflected on the most recent management certificate filed in the Real Property Records.

The Association must estimate the costs for performance of the recount by a person qualified to tabulate votes and must send an invoice for the estimated costs to the requesting Member at the Member's last known address according to Association records no later than the twentieth (20th) day after the date the Association receives the Member's demand for the recount. The Member demanding a recount under this section must pay the invoice in full to the Association on or before the thirtieth (30th) day after the date the invoice is sent to the Member. If the invoice is not paid by the deadline, the Member's demand for a recount is considered withdrawn and a recount is not required. If the estimated costs are lesser or greater than the actual costs, the Association must send a final invoice to the Member on or before the thirtieth (30th) business day after the date the results of the recount are provided. If the final invoice includes additional amounts owed by the Member, any additional amounts not paid to the Association before the thirtieth (30th) business day after the date the invoice is sent to the Member may be added to the Member's account as an assessment. If the estimated costs exceed the final invoice amount, the Member is entitled to a refund. The refund shall be paid to the Member at the time the final invoice is sent.

Following receipt of payment, the Association shall, at the expense of the Member requesting a recount, retain for the purpose of performing the recount the services of a person qualified to tabulate votes. The Association shall enter into a contract for the services of a person who: (1) is not a Member of the Association or related to a Member of the Association Board within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and (2) is: a current or former: (A) county judge; county elections administrator; Justice of the Peace; or county voter registrar; or (B) a person agreed on by the Association and each person requesting the recount.

On or before the thirtieth (30th) day after the date of receipt of payment for a recount, the recount must be completed, and the Association must provide each Member who requested the recount with notice of the results of the recount. If the recount changes the results of the election, the Association shall reimburse the requesting Member for the cost of the recount not later than the thirtieth (30th) day after the date the results of the recount are provided.

Any action taken by the Board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.

(e) Take Office. The newly elected Directors shall take office at the beginning of the first meeting of the Board of Directors in January following the election.

ARTICLE VI BOARD OF DIRECTORS – MEETINGS

(a) Regular Meetings. Regular Meetings of the Board of Directors may be held monthly, at such place and hour as may be fixed from time to time by resolution of the Board. ~~In the event the regular date for a meeting falls on a legal holiday, such meeting shall be held at the same time on the next following day which is not a legal holiday.~~

(b) Regular and special Board meetings must be open to Members, subject to the right of the Board to adjourn a Board meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the Association's attorney, matters involving the invasion of privacy of individual Members, or matters that are to remain confidential at the request of the affected parties and agreement of the Board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual Members, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

Except for a meeting held by electronic or telephonic means as provided below, a Board meeting must be held in a county in which all or part of the property in the Subdivision is located or in a county adjacent to that county.

A Board meeting may be held by electronic or telephonic means provided that: (1) Each Board Member may hear and be heard by every other Board member; (2) Except for any portion of the meeting conducted in executive session; (a) All Members in attendance at the meeting may hear all Board members; and (b) Members are allowed to listen using any electronic or telephonic communication method used or expected to be used by a Board member to participate; and (3) The notice of the meeting includes instructions for Members to access any communication method required to have access to the meeting.

The Board shall keep a record of each regular or special Board meeting in the form of written minutes of the meeting. The Board shall make meeting records, such as documents provided to the Board members for the open portion of the meeting, including approved minutes, available to a Member for inspection and copying on the Member's written request to the Association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the Board.

Members shall be given notice of the date, hour, place, and general subject of a regular or special Board meeting, including a general description of any matter to be brought up for deliberation in executive session. This notice shall be:

- (1) Mailed to each Member not later than the 10th day or earlier than the 60th day before the date of the meeting; or
- (2) Provided at least 72 hours before the start of the meeting by:
 - (A) Posting the notice in a conspicuous manner reasonably designed to provide notice to Association Members:
 - (i) In a place located on the Association's common property or, with the Property Owner's consent, on other conspicuously located privately owned property within the subdivision; or
 - (ii) On any Internet website maintained by the Association or other

Internet media; and

- (B) Sending the notice by e-mail to each Member who has registered an e-mail address with the Association.

It is a Member's duty to keep an updated e-mail address registered with the Association.

If the Board recesses a regular or special Board meeting to continue the following regular business day, the Board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special Board meeting is continued to the following regular business day, and on that following day the Board continues the meeting to another day, the Board shall give notice of the continuation in at least one manner prescribed above within two hours after adjourning the meeting being continued.

(c) Except as provided in paragraph (d) below, a Board may take action outside of a meeting, including voting by electronic or telephonic means, without prior notice to Members, if each Board member is given a reasonable opportunity to express the Board member's opinion to all other Board members and to vote.

Any action taken without notice to Members must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special Board meeting.

(d) The Board may not, unless done in an open meeting for which prior notice was given to Members, consider or vote on:

- (1) Fines;
- (2) Damage assessments;
- (3) Initiation of foreclosure actions;
- (4) Initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety;
- (5) Increases in assessments;
- (6) Levying of special assessments;
- (7) Appeals from a denial of architectural control approval;
- (8) A suspension of a right of a particular Owner before the Owner has an opportunity to attend a Board meeting to present the Owner's position, including any defense, on the issue;
- (9) Lending or borrowing money;
- (10) The adoption or amendment of a dedicatory instrument;

- (11) The approval of an annual budget or the approval of an amendment of the annual budget that increases the budget by more than 10 percent;
- (12) The sale or purchase of real property;
- (13) The filling of a vacancy on the Board;
- (14) The construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or
- (15) The election of an Officer.

(e) Special Meetings. Special Meetings of the Board of Directors may be held when called by the President of the Association, or by any two Directors, after not less than three (3) days' notice to each Director. **If notice has not been given to the Owners, and the meeting is not open to the Owners, none of the fifteen (15) topics identified in paragraph (d) above can be considered and voted on by the Board at a Special Meeting.**

(f) Quorum. A majority of the Directors shall constitute a quorum for the transaction of business. Every act performed or decision made by a majority of Directors present at a duly held meeting in which a quorum is present shall constitute the act or decision of the Board.

ARTICLE VII BOARD OF DIRECTORS – POWERS AND DUTIES

(a) Powers. The Board of Directors shall have power to:

- (1) Adopt and publish rules and regulations governing the use of common areas, if any, and other facilities, including personal conduct of the Members and their guests thereon; and to establish penalties for infractions of such rules and regulations; and
- (2) Suspend the rights to services provided by the Association by any Members during any period in which such Member is in default in the payment of any assessment levied by the Association and the rights for infraction of published rules and regulations. **Before a Members' rights can be suspended the Association must comply with the notice and hearing procedure outlined in paragraph (e) below;** and
- (3) Exercise on behalf of the Association all powers, duties, and authority vested in or delegated to the Association and not specifically reserved to the membership by the Articles of Incorporation or by other provisions of these bylaws and maintain, **update and provide Members access to Board of Director's policies and procedures;** and
- (4) Declare the office of a member of the Board of Directors to be vacant in the event that such member is **absent declared by the Board of Directors to be absent without excuse** from three (3) regular meetings of the Board of Directors in one calendar year; and

- (5) Employ a manager, independent contractors, and such employees as they may deem necessary, and to prescribe their duties; and
- (6) To add new units of the Fair Oaks Ranch Subdivision to the membership of the Homeowners Association to be effective at such times as the plats for said new units are approved by the City of Fair Oaks Ranch, Texas, for units located in Bexar, Comal, and Kendall Counties; and
- (7) ~~Special Local~~ Assessment. Certain areas of the ranch may wish to add services, and assess the Owners therein for same, that are above and beyond the normal functions of the Fair Oaks Ranch Homeowners Association, Inc., such as additional security, yard maintenance, etc. such areas are permitted after a plan of operation has been submitted to the Fair Oaks Ranch Homeowners Association, Inc., Board of Directors and after an affirmative vote by them, **which will be done in an open meeting for which prior notice was given to the Members.**
- (8) Proxies. The Board of Directors shall adopt prescribed form(s) for proxies that must be used for any type of voting, and for use at the annual meetings, regular board meetings, and any special meetings for FORHA. If any other proxy form is used by a Member, it will not be accepted, nor will the vote be counted. In addition to being mailed to the Members, the proxy forms will be posted and made available on the FORHA Website. Proxies are only valid for the time specified in the proxy, but in no case will a proxy be valid for more than eleven (11) months. Whenever a proxy is used, it must contain each proposed action that is going to be voted on, and if a meeting is held and any amendments and/or changes are made from the floor, then the vote on those amendments and/or changes must be postponed so that notice of the amendment and/or changes can be provided to all of the Members. Nominations taken from the floor in a Board Member election are not considered an amendment to the proposal for the election.

(b) Powers. It shall be the duty of the Board of Directors to:

- (1) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at each annual meeting, or at any special meeting at which such a statement is requested in writing by one-fourth of the ~~Class A~~ Members entitled to vote thereat; and
- (2) Adopt, present and publish an annual budget to the membership, quarterly financial updates, and an annual independent review or audit; and
- (3) Supervise all officers, agents, and employees of the Association and see to it that their duties are properly performed.

(c) Assessments. It shall be the duty of the Board of Directors to administer assessments in accordance with the provisions of Article XI of the Bylaws.

(d) Other duties. It shall further be the duty of the Board of Directors to:

- (1) Procure and maintain adequate liability and hazard insurance on any property owned by the Association; and
- (2) Cause all officers or employees having fiscal responsibilities to be bonded, as it may be deemed appropriate; and
- (3) Cause the common areas to be maintained.

(e) Before the Association may: suspend an Owner's right to use a common area; file a suit against an Owner other than a suit to collect a regular or special assessment or foreclose under an Association's lien; charge an Owner for property damage; or levy a fine for a violation of the restrictions or Bylaws or rules of the Association, the Association or its agent must give written notice to the Owner by certified mail.

The notice must:

- (1) Describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the Association from the Owner;
- (2) Inform the Owner that the Owner:
 - (A) is entitled to a reasonable period to cure the violation and avoid the fine or suspension if the violation is of a curable nature and does not pose a threat to public health or safety;
 - (B) may request a hearing on or before the 30th day after the date the notice was mailed to the Owner; and
 - (C) may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et seq.), if the Owner is serving on active military duty;
- (3) specify the date by which the Owner must cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety; and
- (4) be sent by verified mail to the Owner at the Owner's last known address as shown on the Association's records.

The date specified in the notice must provide a reasonable period to cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety.

The Association does not have to send this notice for a violation for which the Owner has been previously given notice under this section and the opportunity to exercise any rights available under this section in the preceding six months.

If the Owner cures the violation before the expiration of the period for cure described in the notice, a fine may not be assessed for the violation.

(f) A violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident. A violation is considered incurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. The fact that a one-time violation is not repeated, or other violation is not ongoing is not considered an adequate remedy.

- (1) The following are examples of acts considered incurable for purposes of this section:
 - (A) shooting fireworks;
 - (B) an act constituting a threat to health or safety;
 - (C) a noise violation that is not ongoing;
 - (D) property damage, including the removal or alteration of landscape; and
 - (E) holding a garage sale or other event prohibited by a dedicatory instrument.
- (2) The following are examples of acts considered curable for purposes of this section:
 - (A) a parking violation that is outlined in the Declaration of Covenants, Conditions and Restrictions and Amendments;
 - (B) a maintenance violation;
 - (C) the failure to construct improvements or modifications in accordance with approved plans and specifications; and
 - (D) an ongoing noise violation.

If the Owner is entitled to an opportunity to cure the violation, the Owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the Board of the Association or before the Board, if the Board does not appoint a committee.

If a hearing is to be held before a committee, the notice prescribed must state that the Owner has the right to appeal the committee's decision to the Board by written notice to the Board.

The Association shall hold a hearing under this section not later than the thirtieth (30th) day after the date the Board receives the Owner's request for a hearing and shall notify the Owner of the date, time, and place of the hearing not later than the tenth (10th) day before the date of the hearing. The Board or the Owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. The Owner or the Association may make an audio recording of the meeting.

The notice and hearing provisions of this section do not apply if the Association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action. If a suit is filed relating to a matter to which those sections apply, a party to the suit may file a motion to compel mediation.

The notice and hearing provisions of this section do not apply to a temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the subdivision. The temporary suspension is effective until the Board makes a final determination on the suspension action after following the procedures prescribed by this section.

(g) An Association may enter into an enforceable contract with: a current Association Board member; a person related to a current Association Board member within the third degree by consanguinity or affinity; a company in which a current Association Board member has financial interest in at least fifty-one percent (51%) of profits; or a company in which a person related to a current Association Board member within the third degree by consanguinity or affinity, has a financial interest in at least fifty-one percent (51%) of profits only if the following conditions are satisfied:

- (1) The Board member, relative, or company bids on the proposed contract and the Association has received at least two other bids for the contract from persons not associated with the Board member, relative, or company, if reasonably available in the community;
- (2) The Board member: (a) is not given access to the other bids; (b) does not participate in any Board discussions regarding the contract; and (c) does not vote on the award of the contract;
- (3) The material facts regarding the relationship or interest with respect of the proposed contract are disclosed to or known by the Association Board, and the Board, in good faith and with ordinary care, authorizes the contract by an affirmative vote of the majority of the Board members who do not have an interest as described above; and
- (4) The Association Board certifies that the other requirements of this Subsection have been satisfied in a resolution approved by an affirmative vote of the majority of the Board members who do not have an interest as described above.

(h) Indemnification. To the fullest extent permitted by Texas statutes, as the same exists or may

hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits broader limitations than permitted prior to such amendment), a Director of the corporation is not liable to the corporation or its Members for monetary damages for an act or omission in the Director's capacity as a Director, except that the provisions of this paragraph do not eliminate or limit: (1) the liability of the Director for the breach of his/her duty of loyalty to the corporation or its Members; (2) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law; (3) a transaction from which a Director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the Director's office; or (4) an act of omission for which the liability of a Director is expressly provided for by statute.

ARTICLE VIII OFFICERS AND THEIR DUTIES

(a) Enumeration of Offices. The officers of the Association shall be a President and Vice President, who shall at all times be members of the Board of Directors, and a Secretary, Treasurer, and such other officers as the Board may from time to time by resolution create.

(b) Election of Offices. The election of officers shall be the first order of business at and shall take place at the first meeting of the newly elected Board of Directors in January, and the old officers shall serve on the Board until the first meeting of the new Board of Directors in January. **The election of officers will be done in an open meeting, after prior notice was given to the Members;**

(c) Term. The officers of the Association shall be elected annually by the Board. Each shall hold office for a term of one year unless he shall sooner resign or shall be removed or otherwise disqualified to serve.

(d) Special Appointments. The Board may elect such other officers as the affairs in 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. **The election of these officers will be done in an open meeting after prior notice was given to the Members;**

(e) Resignation and Removal. Any officer may be removed from office by the Board at any time with or without cause. Any officer may resign at any time by 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.

(f) Vacancies. A vacancy in any office may be filled by appointment of the Board. The officer appointed to such vacancy shall serve for the unexpired term of the officer he replaces. **This will be done in an open meeting after prior notice was given to the Members;**

(g) Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 4 of this Article.

(h) Duties. The duties of the officers are as follows:

- (1) President. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out. Sign all leases mortgages, deeds, and other instruments, and cosign all checks and promissory notes as directed by resolution of the Board of Directors.
- (2) Vice President. The Vice President shall act in the place of the President in the event of his absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required ~~of him~~ by the Board or so designated by the President. Sign all leases mortgages, deeds, and other instruments, and cosign all checks and promissory notes as directed by resolution of the Board of Directors.
- (3) Secretary. The Secretary shall record the votes and keep the minutes of all meeting and proceedings of the Board and the Members; serve notice of meetings of the Board and of Members; keep appropriate current records showing the Members of the Association together with their addresses; and perform such other duties as required by the Board or by law. The Secretary may delegate as approved by the Board day to day and individual meeting responsibilities to the Office Manager or other FORHA employee. In keeping with the Secretary's duty to record all votes, the Secretary shall conduct all elections and be responsible for counting all votes including but not limited to, the annual election of the Directors and Officers of the Board unless contested election, in which case another Board member not running for Director of Secretary shall conduct the election and count the votes. Sign all leases mortgages, deeds, and other instruments, and cosign all checks and promissory notes as directed by resolution of the Board of Directors.
- (4) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all funds of the Association, and may delegate such day to day activities to the Office Manager and provide required oversight, shall disburse funds as directed by resolution of the Board of Directors; sign all leases mortgages, deeds, and other instruments, and cosign all checks and promissory notes as directed by resolution of the Board of Directors; shall cause all proper books of account to be kept; shall prepare or cause an annual report of the Association books to be made at the completion of each fiscal year beginning with the third year after operations of the Association begin; ~~and~~ shall prepare an annual budget and statement of income and expenditures a copy of which documents shall be ~~delivered to each member made available for inspection and copying~~, and a report of which shall be given at the regular annual meeting of the Members; ~~and shall ensure that financials are created and disseminated to the membership in accordance with section VII. (b)(2).~~

**ARTICLE IX
COMMITTEES**

The Association shall appoint a nominating committee as provided in Article V of these bylaws. In addition, the Board of Directors may appoint such other committees, as it may deem appropriate in the performance of its duties.

**ARTICLE X
ASSOCIATION MEMBERSHIP ~~IN ASSOCIATION~~ – VOTING RIGHTS**

(a) Every Owner of a Lot or Lot subdivided in accordance with the Subdivision Restrictions shall be a Member of the Association; Membership shall be appurtenant to and may not be separated from Ownership of a Lot. **Every Owner has the right to vote even if they have a pending enforcement action and/or if they owe delinquent assessments.**

(b) The Association shall have two classes of Members as follows:

CLASS A – Class A Members shall be:

- (1) Fairco, Inc., the developer of said subdivisions, its successors and assigns, which shall be entitled to one vote for each Lot owned by it in any subdivision under the jurisdiction of the Association; and
- (2) All other Owners of any Lot in any such subdivision who shall own, or shall have completed construction of the foundation of, a residence on such Lot, and who shall be entitled to one vote for each such Lot. When more than one person owns an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as such Members may determine among themselves, but in no event shall more than one vote be cast with respect to any Lot owned by Class A Members.

~~(3) The Board of Directors can establish additional classifications of Members, in addition to those provided in Sections 1 and 2 above, as the Board may deem beneficial to FORHA.~~

CLASS B – Class B Members shall be those Lot Owners in any such subdivision who have not completed construction of the residence foundations on their respective Lots. ~~Class B members shall have no rights except as otherwise provided in the Articles of Incorporation but shall obtain voting rights upon classification as Class A members.~~

**ARTICLE XI
ASSESSMENTS**

(a) Lien and Personal Obligation of Assessments. Developer hereby covenants for each Lot within

the subdivision, and each Owner of a Lot is hereby deemed to covenant by acceptance of his deed for such Lot, whether or not is shall be so expressed in his deed, to pay annual assessments to the Association. Such assessments will be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and a continuing lien on each Lot against which such an assessment is made. Each assessment, together with interest, costs, and reasonable attorney's fees shall be the personal obligation of the person or persons who owned the Lot at the time the assessment fell due, but such personal obligation shall not pass to the successors of title of such person or persons unless expressly assumed by them.

(b) Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively to promote the health, safety, welfare, and recreation of the residents in the subdivision, and for the improvement and maintenance of the common areas. Without limitation, the Association may use the funds derived from Annual Assessments, for the following purposes:

- (1) Maintenance and repair of the common areas;
- (2) Acquisition of furnishings and equipment for the common area as may be determined by the Board, including without limitation all equipment, furnishings and personnel necessary for property use of the recreational facilities;
- (3) Liability insurance insuring the Association against any and all liability to the public, to any Owner, or to the invitees or tenants of any Owner arising out of their occupation and/or use of the common area. The policy limits shall be set by the Board and shall be reviewed at least annually and increased or ~~or~~ decreased at the discretion of the Board;
- (4) Workman's compensation insurance to the extent necessary to comply with applicable law, and any other insurance deemed necessary by the Board of Directors of the Association;
- (5) A standard fidelity bond covering all officers and members of the Board of Directors of the Association in an amount to be determined by the Board of Directors;
- (6) Security services as may be deemed necessary in the opinion of the Board of Directors;
- (7) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes. Or assessments which the Association is required or permitted to secure or pay pursuant to the terms of this provision or by law, or which shall be necessary or proper in the opinion of the Board of Directors of the Association for the operation of the common areas and for the benefit of home and Lot Owners;

- (8) Unit Restriction Committee support, as deemed appropriate by the Board;
- (9) Wherever weeds, brush or rubbish grow or accumulate on the Lot of any Owner to the point that such accumulation or growth is, in the opinion of the Board of Directors of the Association, unsightly or unhealthy, the Board of Directors may notify the Owner of the Lot in writing of the existence of such condition, and may direct ~~him~~ the Owner to correct such condition by removing such weeds, brush, or rubbish. Such notice shall state that if the Owner fails to correct such condition within ten (10) days after the date of the notice, as provided below, the Board may cause the same to be done and assess the cost and expense thereof to the Owner of such Lot and affix a lien thereof on such Lot which shall operate in the manner proved in Article XI herein.

(A) The notice that is sent to the Owner must:

- (1) Describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the Association from the Owner;
- (2) Inform the Owner that the Owner:
 - (i) is entitled to a reasonable period to cure the violation and avoid the fine or suspension if the violation is of a curable nature and does not pose a threat to public health or safety;
 - (ii) may request a hearing on or before the 30th day after the date the notice was mailed to the Owner; and
 - (iii) may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et seq.), if the Owner is serving on active military duty;
 - (iv) specify the date by which the Owner must cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety; and
 - (v) be sent by verified mail to the Owner at the Owner's last known address as shown on the Association's records.

The date specified in the notice must provide a reasonable period to cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety.

The Association does not have to send this notice for a violation for which the Owner has been previously given notice under this section and the opportunity to exercise any rights available under this section in the preceding six (6) months.

If the Owner cures the violation before the expiration of the period for cure described in the notice, a fine may not be assessed for the violation.

- (10) All of the above and foregoing services are listed for the purpose of showing what is within the authority of the Board of Directors, but not as an obligation of the Board of Directors or the Association. Unless impractical the Board of Directors shall not enter into a contract services for a duration in ~~access~~ excess of one year.
- (11) The Board of Directors, on their own motion or upon resolution adopted by a majority of the ~~Class A~~ Members, may elect to defer any of the services.

(c) Minimum Assessments.

- (1) The current minimum assessment of \$35.00 per year will be paid by all Lot Owners, including Developer, with the payment being due and payable January 1, and continuing annually on January 1st each year after a Lot is acquired by the Owner.
- (2) Additional assessments, which shall be charged to Class A Members other than Fairco, shall be made in such amounts as are necessary to cover the ~~actual~~ budgeted expenses of services furnished and other authorized purposes of the Association and shall not exceed such expenses.
- (3) The additional assessments charged to Class B Members shall be fifty percent (50%) of the additional assessments charged to Class A Members, but in no event will Class B Members be assessed less than \$35.00.
- (4) Any increase over ten percent (10%) to the prior year Class A Annual Assessments ~~and/or to FORHOA's annual budget~~ shall require approval by a vote of a majority of a quorum of all FORHOA Members.

(d) Notice for Action Authorized Under section c(2). Written notice of any meeting called for the purpose of taking any action authorized by Section c(2) shall be sent to all Members not less than ten (10) nor more than thirty (30) days in advance of such meeting.

(e) Uniform Rate of Assessment.

- (1) Both the annual and special assessments must be fixed at a uniform rate for all Lots, ~~except the FORHA Board of Directors can enter into contracts which provide for the reduction, delayed billing, accrual or assignment of Class B assessments, which as determined by sole judgment of the Board, it deems it to be beneficial to~~

FORHA.

- (2) Any resubdivision of a Lot into two or more Lots shall constitute an additional Lot or Lots upon which an assessment must be paid.

(f) Commencement and Collection of Annual Assessments. The Annual Assessments provided for herein shall commence as to all Lots, including any resubdivided Lot or Lots. The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of the due date thereof and shall fix the dates such amounts become due. Assessments are to be paid annually. Notice of the Annual Assessments shall be sent to every Owner subject thereto. The Association shall, on demand and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessment against a specific Lot has been paid and shall cause to be recorded in the office of the County Clerk of Kendall, Comal, and Bexar counties assessments delinquent more than 180 days.

(g) Commencement and Collection of Special Assessments. The Board of Directors shall have the authority to fix and assess a special assessment(s) as to all Lots, including any resubdivided Lot or Lots. The Board of Directors shall fix the amount of the special assessment against each Lot at least thirty (30) days in advance of the due date thereof and shall fix the dates such amounts become due. Notice of the special assessments shall be sent to every Owner subject thereto. The Association shall, on demand and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the special assessment against a specific Lot has been paid and shall cause to be recorded in the office of the County Clerk of Kendall, Comal, and Bexar counties special assessments delinquent more than 180 days.

Any combination of Annual Assessments and Special Assessment, other than a Special Assessment required as a result of an act of God, that would result in an increase over ten percent (10%) to the prior year Class A Annual Assessments, shall require approval by a vote of a majority of a quorum of all FORHA Members.

(h) Effect of Nonpayment of Assessment; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be deemed in default and shall bear an automatic late fee as determined by the Board as well as interest from the due date at a rate equal to the maximum rate allowed by law. The Association may bring an action at law against the Owner personally obligated to pay the same or may foreclose the lien against the property, **and in addition to the assessment, the late fees, interest and attorney's fees shall be a lien on the property and a personal obligation of the Owner.** No Owner may waive or otherwise escape liability for the assessments provided for here in by abandonment of his Lot. **Any attorney's fees that are incurred can be added to the Owner's account, even if a lawsuit has not been filed.**

(i) The association will provide written notice to the Owner by certified mail that:

- (1) specifies each delinquent amount and the total amount of the payment required to make the account current;

- (2) describes the options the owner has to avoid having the account turned over to a collection agent, including information regarding availability of a payment plan through the association; and
- (3) provides a period of at least thirty (30) days for the Owner to cure the delinquency before further collection action is taken.

(j) A payment received by the Association from the Owner shall be applied to the Owner's debt in the following order of priority:

- (1) any delinquent assessment;
- (2) any current assessment;
- (3) any attorney's fees or third-party collection costs incurred by the Association associated solely with assessments or any other charge that could provide the basis for foreclosure;
- (4) any attorney's fees incurred by the Association that are not the fees identified in number 3;
- (5) any fines assessed by the Association; and
- (6) any other amount owed to the Association.

(k) If, at the time the Association receives a payment from an Owner, the Owner is in default under a payment plan entered into with the Association:

- (1) the Association is not required to apply the payment in the order of priority specified above; and
- (2) in applying the payment, a fine assessed by the Association may not be given priority over any other amount owed to the Association.

(l) Subordination of Assessment Lien to Mortgages. The assessment lien provided for herein shall be subordinate to the lien of any first mortgage. A sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the assessment lien as to payments which become due prior to such sale or transfer. No sale or transfer shall relive such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

~~(12) The aforesaid assessments and liens set out above shall not be applicable in any way against the Texas Veterans Land Board in any circumstances wherein the Texas Veterans Land Board is financing the purchase of property from Fairco, Inc., and the Homeowners' Association shall look only to contact purchasers of property from Fairco, Inc. for the purposes of such assessments.~~

(m) Raintree Woods Homeowners Association, Inc. In addition to being Members of the Fair Oaks Ranch Homeowners, all Lot Owners in the Raintree Woods subdivision shall belong to a “Raintree Woods Homeowners Association” (“RTWHA”). The Board of Directors of Fair Oaks Ranch Homeowners Association shall prepare the Articles of Incorporation and Bylaws for RTWHA and shall cause RTWHA to be incorporated and organized as a separate Texas non-profit corporation. The Board of Directors of Fair Oaks Ranch Homeowners Association shall appoint the initial, interim Directors of RTWHA; thereafter, the Lot Owners in the Raintree Woods subdivision shall elect the Board of Directors of RTWHA. RTWHA shall assess its membership for security expenses, gate, fence and road maintenance; any applicable salaries and taxes; and any other expenses related to security or safety which the RTWHA Board of Directors deems necessary or appropriate. The foregoing assessments payable by the Lot Owners in Raintree Woods subdivision shall be paid in addition to the dues and assessment payable by them as Members of Fair Oaks Ranch Homeowners Association.

ARTICLE XII PROPERTY RIGHTS

(a) Owner’s Easements of Enjoyment. Every Owner of a Lot shall have a right and easement of enjoyment in and to the common area, if any, which shall be appurtenant to and shall pass with the title to such Lot, subject to the following right of the Association:

- (1) The right to charge reasonable admission and other fees for the use of any recreational facility situated within the common area;
- (2) The right to suspend the right of use of recreational facilities and the voting rights of any Owner for periods during which assessments against his Lot remain unpaid, and the right, **after notice and** a hearing by the Board of Directors, to suspend such rights for a period not exceeding thirty (30) days for any infraction of the published rules and regulations of the Association. **The notice and hearing must comply with the notice/hearing provision in Article XI (9)(a) above;**
- (3) The right to dedicate or transfer all or any part of the common area to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless an instrument executed by two-thirds **of each class** of Members agreeing to such dedication or transfer has been duly recorded.

(b) Delegation of Use. Subject to such limitation as may be imposed by the Board of Directors, each Owner may delegate his right of enjoyment in and to the common areas and facilities to the members of his family and to guests accompanied by the respective Owners.

- (1) All trails in the common areas are to be used for horseback riding, hiking, and bicycling. All types of motor vehicles are expressly prohibited on all trails,

Homeowners Park, Nature Area and all other areas so designated by resolution of the Board of Directors other than maintenance vehicles used by or approved by the Association.

- (2) Overnight camping in the common area is expressly prohibited.

ARTICLE XIII **INSPECTION OF BOOKS AND RECORDS: ~~INSPECTION~~**

(a) The books, records, papers of the Association shall be subject to inspection by any Member during ordinary business hours. The Articles of Incorporation and Bylaws of the Association shall be available for inspection by any Members at the principal office of the Association, where copies shall be made available for sale at a reasonable price.

(b) The Association shall make the books and records of the Association, including financial records, open to and reasonably available for examination by an Owner, or a person designated in a writing signed by the Owner as the Owner's agent, attorney, or certified public accountant, in accordance with this section. An Owner is entitled to obtain from the Association copies of information contained in the books and records.

(c) Except as provided in this Section, an attorney's files and records relating to the Association, copies of invoices requested by an Owner that pertain to matters for which the Association seeks reimbursement of fees and costs from that Owner excluded, are not records of the Association and are not subject to inspection by the Owner or production in a legal proceeding.

(d) If a document in an attorney's files and records relating to the Association would be responsive to a legally authorized request to inspect or copy Association documents, the document shall be produced by using the copy from the attorney's files and records if the Association has not maintained a separate copy of the document. This subsection does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.

(e) An Owner or the Owner's authorized representative must submit a written request for access or information by certified mail, with sufficient detail, describing the Association's books and records requested, to the mailing address of the Association or authorized representative as reflected on the most current recorded management certificate. The request must contain an election either to inspect the books and records before obtaining copies or to have the Association forward copies of the requested books and records and:

- (1) if an inspection is requested, the Association, on or before the tenth (10th) business day after the date the Association receives the request, shall send written notice of dates during normal business hours that the Owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the Association; or

- (2) if copies of identified books and records are requested, the Association shall, to the extent those books and records are in the possession, custody, or control of the Association, produce the requested books and records for the requesting party on or before the tenth (10th) business day after the date the Association receives the request, except as otherwise provided by this section.

(f) If the Association is unable to produce the books or records requested on or before the tenth (10th) business day after the date the Association receives the request, the Association must provide to the requestor written notice that:

- (1) informs the requestor that the Association is unable to produce the information on or before the tenth (10th) business day after the date the Association received the request; and
- (2) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the fifteenth (15th) business day after the date notice under this subsection is given.

(g) If an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal business hours, and the requesting party shall identify the books and records for the Association to copy and forward to the requesting party.

(h) The Association may produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the Association.

(i) The Board has adopted a records production and copying policy that prescribes the costs the Association will charge for the compilation, production, and reproduction of information requested and it has been recorded as a dedicatory instrument. An Owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the policy adopted under this subsection.

(j) The Association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the estimated costs are lesser or greater than the actual costs, the Association shall submit a final invoice to the Owner on or before the thirtieth (30th) business day after the date the information is delivered. If the final invoice includes additional amounts due from the Owner, the additional amounts, if not reimbursed to the Association before the thirtieth (30th) business day after the date the invoice is sent to the Owner, may be added to the Owner's account as an assessment. If the estimated costs exceeded the final invoice amount, the Owner is entitled to a refund, and the refund shall be issued to the Owner not later than the thirtieth (30th) business day after the date the invoice is sent to the Owner.

(k) The Association must estimate costs under this section using amounts prescribed by the records production and copying policy described above.

(l) To the extent the information is provided in the meeting minutes, the Association is not required

to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual Owner of an Association, an Owner's personal financial information, including records of payment or nonpayment of amounts due the Association, an Owner's contact information, other than the Owner's address, or information related to an employee of the Association, including personnel files. Information may be released in an aggregate or summary manner that would not identify an individual property Owner.

(m) The books and records shall be released or made available for inspection if:

- (1) the express written approval of the Owner whose records are the subject of the request for inspection is provided to the Association; or
- (2) a court orders the release of the books and records or orders that the books and records be made available for inspection.

(n) The Association has adopted a document retention policy that includes the following requirements:

- (1) certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;
- (2) financial books and records shall be retained for seven years;
- (3) account records of current Owners shall be retained for five years;
- (4) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;
- (5) minutes of meetings of the Owners and the Board shall be retained for seven years; and
- (6) tax returns and audit records shall be retained for seven years.

ARTICLE XIV CORPORATE SEAL

The Association shall not have a corporate seal.

ARTICLE XV FISCAL YEAR

The fiscal year of the Association shall run from January 1st through December 31st.

ARTICLE XVI AMENDMENTS

A vote to amend these bylaws shall only take place after notice has been given to all Members of the place, date, and hour of the meeting along with a copy of the proposed bylaw amendment for which the vote will be held. Members may vote ~~present~~ in person, ~~or~~ by proxy or by absentee ballot.

- (a) These Bylaws may be amended, at a regular or special meeting of the Members, by affirmative vote of ~~a majority of a quorum~~ twenty-five percent (25%) of all ~~Class A~~ Members; however the votes in favor of the amendment must be a majority of the total votes cast for that vote.
- (b) No assessments for any purposes other than those specified in Article XI, sections 1, 2 and 7 shall be authorized ~~except~~ ~~except~~ by amendment to these Bylaws adopted by affirmative vote of a majority of all ~~Class A~~ Members, present in person, ~~or~~ by proxy, or by absentee ballot. ~~except Faireo, Inc.~~

~~The Board of Directors shall make reasonable effort to review these bylaws every five years to ensure that they remain legally and functionally current.~~

Amended _____, 2019

Fair Oaks Ranch Homeowners Association, Inc.

By: _____
Carolyn Knopf, President

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me by Carolyn Knopf, President of Fair Oaks Ranch Homeowners Association, Inc., on behalf of said corporation.

Given under my hand and seal of office, this the _____ day of _____, 2019.

Notary Public – State of Texas