

**BY-LAWS**  
**KERR AND KENDALL COUNTIES FALLING**  
**WATER PROPERTY OWNERS' ASSOCIATION, INC.**  
**AMENDED 10/14/2017**

A Texas Non-Profit Corporation

**ARTICLE I.**

NAME AND LOCATION

The name of the Corporation is Kerr and Kendall Counties Falling Water Property Owners' Association, Inc., hereinafter referred to as the "Association". The principal office of the Association shall be located at the address of the Registered Agent of the Association as is maintained in records of the Secretary of State of the State of Texas, but meetings of members and directors may be held at such places within the State of Texas, Counties of Kerr and Kendall, as may be designated by the Board of Directors.

**ARTICLE II.**

DEFINITIONS

Section 1. Association. Association shall mean and refer to the Kerr and Kendall Counties Falling Water Property Owners' Association, Inc., its successors and assigns.

Section 2. Removed

Section 3. Original Plat. Original Plat shall mean and refer to that Plat filed for record in Volume 2, Page 308-311 of the Map and Plat Records of Kendall County, Texas, and in Volume 6, Page 300-306 of the Map and Plat Records of Kerr County, Texas, designating the Falling Water Subdivision.

Section 4. Falling Water Subdivision. Falling Water Subdivision shall mean and refer to that addition in Kerr and Kendall Counties, Texas, named Falling Water Subdivision, recorded in the Plat Records of Kendall and Kerr Counties, Texas, and designated as such in the original plat.

Section 5. Common Area. Common Area shall mean all real property (including the improvements thereto) leased, owned or maintained by the Association for the common use and enjoyment of the owners. By way of illustration, common Area may include, but not necessarily be limited to, the following: private streets, signs, street medians, entry gates, landscaping, lighting, entrance signs, walls, bridges, and other similar or appurtenant improvements.

Section 6. Lot. Lot shall mean and refer to any plot of land shown upon a recorded Subdivision map of the Properties with the exception of the Common Area.

Section 7. Board. Board shall mean and refer to the Board of Directors of the Association.

Section 8. Owner. Owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. Member. Member shall mean and refer to all those Owners who are members of the Association as provided for below.

### **ARTICLE III.**

#### **PURPOSE OF THE ASSOCIATION**

The non-profit purposes for which this Association is formed are to own, maintain, and govern the Common Areas and Common Property.

### **ARTICLE IV.**

#### **MEMBERS AND ORGANIZATION**

Section 1. Members. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership.

- A) CLASS A. Class A Members shall be all Owners of lots with a dwelling thereon and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event, shall more than one vote be cast with respect to any Lot.
- B) CLASS B. Class B members shall be all the owners of lots without a dwelling thereon. Each Class B member shall be entitled to one (1) vote for each unimproved lot owned.

Section 3. Annual Meetings. The annual meeting of the members shall be held in the last quarter of each year, at the time and place designated in the notice of the annual meeting.

Section 4. Special Meetings. Special meetings of the members may be called at any time by the President or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all the votes of the Class A and Class B membership.

Section 5. Notice of Meetings.

- A) Notice of Member Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 10 but not more than 60 days before such meeting to each member entitled to vote thereat, addressed to the member's addresses last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.
- B) Notice to Members of Board Meetings. Except as exempted by Texas Property Code Section 209.0051(e), 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 matters being brought up for deliberation in executive session. Notices shall be:
  - 1) Mailed to each Member not later than the tenth nor earlier than the sixtieth day before the date of the meeting; or

- 2) Provided at least seventy-two 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 a 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 email to each Member who has registered an email address with the Association.

Section 6. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. The affirmative vote of a majority of the aggregate votes of all classes of membership represented shall be required to transact business unless otherwise provided herein.

Section 7. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his lot.

## **ARTICLE V.**

### **BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE**

Section 1. Number. A Board of five (5) directors, who shall be members of the Association, shall manage the affairs of this Association. The number of directors may be changed by amendment of the By-Laws of the Association.

Section 2. Term of Office. At each annual meeting, the members shall elect directors as their terms are completed for terms of three years.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority of the aggregate votes of all classes of membership of the Association. In the event of death, resignation, or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The Board may meet by any method of communication, including electronic and telephonic, without prior notice to owners under Article IV., Section 5. B), Notice to Members of Board Meetings, if each Director may hear and be heard by every other Director, or the Board may take action by unanimous written consent to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate board action. Any action

taken without notice to owners under Article IV., Section 5. B), Notice to Members of Board Meetings, 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. The Board may not, without prior notice to the owners, consider or vote on any matter prohibited pursuant to Texas Property Code Section 209.0051(h) (1-8), or as amended.

## **ARTICLE VI.**

### **NOMINATION AND ELECTION OF DIRECTORS**

Section 1. Nomination. A Nominating Committee shall make nomination for election to the Board of Directors. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Board of Directors shall appoint the Nominating Committee prior to each annual meeting until the close of the next annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations shall be made from among members.

Section 2. Election. Election to the Board of Directors shall be by electronic ballot or written ballot. At 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 Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## **ARTICLE VII.**

### **MEETING OF DIRECTORS**

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly with notice as prescribed in Article IV., Section 5. B), at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall 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 unless all directors have waived notice or meeting in writing.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board.

## **ARTICLE VIII.**

### **POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 1. Powers. The Board of Directors shall have power to:

- A) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;
- B) suspend the right to use of any facilities owned or operated by the Association by a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;
- C) suspend the voting rights of a member, other than voting in the Association's election of Board Members or on any other matter concerning the rights and responsibilities of the owner, during any period in which such member shall be in default in the payment of any assessment levied by the Association;
- D) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;
- E) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
- F) employ a manager, independent contractors, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- A) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting which such statement is requested in writing by one-fourth (1/4) of the Class A and Class B members who are entitled to vote;
- B) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- C) as more fully provided in the Declaration and herein to:
  - 1) fix the amount of the annual assessment against each Lot at least ten (10) days in advance of each annual assessment period; and
  - 2) send written notice of each assessment to every Owner subject thereto at least ten (10) days in advance of each annual assessment period; and
  - 3) foreclose the lien against any property for which assessments are not paid within the time permitted pursuant to the Texas Property Code or to bring an action at law against the owner personally obligated to pay the same;
- D) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge maybe made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- E) procure and maintain adequate liability and hazard insurance on property owned by the Association;
- F) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and
- G) cause the Common Area to be maintained.

## **ARTICLE IX.**

### **OFFICERS AND THEIR DUTIES**

**Section 1. Enumeration of Officers.** The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may create from time to time by resolution.

**Section 2. Election of Officers.** The election of officers shall take place at the first meeting of the newly elected Board of Directors following each annual meeting of the members.

**Section 3. Term.** The Board shall elect the officers of this Association annually and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

**Section 4. Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of who shall hold office for such period, have such authority, and perform such duties as the Board may determine from time to time.

**Section 5. Resignation and Removal.** The Board may remove any officer from office without cause. Any officer may resign at any time after giving written notice to the Board, the president or secretary. Such resignation shall take effect on the date of receipt of such notice or at a later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6. Vacancies.** A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the office he replaces.

**Section 7. Multiple Offices.** The same person may hold the offices of secretary and treasurer. 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.

**Section 8. Duties.** The duties of the officers are as follows:

- A) **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; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes, except as may be otherwise approved by the Board of Directors.
- B) **Vice-President.** The vice-president shall act in the place and stead 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.
- C) **Secretary.** The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.
- D) **Treasurer.** The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made at the completion of each fiscal year; and shall prepare an

annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## **ARTICLE X.**

### **COMMITTEES**

The Association shall appoint a Nominating Committee as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purposes.

## **ARTICLE XI.**

### **RECORDS**

The books, records and papers of the Association and the Association's Directors shall at all times, during reasonable business hours, be subject to inspection by any member provided that any confidential communications with the Association's attorney, matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the Board shall not be subject to disclosure. The dedicatory documents of the Association shall be available for inspection by any member at the principal office of the Association and copies may be obtained pursuant to the Records Availability and Retention Policy of the Association.

## **ARTICLE XII.**

### **ASSESSMENTS**

Section 1. Obligation to Pay. As provided in the Declaration, each member is obligated to pay the Association semiannual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent.

Section 2. Notice For Any Action Authorized. Any action authorizing a semiannual assessment or charge or special assessments for capital improvements, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than 10 days nor more than 60 days in advance of the meeting.

Section 3. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement. The first semiannual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the semiannual assessment against each Lot at least ten (10) days in advance of each semiannual assessment period. Written notice of the semiannual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 4. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest legal rate permitted by law to be charged the non-paying owner. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. Interest, costs and

reasonable attorney's fees incurred in any action shall be added to the amount of such assessment or charge. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to the Texas Property Code and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all Lot owners. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 5. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any lot shall not affect the assessment lien. The assessment lien shall not be discharged by a conveyance or sale of the lot. However, the sale or transfer of the Lot pursuant to a mortgage foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

### **ARTICLE XIII.**

#### **AMENDMENTS**

The initial Board of Directors hereby adopted the By-Laws of this Association. The By-Laws of the Association have been amended by a vote of the members holding a majority of the membership votes of the Association on July 1<sup>st</sup>, 2016, and thereafter may be amended or altered by a vote of the members holding a majority of the membership votes of this Association.

### **ARTICLE XIV.**

#### **MISCELLANEOUS**

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the day of incorporation.

**Note to reader: THIS IS NOT AN OFFICIAL COPY. The official copy of the signed document is on file in Kendall County under Document Number 00316823, Volume 1608 Page 1092 and in Kerr County under Document Number 17-07629. The original document is on file with the Secretary of Kerr and Kendall Counties Falling Water Property Owners' Association, Inc.**

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IN WITNESS WHEREOF, the undersigned have hereunto set their hands on the \_\_\_\_ day of \_\_\_\_\_, 2017.

Board of Directors of Kerr and Kendall Counties Falling Water Property Owners' Association, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of the KERR AND KENDALL COUNTIES FALLING WATER PROPERTY OWNERS' ASSOCIATION, INC., a non-profit Corporation, and

THAT the foregoing By-Laws constitute the amended By-Laws of said Corporation, as approved by a vote of the membership of the Association, held on the 14th day of October 2017.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2017.

THE STATE OF TEXAS                    §                    \_\_\_\_\_, Secretary  
J. David Worrell

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2017 by \_\_\_\_\_ of KERR AND KENDALL COUNTIES FALLING WATER PROPERTY OWNERS' ASSOCIATION, INC., on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas