

**LAW ENFORCEMENT AGREEMENT
(THE FOUNTAINS HOMEOWNERS ASSOCIATION)**

This Law Enforcement Agreement (the “Agreement”) between the City of Fair Oaks Ranch, Texas, a Texas Municipal Corporation (the “City”) and the Fountains Homeowners Association (the “Association”), collectively, Parties, is entered into as of the date of the final signature of the parties (the “Effective Date”) and approval by the City Council.

WITNESSETH:

WHEREAS, The Fountains is a private gated community in the City of Fair Oaks Ranch, [Bexar] County, Texas, generally located at SW Corner of Fair Oaks Parkway and Dietz Elkhorn and containing a total of Thirty (30) residences; and

WHEREAS, the Association is the owner of the private streets in The Fountains (the “Private Streets”) and is responsible for the maintenance thereof; and

WHEREAS, the Association acknowledge that The Fountains is a subdivision within the City limits of the City and in accordance with the Texas Transportation Code Section 542.008 (the “Statute”), the Association presented a petition to the City Council of the City (the “City Council”) seeking to cause the traffic rules and laws related to operation of motor vehicles on public thoroughfares of the City to apply to the Private Streets in The Fountains (the “Petition”); and

WHEREAS, the City Council has found the Petition in the best interest of the City generally, has accepted the Petition, and directed the City staff to draft an ordinance and this Agreement, according to the requirements of the Statute to provide for the enforcement of the traffic rules and laws related to operation of motor vehicles on public thoroughfares of the City to apply to Private Streets in The Fountains; and,

WHEREAS, the Association further requests and authorizes the City to allow the residents of The Fountains to participate in the Home Watch program offered by the Fair Oaks Ranch Police Department (“Department”); and

WHEREAS, nothing herein is intended by the Parties to limit the authority of the Department to respond to any call for service, report of suspicious activity, or any other situation requiring an immediate investigative response, solely because the subdivision is gated.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Association agree as follows:

1. Term. Pursuant to the Statute, the City has extended the traffic rules and laws related to operation of motor vehicles on public thoroughfares of the City to apply to the Private Streets in The Fountains. The Association agrees that, pursuant to this Agreement, the Private Streets are considered to be public streets for purposes of the application and enforcement of the traffic rules and laws addressed herein and that this Agreement shall remain in effect until such time as the City should determine, by ordinance, that it is not in its interest to enforce the traffic rules and laws within the subdivision.

2. Traffic Signs. The Association shall install subdivision traffic signs and street name blade signs in compliance with both the Texas Manual of Uniform Traffic Control Device standards and the City's standards. The Association shall be solely responsible for all costs and expenses of the signs and the installation thereof.

3. City Patrol. Effective on the date an ordinance is adopted to extend traffic laws, rules, general patrol and the Home Watch program, police officers of City will be authorized to begin general patrol of the subdivision for the purposes stated herein and for issuing traffic citations for violations of traffic laws occurring on the roads within the subdivision when appropriate and in the discretion of police officers of City, such police officers having the sole discretion in such matters.

4. No Warranties or Representations. Neither City nor City's Police Department or City's police officers make any representations or warranties to the Association or to anyone else in relation to City patrols or City enforcement of traffic laws on the roads within the subdivision. City disclaims any responsibility to maintain or improve the roads within the subdivision or any street signs or traffic signs on said roads, said maintenance and improvement responsibility to be and remain solely that of the Association.

5. Speed Humps. The Association agrees that all speed humps on the Private Streets must comply with the City's standards. New speed humps must receive approval through the normal City process and are the discretion of the City of Fair Oaks Ranch based on City policies and standards. The Association shall be solely responsible for all costs and expenses necessary to bring and keep the speed humps in compliance.

6. Plans, Installation, and Approval. Prior to installation of the subdivision traffic signs and street name blade signs and prior to work being done on the speed humps, the Association shall submit plans for the design and specifications of such traffic and street name or other signage and such speed humps and obtain written approval from the City. The Association shall construct, repair, and/or install, or cause the construction, repair, and/or installation of, such signage and speed humps in accordance with the approved plans.

7. Association Obligations. The Association will pay for all repairs, replacement, and maintenance of all signage and speed humps to maintain compliance with the applicable standards set forth herein. All maintenance performed by the Association will meet the specifications of the codified requirements of the City related to traffic signage and speed humps in residential subdivisions. If the City determines that repairs, replacement, and/or maintenance are required, the City shall inform the Association in writing of the need for said repairs, replacement, and/or maintenance, and the Association shall commence said repairs, replacement, and/or maintenance within fourteen (14) calendar days of such notice and diligently pursue the work thereon, with completion thereof not to exceed forty-five (45) calendar days.

8. Traffic Control Devices. Pursuant to the authority granted under the Statute, the City may place official traffic control devices on property abutting the Private Streets if (1) those devices relate to a specified traffic rule; and (2) the consent of the owner of that property is obtained or an easement is available for the placement. The Association hereby consents to the placement of any such devices on the property owned by them. No additional consent shall be required.

9. Payment. The Association will not be required to pay any additional cost for the services requested herein, unless such services are requested in excess of the services provided to City citizens that do not reside in private gated communities in the City. Notwithstanding the foregoing, the Association shall be required to pay those costs and expenses discussed in Sections 2, 5, 6, and 7, and 8 of this Agreement.

10. INDEMNIFICATION. THE ASSOCIATION ON BEHALF OF EACH OF THEIR SUCCESSORS, ASSIGNEES, GRANTEEES, AND/OR TRUSTEES DOES HEREBY AGREE TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS CITY COUNCILMEMBERS, OFFICERS, AGENTS, REPRESENTATIVES, AND EMPLOYEES (THE “INDEMNIFIED PARTIES”) FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS’ FEES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE ASSOCIATION IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, IN WHOLE OR IN PART, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (HEREINAFTER “CLAIMS”). THE ASSOCIATION IS EXPRESSLY REQUIRED TO DEFEND THE INDEMNIFIED PARTIES AGAINST ALL SUCH CLAIMS.

IN ITS SOLE DISCRETION, THE CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY THE ASSOCIATION IN FULFILLING THEIR OBLIGATIONS HEREUNDER TO DEFEND AND INDEMNIFY THE INDEMNIFIED PARTIES, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY THE CITY IN WRITING. THE CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER THE CITY IS UNDER NO OBLIGATION TO DO SO.

THIS SECTION 10. SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT WITH RESPECT TO ANY INCIDENT OCCURRING DURING THE TERM HEREOF.

11. Miscellaneous.

- (a) Breach. In the event of a breach of this Agreement by any party, any other party may pursue any remedies available at law or in equity, including without limitation, specific performance.
- (b) Assignment, Binding Nature, and Recording. This Agreement may not be assigned by the Association.
- (c) Notices. Any notice required or permitted by this Agreement is effective when personally delivered in writing or two (2) business days after notice is deposited with the U.S. Postal Service, postage prepaid, certified mail with return receipt requested, and addressed as follows:

City:

City of Fair Oaks Ranch, Texas
7286 Dietz Elkhorn
Fair Oaks Ranch, Texas 78015
Attention: City Manager

with copy to:

Denton Navarro Rocha Bernal & Zech, P.C.
2517 N. Main Avenue
San Antonio, Texas 78212
Attention: T. Daniel Santee

Association:

The Fountains
Homeowner's Association
Fair Oaks Ranch, Texas 78015
Attention: Kathy Phillips - President

with copy to:

Attention: _____

The parties may, from time to time, change their respective addresses listed above to any other location in the United States for the purpose of notice under this Agreement. A party's change of address shall be effective when notice of change is provided to the other party in accordance with the provisions of this Section 11.(c).

- (d) Capacities. The person executing this Agreement on behalf of the Association represents and warrants that he/she has the authority to do so in the capacity stated.
- (e) Interpretation. This Agreement will be deemed drafted equally by all parties hereto. The language of all parts of this Agreement will be construed as a whole according to its fair meaning, and any presumption or principle that the language in this Agreement is to be construed against any party will not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- (f) Further Assurances. The parties agree to take such further actions and to sign such further documents as may be reasonably necessary or appropriate to fulfill the intent of, and to complete the transactions described in this Agreement.

- (g) Unenforceability. If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability shall not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.
- (h) Choice of Law. This Agreement will be construed under the laws of the State of Texas without regard to choice-of-law rules of any jurisdiction. Venue shall be in the State District Courts of Kendal County, Texas with respect to any lawsuit arising out of or construing the terms and provisions of this Agreement. No provision of this Agreement shall constitute a consent to suit by any party.
- (i) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes.
- (j) Immunity. By execution of this Agreement, the parties agree that the City has not waived or surrendered any of its governmental powers, immunities, or rights.
- (k) Force Majeure. Notwithstanding anything to the contrary contained herein, in the event a party is prevented from performing its obligations hereunder due to inclement weather, strikes, riots, civil unrest, or any other cause which is beyond the reasonable control of such party (a delay due to any such cause being referred to herein as a "Force Majeure Delay") then the time period for such party's performance shall be extended by the length of the Force Majeure Delay and such party's failure to perform such obligation shall be excused for the duration of, and to the extent of, such Force Majeure Delay.

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IN WITNESS WHEREOF, the parties hereby have executed this Agreement to be effective as of the Effective Date.

THE CITY:

CITY OF FAIR OAKS RANCH, TEXAS,
a Texas municipal corporation

By: _____
Tobin Maples, City Manager

Date: _____

THE ASSOCIATION:

The Fountains of Fair Oaks Ranch,
a HOA in Fair Oaks Ranch, TX

By: Kathy Phillips
Name: Kathy Phillips
Title: President

Date: January 17, 2023