



Control Number: 50788



Item Number: 62

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SOAH NO. 473-20-4071.WS

PUC DOCKET NO. 50788

RECEIVED  
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RATEPAYERS APPEAL OF THE § BEFORE THE STATE OFFICE  
DECISION BY THE WINDERMERE §  
OAKS WATER SUPPLY § OF  
CORPORATION TO CHANGE WATER §  
AND SEWER RATES § ADMINISTRATIVE HEARINGS

**FIRST AMENDED RATEPAYERS' REPRESENTATIVES' ANSWERS TO  
WINDERMERE OAKS WATER SUPPLY CORPORATIONS SECOND REQUEST FOR  
INFORMATION**

COMES NOW, the Ratepayers Representatives of the Windermere Oaks Water Supply Corporation ("Ratepayers") and files these answers to Windermere Oaks Water Supply Corporation Second Request for Information which was received on November 16, 2020. Pursuant to 16 Tex. Admin. Code § 22.144(c), a "party upon whom a request is served shall serve a full written response ... within 20 days after receipt of the request." Twenty days after November 16, 2020, is Sunday, December 6, 2020. The first working day after December 6, 2020 is December 7, 2020. Ratepayers' responses are timely filed.

Respectfully submitted,

*Josephine Fuller*

Josephine Fuller, Ratepayer Representative  
328 Coventry Road  
Spicewood, Texas 78669  
(512)743-2553  
[ratepayersrepiosiefuller@gmail.com](mailto:ratepayersrepiosiefuller@gmail.com)

6.2

*Patti Flunker*

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Patti Flunker, Ratepayer Representative  
305 Coventry Road  
Spicewood, Texas 78669  
(512) 699-1082  
[ratepayersrepjosiefuller@gmail.com](mailto:ratepayersrepjosiefuller@gmail.com)

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic email on December 7, 2020 in accordance with the Order Suspending Rules, issued in Project 50664.

*Josephine Fuller*

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Josephine Fuller, Ratepayer Representative

*Patti Flunker*

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Patti Flunker, Ratepayer Representative

**SOAH DOCKET NO. 473-20-4071.WS  
PUC DOCKET NO. 50788**

**RATEPAYERS REPRESENTATIVES' ANSWERS TO WOWSC'S SECOND  
REQUEST FOR INFORMATION TO RATEPAYERS**

**WOWSC 2-1**

Admit or deny that Ratepayer Representatives are aware of 16 Texas Administrative Code § 24.101(e)(2), regarding WOWSC' s recovery of legal expenses related to any appeal under Texas Water Code§ 13.043(b).

**Answer**

Admit

Prepared by: Josie Fuller & Patti Flunker; Sponsored by: Josie Fuller & Patti Flunker;

**WOWSC 2-2**

If the response to WOWSC 2-1 is admit, admit or deny that prior to Members signing the Petition, Ratepayer Representatives explained to Members that WOWSC may be allowed to recover all legal defense costs associated with this rate appeal. Please provide all documents related to such communications.

**Answer**

Ratepayer Representatives admit they did not attempt to speculate concerning whether or to what extent the WOWSC may be allowed to recover legal costs associated with this rate appeal. The WOWSC has stated to the membership on several occasions that it may be allowed to recover legal costs and that such costs would likely exceed \$100,000.<sup>1</sup>

Prepared by: Josie Fuller & Patti Flunker; Sponsored by: Josie Fuller & Patti Flunker

**WOWSC 2-3**

If the response to WOWSC 2-2 is admit, what was the cost-estimate presented by Ratepayer Representatives to Members for costs associated with WOWSC's legal defense before Members signed the Petition? Please provide all related documents, reasoning, and calculations.

**Answer**

See response to 2-2

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<sup>1</sup>

[https://wowsc.org/images/images\\_rwi/rwi\\_778\\_WOWSC\\_June\\_24\\_2020\\_Member\\_Letter\\_1352902479\\_7674.pdf](https://wowsc.org/images/images_rwi/rwi_778_WOWSC_June_24_2020_Member_Letter_1352902479_7674.pdf)

#### **WOWSC 2-4**

If the response to WOWSC 2-2 is deny, have Ratepayer Representatives explained to all Members who signed the Petition that WOWSC may recover its legal expenses related to this rate appeal? Please provide all documents related to such communications.

#### **Answer**

See response to 2.2. The law does not require Ratepayer Representatives to opine on this matter.

#### **WOWSC 2-5**

Please provide all documents or communications from Ratepayer Representatives to Members regarding expectations for WOWSC's legal expenses related to this rate appeal.

#### **Answer**

None.

#### **WOWSC 2-6**

If Ratepayer Representatives have not communicated to Members a cost-estimate for WOWSC's legal defense costs or the total amount of WOWSC's legal defense costs through October 22, 2020 as identified in WOWSC's Response to Staffs First Request for Information, when will Ratepayer Representatives inform all Members who signed the Petition?

#### **Answer**

Apparently, the Public Utility Commission of Texas who has jurisdiction over this matter does not consider it appropriate for any party to threaten ratepayers with the prospect of large legal fees in connection with the decision whether or not to appeal rates they believe are illegal and unjust. If it is determined that Ratepayer Representatives have a duty to speculate publicly on what the WOWSC's legal costs may be, they will step up their efforts to obtain attorney invoices and budgets from the WOWSC and will do their best to provide such information. Ratepayer Representatives suggest, however, that the WOWSC itself could easily provide accurate and reliable information to the membership through the production of its attorney invoices and legal budgets.

Prepared by: Josie Fuller & Patti Flunker; Sponsored by: Josie Fuller & Patti Flunker

#### **WOWSC 2-7**

Admit or deny that within the last thirty (30) calendar days Ratepayer Representatives have asked Members whether they still individually agree with continuing with this

proceeding.

**Answer**

Ratepayer Representatives admit they endeavor to communicate regularly with the Members concerning all aspects of this proceeding.

Prepared by: Josie Fuller & Patti Flunker; Sponsored by: Josie Fuller & Patti Flunker

**WOWSC 2-8**

Admit or deny that Ratepayer Representatives assert that WOWSC mismanaged system finances, as stated in Ratepayers' First Amended Appeal. If admit, what is the basis for such assertion? Please provide all documents and calculations associated with this response.

**Answer**

Admit

The WOWSC continues to defend a lawsuit which the Directors and Officer Insurance Carrier has denied, citing violations of state law for such denial.<sup>2</sup> The land sale to former director Martin's company netted the WOWSC a measly \$200,000.<sup>3</sup> The legal fees to defend past and current directors (not the WOWSC) has far exceeded \$200,000 to date, according to WOWSC minutes and newsletters. One must wonder if the WOWSC had advertised on the open market the Martin property to get the highest bid, could that property garner the WOWSC double that amount if not more as stated in the WOWSC attorney letter sent to Ms. Martin ?

WOWSC former President and current Director, Dorothy Taylor stated in a WOWSC newsletter, that they are having to deal with and address issues that they "inherited" from past actions or inactions of previous board members. Taylor statements appear to acknowledge some instances of mismanagement by past board members.<sup>4</sup>

In 2016 when the WOWSC sold 4 acres to director Martin's Corporation for roughly \$200,000, the WOWSC did not capture this income as non-member patron income on their 2016 990 IRS Form, thereby calling into question inaccurate reporting of non-member income and possibly affecting their nonprofit status according to 85/15 rule applicable to nonprofit corporation's tax exemption status.<sup>5</sup>

Board president Mr. Gimenez signed under penalties of perjury, that he has examined the 2019 Federal Tax Return, to the best of his knowledge and belief, it is true, correct, and

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<sup>2</sup> [https://interchange.puc.texas.gov/Documents/50788\\_1\\_1062775.PDF](https://interchange.puc.texas.gov/Documents/50788_1_1062775.PDF) (pages 56-51)

<sup>3</sup> [https://www.wowsc.org/documents/778/2015-12-19\\_WOWSC\\_Minutes\\_Ap\\_.pdf](https://www.wowsc.org/documents/778/2015-12-19_WOWSC_Minutes_Ap_.pdf)

<sup>4</sup> [https://www.wowsc.org/documents/778/Newsletter\\_March\\_2018\\_3.20.18\\_Bd\\_approved.pdf](https://www.wowsc.org/documents/778/Newsletter_March_2018_3.20.18_Bd_approved.pdf)

<sup>5</sup> <https://www.irs.gov/pub/irs-tege/eotopice02.pdf>

complete. However, the 2019 WOWSC Federal Tax Return does not capture any income paid to a director, specifically the payments made to Mr. Gimenez in 2019 as the Public Information Officer. Additionally, the return does not capture any hours Mr. Gimenez accrued in 2019 as the Public Information Officer as required in Part VII, Section A (B)<sup>6</sup>. Mr. Gimenez was elected at the as the Public Information Officer to receive a monthly compensation of \$416 a month in July 2019.<sup>7</sup>

See 2-13 for supplemental answers

Prepared by: Josie Fuller & Patti Flunker; Sponsored by: Josie Fuller & Patti Flunker

## **WOWSC 2-9**

### **Answer**

Admit or deny that Ratepayer Representatives assert that WOWSC has incurred wasteful legal expenditures. If admit, what is the basis for such assertion? Please provide all documents and calculations associated with this response.

The Martin land sale resulted from the Board's admitted violations of state open meetings law. Further, in a detailed demand letter dated January 25, 2019<sup>8</sup>, the WOWSC's own counsel explained the fraud, breaches of fiduciary duty and other wrongful conduct that culminated in a transaction that **was not** fair to the WOWSC or in its best interests. The Board had a duty not to let that happen and a duty to correct it after it occurred. The Board attempted to excuse its failure to fulfill its duty by claiming that the WOWSC could not afford to engage in costly litigation with no guarantee of recovery. The WOWSC also misled the court by portraying that the company could not afford the cost of rescission, but that was not true (see attachment A). Inexplicably, the Board has spent enormous resources on litigation for which it has no prospect of recovery in an effort to ensure that no one recovers the property on the Members' behalf and that its current and former directors are not held accountable for their misbehavior. The only beneficiaries of this costly legal enterprise are the unfaithful fiduciaries who have perpetuated it. That is not a proper use of company resources. As soon as the WOWSC produces its attorney invoices associated with these expenditures, Ratepayer Representatives will calculate the totals and make them available.

Prepared by: Josie Fuller & Patti Flunker; Sponsored by: Josie Fuller & Patti Flunker

## **WOWSC 2-10**

Admit or deny that Ratepayer Representatives assert that WOWSC should not incur legal costs to defend itself and board members in pending litigation. If admit, what is the basis for such assertion? Please provide all documents associated with this

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<sup>6</sup> <https://www.irs.gov/pub/irs-pdf/f990.pdf>

<sup>7</sup> [https://www.wowsc.org/documents/778/2009-03-07\\_WOWSC\\_MIN.pdf](https://www.wowsc.org/documents/778/2009-03-07_WOWSC_MIN.pdf)

<sup>8</sup> [https://interchange.puc.texas.gov/Documents/50788\\_1\\_1062775.PDF](https://interchange.puc.texas.gov/Documents/50788_1_1062775.PDF) (pages 44-47)

response.

**Answer**

The WOWSC has never “defended itself.” No one has ever tried to recover financially against the WOWSC. The WOWSC has the wherewithal to fund a recission and the 2018 Board was prepared to do just that. The open meetings act violations were blatant and undisputed; the WOWSC had no defense to assert and should not have spent the Member’ resources trying to gin one up. The WOWSC itself expressly acknowledged the wrongful conduct of at least one of its unfaithful fiduciaries and her affiliate; the WOWSC has no business defending such conduct. The directors who allowed this to happen in 2015 and who made it worse in 2019 did not act in good faith, were not diligent and did not act in the best interests of the WOWSC, and no one could have ever thought they did. The Members have borne the cost for attorneys to cobble together and sponsor a fictional narrative in an effort to justify such misconduct. That is not a proper use of company resources.

Prepared by: Josie Fuller & Patti Flunker; Sponsored by: Josie Fuller & Patti Flunker

**WOWSC 2-11**

In Ratepayers' First Amended Appeal at page 2, Ratepayer Representatives argue that "WOWSC has owned and currently owns valuable real estate assets in the Spicewood Airport that is within their service area and which should have been sold and should be sold to the highest bidder to defray Corporation debt and supplement income for capital improvements."

Ratepayer Representatives also state, at page two of their First Amended Appeal, that there is an additional 7+ acres of land owned by WOWSC that still remains unsold and "could have be [sic] sold to the highest bidder to defray any and all debt of the Corporation and even supplement funds for capital improvement projects "

Admit or deny that Ratepayer Representatives are aware that a Notice of Lis Pendens was filed on that 7+ acres of property by the plaintiffs in the *Rene Ffrench, John Richard Dial And Stuart Bruce Sorgen V. Friendship Homes & Hangars, LLC, Windermere Oaks WSC, et al.*, Cause No. 48292, 33rd Judicial District Com1, Burnet County, Texas case.

**Answer**

Ratepayer Representatives are aware of the lis pendens.

If admit, do Ratepayer Representatives still assert that WOWSC should sell the 7+ acres, even though the property has been encumbered? Please provide all documents associated with this response.

The lis pendens is not an encumbrance. As Ratepayer Representatives understand it, the lis pendens is in place to ensure that the Board does not once again illegally dispose of a



valuable company asset for a fraction of its market value. They have no reason to think that the lis pendens would interfere with a legitimate sale for market value.

Prepared by: Josie Fuller & Patti Flunker; Sponsored by: Josie Fuller & Patti Flunker

## **WOWSC 2-12**

In Ratepayers' First Amended Appeal at page 2, Ratepayers criticize the WOWSC Board's decision to "increase water and sewer rates to pay for past and current board members' legal expenses."

Admit or deny that Ratepayer Representatives argue that WOWSC ratepayers should never have to pay for WOWSC legal expenses, either prospectively or retrospectively. If admit, what is the basis for such assertion? Please provide all documents associated with this response.

### **Answer**

What Ratepayer Representatives think the law should be is irrelevant. The law determines whether and to what extent the WOWSC is allowed to pass through legal expenses to the Members through rates. The WOWSC is required to follow that law.

Prepared by: Josie Fuller & Patti Flunker; Sponsored by: Josie Fuller & Patti Flunker

## **WOWSC 2-13**

Provide all documents supporting Ratepayers' assertions that WOWSC:

See 2-8 for supplemental answers

i. mismanaged system finances;

### **Answer**

2018 WOWSC Minutes state Equity Buy in Fees had not been raised since 2005<sup>9</sup>

ii. mismanaged legal expenditures;

### **Answer**

The Ratepayers Representatives never made the statement the WOWSC mismanaged legal expenditures. The Ratepayers Representatives asserted in their original pleading the WOWSC has prodigal habits related legal expenditures<sup>10</sup>

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<sup>9</sup> [https://www.wowsc.org/documents/778/2018-3-12\\_WOWSC\\_Meeting\\_Minutes\\_approved.pdf](https://www.wowsc.org/documents/778/2018-3-12_WOWSC_Meeting_Minutes_approved.pdf) (page 2)

<sup>10</sup> [https://interchange.puc.texas.gov/Documents/50788\\_1\\_1062775.PDF](https://interchange.puc.texas.gov/Documents/50788_1_1062775.PDF) (page 4)

iii. misallocated funds to reserve accounts;

**Answer**

Never setting up reserve accounts until 2017. Equity Buy In Fees not allocated to a reserve account.

See footnote<sup>11</sup>

iv. was negligent in selling valuable real estate assets below market value;

**Answer**

See footnote<sup>12</sup>

v. refused to sell current real estate assets.

**Answer**

See footnote<sup>13</sup>

Prepared by: Josie Fuller & Patti Flunker; Sponsored by: Josie Fuller & Patti Flunker

**WOWSC 2-14**

Admit or deny that Ratepayers assert that WOWSC should attempt to sell its remaining property during pending litigation over a previous land sale. If admit, please provide all documents associated with this response.

**Answer**

See Response to 2-11. It would be one thing if the Board were postponing a sale to allow the company to recover the property sold to Martin and to sell the airport property as a whole, thereby maximizing the benefit to the Members. But the Board has no intention of reconstituting the tract and clearly is prepared to jeopardize the financial health of the company to prevent anyone else from doing so any time in the near future. While a piecemeal sale is unlikely to yield the highest value, under the circumstances there is little justification for the Board's refusal to actively market the remaining property.

Prepared by: Josie Fuller & Patti Flunker; Sponsored by: Josie Fuller & Patti Flunker

**WOWSC 2-15**

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<sup>11</sup> [https://www.wowsc.org/documents/778/2017-1-14\\_WOWSC\\_Minutes\\_approved\\_signed\\_1\\_.pdf](https://www.wowsc.org/documents/778/2017-1-14_WOWSC_Minutes_approved_signed_1_.pdf)

<sup>12</sup> [https://interchange.puc.texas.gov/Documents/50788\\_1\\_1062775.PDF](https://interchange.puc.texas.gov/Documents/50788_1_1062775.PDF) (pages 46)

<sup>13</sup> [https://www.wowsc.org/documents/778/Newsletter\\_April\\_4.10.2018\\_Board\\_approved.pdf](https://www.wowsc.org/documents/778/Newsletter_April_4.10.2018_Board_approved.pdf)

If the response to WOWSC 2-14 is admit, admit or deny that it is Ratepayers' assertion that WOWSC will receive the highest value for its remaining property during the pending litigation over a previous property sale. If admit, please provide all documents association with this response.

**Answer**

Ratepayer Representatives admit that for many years, and up until the moment the Board approved the sale to Martin, the conventional wisdom was that the WOWSC would receive the highest value for its surplus property by actively marketing the property as a single tract.<sup>14</sup> To the extent the WOWSC is no longer in a position to receive the highest value, that is because of the misconduct of its fiduciaries and not because of the pending litigation. Ratepayer Representatives also admit that the WOWSC is unlikely to receive the highest value for its remaining property unless it exposes such property for sale to the largest available market. So far as Ratepayer Representatives are aware, the remaining property has not been listed or marketed in any way. Finally, if it is accurate that the Board has neglected its duties concerning the closure of the old wastewater treatment plant which is located on the remaining tract, then Ratepayer Representatives admit that the company is unlikely to receive the highest value for its remaining property as a result of that neglect.

Prepared by: Josie Fuller & Patti Flunker; Sponsored by: Josie Fuller & Patti Flunker

**WOWSC 2-16**

Admit or deny that Ratepayer Representative Patti Flunker resides in the same house as Daniel Flunker, former registered principal of TOMA Integrity, Inc.

**Answer**

Admit

Prepared by: Patti Flunker; Sponsored by: Patti Flunker

**WOWSC 2-17**

Admit or deny that Ratepayer Representatives signed a Petition to remove Joe Gimenez from the Board of Directors of WOWSC in 2019.

**Answer**

Admit. Ratepayers Representatives, like all other Members, have that right under the Windermere Oaks Water Supply Corporation Bylaws

Prepared by: Josie Fuller & Patti Flunker; Sponsored by: Josie Fuller & Patti Flunker

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<sup>14</sup> [https://www.wowsc.org/documents/778/2015-03-16\\_WOWSC\\_Minutes\\_Ap.pdf](https://www.wowsc.org/documents/778/2015-03-16_WOWSC_Minutes_Ap.pdf)

## **WOWSC 2-18**

Admit or deny that Ratepayer Representatives signed a Petition to remove the Directors of WOWSC from the Board of Directors of WOWSC in October or November 2020.

### **Answer**

Admit, Ratepayers Representatives, like all other Members, have that right under the Windermere Oaks Water Supply Corporation Bylaws

Prepared by: Josie Fuller & Patti Flunker; Sponsored by: Josie Fuller & Patti Flunker

## **WOWSC 2-19**

Admit or deny that Patti Flunker recommended that WOWSC use the free service provided by the Texas Rural Water Association for determining rates in 2015 or 2016.

### **Answer**

Deny, the WOWSC November 19, 2016 WOWSC Board Minutes state;

“Nathan from TRWA recommended TRWA could help with a rate study which they do for free. Karri and George were to contact TRWA and get information.”

Additionally, the WOWSC November 19, 2016 WOWSC Board Minutes state;

“Patti Flunker, employee of TRWA recommended that WOWSC Board members sign up on the TRWA website to receive notices of conferences and other information.”<sup>15</sup>

The WOWSC has maliciously made false accusations regarding statements never made by Patti Flunker. The WOWSC actions rises to the level of defamation of Patti Flunker’s character with the intent to harm her reputation in the Windermere Oaks Community (see footnote 13). The WOWSC’s continued false accusations serve no other purpose but to slander Patti Flunker and push forth fictitious narratives by WOWSC directors. This is just a glimpse to demonstrate the WOWSC directors’ questionable actions, failure of their fiduciary duties and lack of integrity as elected officials. Had the WOWSC board or their attorney referenced previous WOWSC minutes to verify this libelous action on their part this question would not be part of this RFI, however they did not. Instead, the WOWSC continues to rack up prodigal legal expenses which they pass on to the ratepayers.

Patti Flunker has attended several WOWSC meetings, requesting that WOWSC rectify their newsletters and comments made in open board meetings, however this has fallen on deaf ears and the WOWSC continues their assaults on Patti Flunker’s character.

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<sup>15</sup> [https://www.wowsc.org/documents/778/2016-11-19\\_WOWSC\\_Minutes\\_approved\\_signed.pdf](https://www.wowsc.org/documents/778/2016-11-19_WOWSC_Minutes_approved_signed.pdf)

# ATTACHMENT A

**AFFIDAVIT OF DAVID BERTINO**

**STATE OF TEXAS** §  
**COUNTY OF WILLIAMSON** §

BEFORE ME the undersigned Notary Public on this day appeared DAVID BERTINO, and upon his oath stated as follows:

1. My name is DAVID BERTINO. I am over the age of eighteen (18) years, am competent to make this affidavit, and the following facts are true and correct and within my knowledge.

2. I am the current President of the Board of Directors of the WINDERMERE OAKS WATER SUPPLY CORPORATION (“WINDEREMERE OAKS”), located in Spicewood, Texax. I jointed the Board of Directors April 21, 2018 and have been President since April 21, 2018. .

3. I would note that none of the members of WINDERMERE OAKS’ Board of Directors who sat on the Board in December, 2015 are currently members of the Board of Directors.

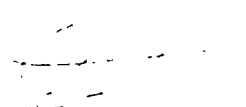
4. By reading the minutes of the Board meetings in which the Board voted to sell the real property, from reviewing the Petition, Supplemental Petition, First Amended Petition and Petition in Intervention filed by TOMA and Mr. DIAL, I am familiar with this lawsuit filed by TOMA INTEGRITY, INC. (“TOMA”), and into which RIDHARD DIAL has filed an Intervention, filed against WINDERMERE OAKS in which they claim that in December, 2015 and again in February, 2016 the then Board of Directors for WINDERMERE OAKS voted to sell some estate owned by WINDERMERE OAKS to a company named FRIENDSHIP HOMES

& HANGERS, LLC. ("FRIENDSHIP HOMES") for the sum of \$203,000.00, and they claim that the votes to sell the real property were allegedly in violation of the Texas Open Meeting Act ("OMA").

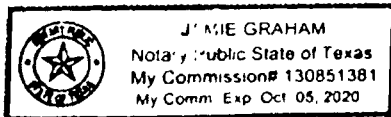
5. Upon information and belief, my understanding is FRIENDSHIP HOMES sold a portion of the property it bought from WINDERMERE OAKS to third persons, JOHANN MAIR and MICHAEL MAIR.


6. I have familiarized myself with the current finances of WINDERMERE OAKS and the company does not now have liquid funds in the amount of the original sales price of \$203,000.00.

Dated this 6 day of June, 2018.

  
DAVID BERTINO

SUBSCRIBED AND SWORN to before me the undersigned Notary Public on this 6 day of June, 2018 by DAVID BERTINO



  
Notary Public, in and for the  
State of Texas