

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA.

DR. THOMAS J. LANE,
Plaintiff,

vs.

CASE NO. 2014 CA 000696

STATE OF FLORIDA, DEPARTMENT OF
BUSINESS AND PROFESSIONAL REGULATION,
DIVISION OF PARI-MUTUEL WAGERING;
FLORIDA THOROUGHBRED BREEDERS'
ASSOCIATION, INC. AKA FLORIDA
THOROUGHBRED BREEDERS' AND OWNERS'
ASSOCIATION, INC.; JOE BARBAZON; FRED BREI;
GILBERT CAMPBELL; SHEILA DIMARE; BRENT
FERNUNG; GEORGE ISSACS; MILAN KOSANOVICH;
ROY LERMAN; PHIL MATTHEWS; JOSEPH M.
O'FARRELL III; DIANE PARKS; GEORGE RUSSELL;
JESSICA STEINBRENNER; CHARLOTTE WEBER;
GREG WHEELER; and LONNY T. POWELL,
Defendants.

**FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF;
FOR RELIEF IN THE NATURE OF QUO WARRANTO; AND FOR DERIVATIVE
ACTION BY A MEMBER OF A FLORIDA NOT FOR PROFIT CORPORATION**

The plaintiff sues the defendants and alleges:

Introduction

1. Counts I, II and III include causes of action for declaratory and injunctive relief pursuant to Chapter 86, Fla. Stat (2013) that the plaintiff is bringing in his individual capacity.

This Court has jurisdiction over Counts I, II and III pursuant to §§26.012 and 86.011.¹

2. Count IV includes a cause of action in the nature of quo warranto that the plaintiff is bringing not in his individual capacity but in relation to the State of Florida. This Court has original jurisdiction over Count IV pursuant to Article V, §5 and §26.012(2)(a).

3. Count V is a derivative action initiated by the plaintiff as a member of a Florida corporation not for profit, the defendant, Florida Thoroughbred Breeders' Association, Inc. aka Florida Thoroughbred Breeders' and Owners' Association, Inc. ("FTBOA"), which derivative action the plaintiff brings on behalf of the members of FTBOA to enforce a right of action that exists on behalf of FTBOA against its directors for breach of fiduciary duty. This Court has jurisdiction over Count V pursuant to §26.012.

4. The plaintiff is a resident of Marion County, Florida.

5. The defendant, State of Florida, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (the "Division") is an agency of the executive branch of the government of the State of Florida and is the agency responsible for the regulation of Florida's gaming industry and the enforcement of Chapters 550 and 551. Venue in actions against the Division is proper in this Court.

6. The defendant, FTBOA, is a private, not for profit Florida corporation that has been unconstitutionally granted certain privileges by the Florida Legislature and that has otherwise committed the *ultra vires* acts as hereinafter set forth.

7. The individual defendants, Joe Barazon, Fred Brei, Gilbert Campbell, Sheila DiMare, Brent Fernung, George Issacs, Milan Kosanovich, Roy Lerman, Phil Matthews, Joseph M. O'Farrell, III, Diane Parks, George Russell, Jessica Steinbrenner, Charlotte Weber and Greg

¹ All references to the Florida Statutes shall be the 2013 version published by the Statutory

Wheeler, purport to be the members of the board of directors of FTBOA (collectively the “Directors”).

8. The individual defendant, Lonny T. Powell (“Powell”), purports to be the Executive Director and/or CEO of FTBOA.

The Plaintiff’s Standing

9. The plaintiff, Dr. Thomas J. Lane, is a breeder of Florida-bred thoroughbred horses and he has continuously been a breeder of Florida-bred thoroughbred horses since approximately 1980.

10. As a breeder of Florida-bred thoroughbred horses that have won races at racetracks in Florida, the plaintiff has a statutorily protected economic right to receive certain financial awards under §550.2625(3)(a) as follows:

“The breeder of each Florida-bred thoroughbred horse winning a thoroughbred horse race is entitled to an award of up to, but not exceeding, 20 percent of the announced gross purse, including nomination fees, eligibility fees, starting fees, supplementary fees, and money added by the sponsor of the race.

11. Notwithstanding the plaintiff’s statutory entitlement under §550.2625(3)(a) to payment of a financial award is not conditioned in any way, the legislature has, through the enactment of §550.2625(3), unlawfully and unconstitutionally designated FTBOA, a private, non-governmental corporation, to administer the distribution of awards under §550.2625(3) (the “Distributable Awards”) and has further authorized FTBOA by statute to diminish the Distributable Awards available to the plaintiff and others by 10% of the gross amount distributable through the deduction of an “administrative fee” to FTBOA without regard to the actual expense incurred by FTBOA in distributing the Distributable Awards. Furthermore, the Legislature designated FTBOA without any regard to the availability of other qualified organizations that might have been available to administer the Distributable Awards if the

selection process had properly included competitive bidding in which these other organizations could have come forward with proposals that would not have resulted in the diminishment of the Distributable Awards by the 10% annual fee paid by statutory mandate to FTBOA, a private, non-governmental corporation. Accordingly, the plaintiff has suffered damages specially caused by the enactment of §550.2625(3) on account of a reduction in the Distributable Awards available for distribution to the plaintiff by the 10% fee §550.2625(3) authorizes be paid from earned breeders' awards to FTBOA, a private, non-governmental corporation.

12. The plaintiff is currently a member in good standing of FTBOA although his membership is presently coerced for financial reasons as explained in paragraph 14 below. A copy of the plaintiff's membership card for calendar year 2013 is attached as Exhibit 1. The plaintiff first became a member of FTBOA on or about 1980. At that time, the articles of incorporation of FTBOA set forth in Article II the purposes for which FTBOA was incorporated and the means through which those purposes were to be effectuated as follows:

ARTICLE II. NATURE AND PURPOSES OF CORPORATION

“This is a non-profit corporation organized solely for general charitable Purposes pursuant to Florida Corporations Not For Profit Law set forth in Part 1 of Chapter 617 of Florida Statutes, with the more particular purpose and object of this corporation being the promotion and close cooperation in promoting the thoroughbred horse breeding industry in Florida and the country at large; and to this end, by mutual helpfulness and cooperation to gain a greater knowledge of the soil analysis of the State of Florida and the same cooperation to gain a greater scientific knowledge of the most beneficial grasses, feed, care and water most suitable to the successful and profitable breeding of thoroughbred horses.”

The most current version of FTBOA's articles of incorporation, having been “Restated” as of July 11, 2012, continues in full force and effect the foregoing stated nature and purposes of FTBOA, as indicated in the copy of the “Restated” articles of incorporation attached as Exhibit 2.

13. When the plaintiff first joined FTBOA as a member, FTBOA's corporate

activities were consistent with the extremely limited nature and purposes for which FTBOA was incorporated as stated in Article II of the Articles of Incorporation (“Article II”). However, in recent years, FTBOA’s corporate activities have unlawfully and improperly deviated from the limited nature and purposes stated in Article II by becoming engaged in the political process through the retention and payment of multiple lobbyists and through the expenditure of large sums of FTBOA’s available funds for political contributions made directly to legislators and indirectly to campaign committees established by the political parties, through the funding of politically inspired litigation initiated by a non-thoroughbred breeding industry horsemen’s association and further by becoming engaged in essentially for-profit, entrepreneurially-based business ventures including the ownership of a horse racing permit and some form of ownership interest in a commercial casino project in Miami-Dade County.

14. Although there is no legal requirement that the plaintiff remain a member of FTBOA in order to receive Distributable Awards to which the plaintiff is statutorily entitled, the discriminatory registration fee penalties that FTBOA imposes on the registration of Florida-bred horses owned by non-members compels the plaintiff to remain a member of FTBOA strictly for financial reasons notwithstanding the plaintiff’s objection to the use of his dues and other payments he makes to FTBOA for any purpose not specifically identified in Article II. Use of the plaintiff’s due and other payments for purposes not authorized by Article II implicates a violation of the plaintiff’s first amendment right of free association. *Aboud v. Detroit Board of Education*, 431 U.S. 209 (1977); *The Florida Bar*, 439 So.2d 213 (Fla. 1983).

Laws Challenged

15. In Counts I and II, the plaintiff challenges the constitutionality of the following identified provisions of Chapters 550 and 551 that the plaintiff asserts are either special laws enacted by the Legislature in violation of Article III, §10 or are prohibited special laws enacted in

violation of Article III, §11(a)(12):

- a. §550.26125. The text of this section is attached as Exhibit 3.
- b. §550.2625(3). The text of this section is attached as Exhibit 4.
- c. §550.625(2)(a). The text of this section is attached as Exhibit 5.
- d. §551.104(10)(a)1. The text of this section is attached as Exhibit 6.

16. In Count III, the plaintiff challenges the constitutionality of §550.2625(3) as a violation of the plaintiff's First Amendment right to free association. The text of §550.2625(3) is attached as Exhibit 4.

*Count I—Constitutional Challenge to §§550.26125, 550.2625(3), 550.625(2)(a) and
551.104(10)(a)1*

17. The plaintiff realleges and reasserts the allegations of paragraphs 1 through 16 above as if fully rewritten herein.

18. Article III, Section 10, entitled “Special laws”, provides as follows:

Special laws. -- No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

19. An act of the legislature is a special law when it relates to a particular person or entity in connection with a specific situation in which that person or entity is involved. The Legislature in §§550.26125, 550.2625(3), 550.625(2)(a) and 551.104(10)(a)1 specifically identifies and designates FTBOA as the particular private person or entity to receive the specific legislatively-established benefits and privileges granted and conferred by the cited statutes.

20. The specific identification of FTBOA by the legislature within §§550.26125, 550.2625(3), 550.625(2)(a) and 551.104(10)(a)1 causes those sections to be classified as a special law within the context of Article III, Section 10.

21. Sections 550.26125, 550.2625(3), 550.625(2)(a) and 551.104(10)(a)1, although special in character because of the specific identification and designation of FTBOA, was enacted as a general law but was not advertised as a special law as required by law and does not contain any provision for the approval thereof by referendum.

WHEREFORE, the plaintiff requests that the Court issue a declaratory judgment that:

(a) Determines and declares the rights of the parties under §§550.26125, 550.2625(3), 550.625(2)(a) and 551.104(10)(a)1;

(b) Declares that §550.26125 is a special law enacted under the guise of a general law in violation of Article III, Section 10;

(c) Declares that §550.2625(3) is a special law enacted under the guise of a general law in violation of Article III, Section 10;

(d) Declares that §550.625(2)(a) is a special law enacted under the guise of a general law in violation of Article III, Section 10;

(e) Declares that §551.104(10)(a)1 is a special law enacted under the guise of a general law in violation of Article III, Section 10; and

(f) Directs the Division to enforce the provisions of Chapters 550 and 551 without regard to any of the unconstitutional provisions of §§550.26125, 550.2625(3), 550.625(2)(a) and 551.104(10)(a)1.

Count II—Constitutional Challenge to §§550.26125, 550.2625(3), 550.625(2)(a) and 551.104(10)(a)1

22. The plaintiff realleges and reasserts the allegations of paragraphs 1 through 16 above as if fully rewritten herein.

23. Article III, Section 11(a)(12) provides is relevant part as follows:

Prohibited Special laws. –

(a) There shall be no special law or general law of local application pertaining to:

(12) private incorporation or grant of privilege to a private corporation.

24. Privilege as contemplated by Article III, Section 11(a)(12) is a right granted to one by the government as a peculiar benefit, advantage or favor.

25. The each of rights granted to FTBOA under §§550.26125, 550.2625(3), 550.625(2)(a) and 551.104(10)(a)1 is a privilege as contemplated by Article III, Section 11(a)(12) that the legislature is constitutionally prohibited from granting to any private corporation, including FTBOA.

WHEREFORE, the plaintiff requests that the Court issue a declaratory judgment that:

(a) Determines and declares the rights of the parties under §§550.26125, 550.2625(3), 550.625(2)(a) and 551.104(10)(a)1;

(b) Declares that §550.26125 is a prohibited special law enacted in violation of Article III, Section 11(a)(12);

(c) Declares that §550.2625(3) is a prohibited special law enacted in violation of Article III, Section 11(a)(12);

(d) Declares that §550.625(2)(a) is a prohibited special law enacted in violation of Article III, Section 11(a)(12);

(e) Declares that §551.104(10)(a)1 is a prohibited special law enacted in violation of Article III, Section 11(a)(12); and

(f) Directs the Division to enforce the provisions of Chapters 550 and 551 without regard to any of the unconstitutional provisions of §§550.26125, 550.2625(3), 550.625(2)(a) and

551.104(10)(a)1.

Count III—Constitutional Challenge to §550.2625(3)—Freedom of Association

26. The plaintiff realleges and reasserts the allegations of paragraphs 1 through 16 above as if fully rewritten herein.

27. Because of the discriminatory fee structure that FTBOA imposes upon non-members for the performance of duties §550.2625(3) requires FTBOA to perform (See Exhibit 4), the plaintiff finds himself financially coerced through the legislature's selection of FTBOA to administer the Distributable Awards into becoming a dues paying member of FTBOA as a condition to the continuing pursuit of his livelihood as a participant in the Florida thoroughbred breeding industry.

28. The payments by the plaintiff of dues and other sums to FTBOA are not the voluntarily acts of the plaintiff, but instead are coerced acts taken solely because of the legislature's designation of FTBOA to administer the Distributable Awards in §550.2625(3). Accordingly, FTBOA's use of the plaintiff's dues and other payments to advance a corporate agenda that includes lobbying and other political activities to which the plaintiff does not agree violates the plaintiff's First Amendment right to freedom of association.

WHEREFORE, the plaintiff requests that the Court issue a declaratory judgment that:

- (a) Determines and declares the rights of the parties under §550.2625(3);
- (b) Declares that §550.2625(3) was enacted in violation of the Right to Freedom of Association contained within the First Amendment to the United States Constitution; and
- (c) Directs the Division to enforce the provisions of Chapter 550 without regard to the unconstitutional provisions of §550.2625(3).

Count IV—Action in the Nature of Quo Warranto

29. The plaintiff realleges and reasserts the allegations of paragraphs 1 through 16 above as if fully rewritten herein.

30. The plaintiff is bringing this action in the nature of quo warranto to challenge by what right the individual directors of FTBOA, namely Joe Barazon, Fred Brei, Gilbert Campbell, Sheila DiMare, Brent Fernung, George Issacs, Milan Kosanovich, Roy Lerman, Phil Matthews, Joseph M. O’Farrell, III, Diane Parks, George Russell, Jessica Steinbrenner and Greg Wheeler (collectively the “Directors”), are lawfully exercising their purported authority to act and serve as directors of FTBOA.

31. As a member entitled to vote and otherwise in good standing with FTBOA, the plaintiff is entitled to exercise all of the privileges of membership set forth in the current, restated as of July 11, 2012 Articles of Incorporation of FTBOA (the “Articles”), including the right to vote in elections to determine the members of FTBOA’s board of directors. A copy of the Articles is attached as Exhibit 2.

32. As a member entitled to vote and otherwise in good standing with FTBOA, the plaintiff has standing to maintain an action in the nature of quo warranto to challenge by what right the Directors are lawfully exercising their purported authority to act and serve as directors of FTBOA. *State ex rel. Christian v. Austin*, 302 So.2d 811, 814 (Fla. 1st DCA 1974).

33. The Articles provide in “Article VII. Meetings” in relevant part as follows:

“(a) The Membership shall meet at an annual meeting to try and coincide with “Ocala Week”, and such special meetings when called pursuant to the Bylaws.

A quorum for membership meetings shall consist of thirty-four (34%) of the total number of members entitled to vote and in good standing, represented in person or by proxy.”

34. On October 31, 2013, FTBOA held its 2013 Annual Meeting of the members of FTBOA as required by the provisions of Article VII (a) of the Articles.

35. Based upon the best information made available to the membership by the FTBOA, as of the week before the 2013 annual meeting, FTBOA had 1140 members entitled to vote and otherwise in good standing. Applying the formula to determine the existence of a quorum found in Article VII (a) of the Articles, 34% of the total membership of the FTBOA in good standing (34% of 1140 members) equals 387 members—meaning that 387 members were required to be present in person or by proxy in order for there to be a quorum at the FTBOA’s 2013 annual meeting.

36. Based upon the plaintiff’s best knowledge and belief, a quorum of the members of FTBOA was not present in person or by proxy at the 2013 Annual Meeting.

37. As provided in Article XIII of FTBOA’s most current bylaws, a copy of which bylaws are attached as Exhibit 7 (the “Bylaws”), the election of FTBOA’s board of directors is accomplished by a member executing a written ballot and by mailing it to the election teller. Proxy voting is not authorized. Because neither the Articles nor the Bylaws provide for written ballots to be considered either as proxies or for determining the existence of a quorum, the number of written ballots received by FTBOA is not a factor when determining the existence of a quorum under the Articles. Furthermore, even if all of the 353 written votes that FTBOA announced were cast by members at the 2013 Annual Meeting were counted toward a quorum, there still was not a quorum present at the 2013 Annual Meeting.

38. Despite knowing that it lacked a quorum at the 2013 Annual Meeting, FTBOA announced that by virtue of the votes cast, the following defendants were elected to FTBOA’s board of directors at the 2013 Annual Meeting: George Issacs, Milan Kosanovich, Roy Lerman, Jessica Steinbrenner and Charlotte Weber.

39. On October 19, 2012, FTBOA held its 2012 Annual Meeting of the members of FTBOA as required by the provisions of Article VII (a) of the Articles.

40. Based upon the best information made available to the membership by the FTBOA, as of the week before the 2012 annual meeting, FTBOA had 1309 members entitled to vote and otherwise in good standing. Applying the formula to determine the existence of a quorum found in Article VII (a) of the Articles, 34% of the total membership of the FTBOA in good standing (34% of 1309 members) equals 445 members—meaning that 445 members were required to be present in person or by proxy in order for there to be a quorum at the FTBOA's 2012 annual meeting.

41. Based upon the plaintiff's best knowledge and belief, a quorum of the members of FTBOA was not present in person or by proxy at the 2012 Annual Meeting.

42. Furthermore, based upon the plaintiff's best knowledge and belief, even if all of the written votes that were cast by members at the 2012 Annual Meeting were counted toward a quorum, there still was not a quorum present at the 2012 Annual Meeting. The defendant, Phil Matthews, who served as the presiding officer at the 2012 Annual Meeting, acknowledged to the members that attended the 2012 annual meeting that a quorum had not been achieved for the meeting. When the presiding officer was asked at the meeting about the number of votes cast in the election of the directors, the presiding officer failed and refused to answer the question posed to him, asserting instead that a quorum is not necessary for the election of directors.

43. Despite knowing that it lack of a quorum at the 2012 Annual Meeting, FTBOA announced that by virtue of the votes cast, the following defendants were elected to FTBOA's board of directors at the 2012 Annual Meeting: Phil Matthews, Fred Brei, Brent Furnung, Joseph Barbazon and Joseph M. O'Farrell, III.

44. Also at the 2012 Annual Meeting, the defendant, Phil Matthews, as the presiding

officer of that meeting, also acknowledged to the members present that there was not a quorum present at the 2011 Annual Meeting during which the defendants, Diane Parks, Gilbert Campbell, George Russell and Sheila DiMare were elected to the office of director of the FTBOA. See FTBOA's summary of the 2011 Meeting in which it was acknowledged that a quorum was not present attached as Exhibit 8. Also elected to the office of director at the 2011 annual meeting was a non-party to this action, Eddie Woods. Mr. Woods subsequently resigned his office of director and was replaced by the defendant, Greg Wheeler, by vote of the other directors held pursuant to the provisions of the bylaws.

45. The purported election of the members of FTBOA's board of directors held during the 2011, 2012 and 2013 Annual Meetings of FTBOA was illegal and invalid for the following reasons:

- a. The 2013 Annual Meeting of the members of the FTBOA held on October 31, 2013 at which time the defendants, George Issacs, Milan Kosanovich, Roy Lerman, Jessica Steinbrenner and Charlotte Weber, were purportedly elected as directors lacked the quorum required by the Articles; and accordingly, because of the lack of a quorum, FTBOA was not authorized to transact business; and therefore the election of said defendants as directors of FTBOA was null and void and was otherwise ineffectual to elect the said defendants as directors of FTBOA.
- b. The 2012 Annual Meeting of the members of FTBOA held on October 19, 2012 at which time the defendants, Joe Barbazon, Fred Brei, Brent Furnung, Phil Matthews and Joseph M. O'Farrell, III, were purportedly elected as directors lacked the quorum required by either of the Articles; and accordingly, because of the lack of a quorum, FTBOA was not authorized to transact business; and

therefore the election of said defendants as directors of FTBOA was null and void and was otherwise ineffectual to elect the said defendants as directors of FTBOA.

- c. The 2011 Annual Meeting of the members of FTBOA held on October 13, 2011 at which time the defendants, Gilbert Campbell, Sheila DiMare, George Russell and Diane Parks, were purportedly elected as directors lacked the quorum required by either of the Articles; and accordingly, because of a lack of a quorum, FTBOA was unauthorized to transact business; and therefore the purported election of said defendants as directors of FTBOA, was null and void and was otherwise ineffectual to elect the said defendants as directors of FTBOA.

46. The purported appointment of the defendant, Craig Wheeler, as a replacement director of FTBOA in place of Eddie Woods was illegal and invalid because said defendant was appointed by the other directors, none of whom were duly and lawfully elected to the office of director of FTBOA on account of a lack of a quorum at the 2011, 2012 and 2013 Annual Meetings of FTBOA or at any earlier annual meeting (at which there was also no quorum) at which the Directors selecting Craig Wheeler were purportedly elected.

47. By reason of these illegal and invalid elections and the subsequent acts and proceedings of persons claiming to have been elected directors at FTBOA's 2011, 2012 and 2013 Annual Meetings, the plaintiff is aggrieved and alleges that his rights as a member in good standing of FTBOA have been infringed upon by the illegal usurpation by the Directors of their purported positions as directors of FTBOA and their continued exercise of authority as directors unlawfully asserted.

48. By reason of the illegal and invalid elections of the Directors, all corporate actions taken by the board of directors of FTBOA for the entire period of time in which any of the

Directors were improperly serving as directors are null and void, including the employment agreement or arrangement under which Powell serves as an employee of FTBOA.

49. The plaintiff demands that the Directors show by what right they are lawfully exercising their purported authority to serve as members of the board of directors of FTBOA.

WHEREFORE, the plaintiff requests:

A. Entry of a writ of quo warranto quashing as null and void the purported election of the defendants, Joe Barazon, Fred Brei, Gilbert Campbell, Sheila DiMare, Brent Fernung, George Issacs, Milan Kosanovich, Roy Lerman, Phil Matthews, Joseph M. O'Farrell, III, Diane Parks, George Russell, Jessica Steinbrenner and Charlotte Weber to the office of director of FTBOA and ousting said defendants from their purported positions as members of the board of directors of FTBOA; and

B. Entry of a writ of quo warranto quashing as null and void the purported appointment of the defendant, Greg Wheeler, to the office of director of FTBOA and ousting said defendant from his purported position as a member of the board of directors of FTBOA;

C. Entry of a writ of quo warranto quashing as null and void any purported employment agreement or arrangement between FTBOA and Powell, and ousting said defendant from his purported position as executive director and CEO of FTBOA;

D. Awarding the plaintiff the costs of this action; and

E. Awarding the plaintiff such other and further relief as the Court deems just and proper under the circumstances.

Count V—Member Derivative Action

50. The plaintiff realleges and reasserts the allegations of paragraphs 1 through 16 above as if fully rewritten herein.

51. This is derivative action brought by a member of FTBOA on behalf of the membership to enforce a right of action that exists on behalf of FTBOA against the Directors and Powell. *Fox v. Professional Wrecker Operators of Florida, Inc.*, 801 So.2d 175 (Fla. 5th DCA 2001).

52. A corporation must act in accordance with its articles of incorporation. Article II of the prior and restated Articles of Incorporation of FTBOA provides in relevant part as follows:

ARTICLE II. NATURE AND PURPOSES OF CORPORATION

“This is a non-profit corporation organized solely for general charitable Purposes pursuant to Florida Corporations Not For Profit Law set forth in Part 1 of Chapter 617 of Florida Statutes, **with the more particular purpose and object of this corporation being the promotion and close cooperation in promoting the thoroughbred horse breeding industry in Florida and the country at large; and to this end, by mutual helpfulness and cooperation to gain a greater knowledge of the soil analysis of the State of Florida and the same cooperation to gain a greater scientific knowledge of the most beneficial grasses, feed, care and water most suitable to the successful and profitable breeding of thoroughbred horses.**”

53. FTBOA, either acting through its officers or executive committee without the involvement of the full board of directors or with the involvement of the full board, have authorized FTBOA to engage in several corporate activities that are not authorized by Article II and are therefore *ultra vires* acts of FTBOA. Included within the *ultra vires* corporate actions to which this derivative action is directed are the following:

a. Engaging in the political process through the retention of lobbyists and the requisite expenditure of assets of a not for profit corporation for a purely political purpose beyond the scope of the charitable purposes of FTBOA set forth in Article II;

b. Engaging in the political process through financial contributions to members of the legislature and to other political campaign donations and the requisite expenditure of assets of a not for profit corporation for a purely political purpose beyond the

scope of the charitable purposes of FTBOA set forth in Article II;

c. Engaging in traditional for profit ventures, such as the investment in Ocala Thoroughbred Racing or “OTR”, the holder of pari-mutuel permit and the requisite expenditure of assets of a not for profit corporation for a profit-making purpose beyond the scope of the charitable purposes of FTBOA set forth in Article II;

d. Engaging in traditional for profit ventures, such as FTBOA’s involvement in a casino project in Miami-Dade County known as the “Genting Project” and the requisite expenditure of assets of a not for profit corporation for a profit-making purpose beyond the scope of the charitable purposes of FTBOA set forth in Article II;

e. Making a loan to a non-thoroughbred industry political action group and/or otherwise agreeing to be responsible for the payment of a substantial part of the legal fees incurred by said non-thoroughbred industry political action group and the requisite expenditure of assets of a not for profit corporation to fund a lawsuit that has no relevant connection to the charitable purposes of FTBOA as set forth in Article II;

f. Using the 10% fee paid to FTBOA for administering the Distributable Awards for the purposes other than those required by §550.2625(3);

g. Entering into long term employment arrangements with employees, including the employment arrangement with Powell, undertaken by the directors despite knowing that none of them were elected at a meeting in which a quorum of the members were present in person or by proxy as required by the Articles; and

h. Taking all other corporation action taken by the directors despite knowing that none of them were elected at a meeting in which a quorum of the members were present in person or by proxy as required by the Articles.

54. To the extent that the foregoing corporate activities of FTBOA are found to be

ultra vires, then Powell and the Directors or any of them who authorized such *ultra vires* acts have breached their fiduciary duty to FTBOA for which the offending Director is individually liable to FTBOA for any damages that it has or will suffered until the *ultra vires* acts are discontinued.

55. The plaintiff has no adequate remedy at law.

WHEREFORE, the plaintiff requests:

A. That the Directors and Powell be restrained and enjoined from continuing the *ultra vires* acts complained of in this Count V;

B. That the individual Directors involved in approving any of the *ultra vires* acts and Powell account to and pay over to FTBOA all losses and damage caused by their *ultra vires* acts; and

C. That this Court grants to the plaintiff such other relief as may be just and proper under the circumstances, including the costs of this action and attorneys' fees if awardable.

DATED this 10th day of April, 2014.

S/DAVID S. ROMANIK

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EXHIBIT 1

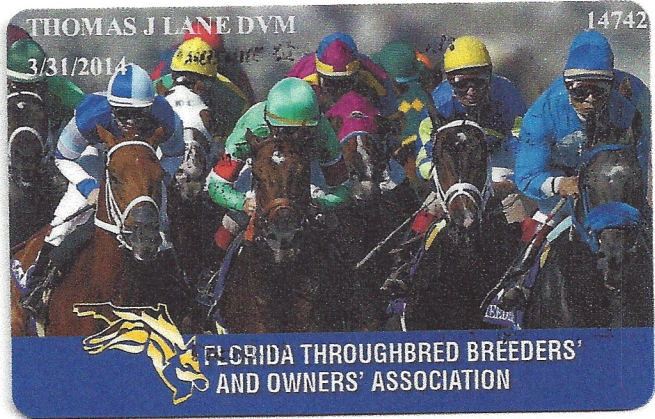


EXHIBIT 2

**Restated Articles of Incorporation of
Florida Thoroughbred Breeders' Association, Inc.**

The Articles of Incorporation of **FLORIDA THOROUGHBRED BREEDERS' ASSOCIATION, INC.**, are hereby restated to read:

ARTICLE I. NAME

The name of this corporation is **FLORIDA THOROUGHBRED BREEDERS' ASSOCIATION, INC.**

ARTICLE II. NATURE AND PURPOSES OF CORPORATION

This is a non-profit corporation organized solely for general charitable purposes pursuant to Florida Corporations Not For Profit Law set forth in Part 1 of Chapter 617 of Florida Statutes, with the more particular purpose and object of this corporation being the promotion and close cooperation in promoting the thoroughbred horse breeding industry in Florida and the country at large; and to this end, by mutual helpfulness and cooperation to gain a greater knowledge of the soil analysis of the State of Florida and by the same cooperation gain a greater scientific knowledge of the most beneficial grasses, feed, care and water most suitable to the successful and profitable breeding of thoroughbred horses.

The corporation is formed to operate exclusively to such purposes as would qualify it as an exempt organization under Section 501(c) of the Internal Revenue Code of 1954 or corresponding provision of any subsequent Federal tax laws, including, for such purposes, the making of distributions to organizations which qualify as tax-exempt organizations under the Code.

ARTICLE III. TERM OF EXISTENCE

This corporation shall have a perpetual existence.

ARTICLE IV. MEMBERSHIP

The corporation shall have a membership distinct from the Board of Directors (Trustees). The authorized number and qualification of members of the corporation, the manner of their admission, the different classes of membership, if any, the property, voting, and other rights and privileges of members and their liability for dues and assessments and the method of collection thereof, shall be set forth in the Bylaws, however, the specific Bylaw dealing with membership shall only be amendable by the membership.

ARTICLE V. LOCATION OF PRINCIPAL OFFICE

The principal office for the transaction of business of the corporation is in Marion County at 801 SW 60th Avenue, Ocala, Florida 34474.

ARTICLE VI. MANAGEMENT OF CORPORATE AFFAIRS

(a) **Board of Directors.** The powers of this corporation shall be exercised, its properties controlled, and its affairs conducted by the Board of Directors. The number of Directors of the corporation shall be not less than nine (9) nor more than fifteen (15).

The Directors shall be divided into three (3) groups with each member of each group to be elected for a 3-year term, with each group's year of election to be staggered over a 3-year period and each Director shall serve until the qualification of each Director's successor in office.

Any action required or permitted to be taken by the Board of Directors under any provision of law may be taken without a meeting, if all members of the Board shall individually or collectively consent in writing to such action pursuant to the Laws of Florida.

No Director shall serve more than two (2) consecutive terms on the Board, to become effective with all elections on or after January 1, 1980.

(b) The Board of Directors shall elect a President, First Vice President, a Second Vice President, a Treasurer and a Secretary, and such other officers as the Bylaws of the corporation may authorize the Board to elect from time to time.

No Officer, except the Secretary, shall hold the same office for more than three (3) years, and the position of Secretary and Treasurer may be held by one and the same person.

The Officers of the Association shall be elected by a majority vote of the directors present at an annual or other meeting and the term of office for any Officer shall be for a period of one (1) year at the pleasure of the Board.

ARTICLE VII. MEETINGS

(a) The Membership shall meet at an annual meeting to try and coincide with "Ocala Week", and such special meetings when called pursuant to the Bylaws.

A quorum for membership meetings shall consist of thirty-four (34%) percent of the total number of members entitled to vote and in good standing, represented in person or by proxy.

(b) The Board of Directors shall have an annual meeting immediately after the general Membership meeting and shall meet at least four (4) times a year pursuant to the notice of the President.

A quorum shall consist of a majority of Directors and no Director shall be considered present by proxy.

Any Director absent from three (3) consecutive Board of Directors meetings without good cause being acknowledged by the majority of the Board shall be automatically retired from the Board.

ARTICLE VIII. AMENDMENT TO ARTICLES OF INCORPORATION

These articles of Incorporation may be amended in any manner provided by law. Every amendment shall be approved by the Board of Directors, proposed by them to the Membership entitled to vote thereon and approved at a Membership meeting by a majority of the Members entitled to vote

thereon, or pursuant to a written statement manifesting their intention that a certain amendment of these Articles of Incorporation be made, to be signed by all members of the Board of Directors and two-thirds (2/3) of the Members entitled to vote at a Membership meeting.

ARTICLE IX. BYLAWS

Subject to the limitations contained in the Bylaws and any limitations set forth in the Corporation Not For Profit Law of Florida, concerning corporate action that must be authorized or approved by the Membership of the corporation, the Bylaws of this corporation may be made, altered, rescinded, added to, or new Bylaws may be adopted, either by a resolution of the Board of Directors or by a procedure set forth in the Bylaws of the corporation, however, any Bylaw adopted by the Membership that provides that it may only be amended by the Membership shall not be modifiable by any other method.

ARTICLE X. DEDICATION OF AND DISTRIBUTION OF ASSETS

The property of this corporation is irrevocably dedicated to the charitable purposes of the corporation and no part of the net income or assets of this corporation shall ever inure to the benefit of any Director, Officer or Member thereof, or to the benefit of any private individual. Except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the corporation. Notwithstanding any other provision of these Articles, the corporation shall not carry on any other activity not permitted to be carried on by a corporation exempt from Federal Income Tax under Section 501(c)(5) of the Internal Revenue Code of 1954 or a corresponding provision of any future Section concerning labor, agriculture or horticultural organizations.

ARTICLE XI. DISSOLUTION

Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation, exclusively for the purpose of the corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes or such other purposes as shall, at the time, qualify as an exempt organization or organizations under Section 501(c) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law) as the Board of Directors shall determine. Any of such assets not so disposed of, shall be disposed of by the Circuit Court of the County in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

ARTICLE XII. INDEBTEDNESS

The highest amount of indebtedness or liability to which the corporation may at any time subject itself shall be \$75,000.00. Notwithstanding the foregoing, the corporation may pledge any or all of its assets as determined by the Board of Directors, as security for non-recourse obligations of the corporation in excess of \$75,000.00, and may pledge any or all of its assets as security for the obligations of entities in which the corporation has an ownership interest.

ARTICLE XIII. REAL ESTATE

The corporation may own any and all real estate which, in the sole discretion of the Board of Directors, is determined to be necessary or useful in carrying out the corporate purposes, and shall have full authority to pledge, convey, and encumber the same as determined by the Board of Directors.

ARTICLE XIV. EXECUTIVE COMMITTEE

The Board of Directors, after being elected and assuming office, shall elect an Executive Committee consisting of five (5) Members. The Executive Committee shall be authorized to exercise all the authority of the Board of Directors, except that no committee shall have the authority to:

1. Approve or recommend a membership action or proposals required by law to be approved by the membership.
2. Designate candidates for the office of Director for purposes of proxy solicitation or otherwise.
3. Fill vacancies on the Board of Directors or any committee thereof.
4. Amend the Bylaws.

Further, the Board of Directors, by Resolution adopted in accordance with this Section, may designate one or more Directors as alternate members of such committee, who may act in the place and stead of any absent member or members at any meeting of such committee.

EXHIBIT 3

550.26165 Breeders' awards.—

(1) The purpose of this section is to encourage the agricultural activity of breeding and training racehorses in this state. Moneys dedicated in this chapter for use as breeders' awards and stallion awards are to be used for awards to breeders of registered Florida-bred horses winning horseraces and for similar awards to the owners of stallions who sired Florida-bred horses winning stakes races, if the stallions are registered as Florida stallions standing in this state. Such awards shall be given at a uniform rate to all winners of the awards, shall not be greater than 20 percent of the announced gross purse, and shall not be less than 15 percent of the announced gross purse if funds are available. In addition, no less than 17 percent nor more than 40 percent, as determined by the **Florida Thoroughbred Breeders' Association**, of the moneys dedicated in this chapter for use as breeders' awards and stallion awards for thoroughbreds shall be returned pro rata to the permitholders that generated the moneys for special racing awards to be distributed by the permitholders to owners of thoroughbred horses participating in prescribed thoroughbred stakes races, nonstakes races, or both, all in accordance with a written agreement establishing the rate, procedure, and eligibility requirements for such awards entered into by the permitholder, the **Florida Thoroughbred Breeders' Association**, and the Florida Horsemen's Benevolent and Protective Association, Inc., except that the plan for the distribution by any permitholder located in the area described in s. 550.615(9) shall be agreed upon by that permitholder, the **Florida Thoroughbred Breeders' Association**, and the association representing a majority of the thoroughbred racehorse owners and trainers at that location. Awards for thoroughbred races are to be paid through the **Florida Thoroughbred Breeders' Association**, and awards for standardbred races are to be paid through the Florida Standardbred Breeders and Owners Association. Among other sources specified in this chapter, moneys for thoroughbred breeders' awards will come from the 0.955 percent of handle for thoroughbred races conducted, received, broadcast, or simulcast under this chapter as provided in s. 550.2625(3). The moneys for quarter horse and harness breeders' awards will come from the breaks and uncashed tickets on live quarter horse and harness racing performances and 1 percent of handle on intertrack wagering. The funds for these breeders' awards shall be paid to the respective breeders' associations by the permitholders conducting the races.

(2) Each breeders' association shall develop a plan each year that will provide for a uniform rate of payment and procedure for breeders' and stallion awards. The plan for payment of breeders' and stallion awards may set a cap on winnings and may limit, exclude, or defer payments on certain classes of races, such as the Florida stallion stakes races, in order to assure that there are

adequate revenues to meet the proposed uniform rate. Priority shall be placed on imposing such restrictions in lieu of allowing the uniform rate for breeders' and stallion awards to be less than 15 percent of the total purse payment. The plan must provide for the maximum possible payments within revenues.

(3) Breeders' associations shall submit their plans to the division at least 60 days before the beginning of the payment year. The payment year may be a calendar year or any 12-month period, but once established, the yearly base may not be changed except for compelling reasons. Once a plan is approved, the division may not allow the plan to be amended during the year, except for the most compelling reasons.

(4) It is not intended that the funds in the breeders' association special payment account be allowed to grow excessively, although there is no intent to require that payment each year equal receipts each year. The rate each year shall be adjusted to compensate for changing revenues from year to year.

(5)(a) The awards programs in this chapter, which are intended to encourage thoroughbred breeding and training operations to locate in this state, must be responsive to rapidly changing incentive programs in other states. To attract such operations, it is appropriate to provide greater flexibility to thoroughbred industry participants in this state so that they may design competitive awards programs.

(b) Notwithstanding any other provision of law to the contrary, the **Florida Thoroughbred Breeders' Association**, as part of its annual plan, may:

1. Pay breeders' awards on horses finishing in first, second, or third place in thoroughbred horse races; pay breeders' awards that are greater than 20 percent and less than 15 percent of the announced gross purse; and vary the rates for breeders' awards, based upon the place of finish, class of race, state or country in which the race took place, and the state in which the stallion siring the horse was standing when the horse was conceived;

2. Pay stallion awards on horses finishing in first, second, or third place in thoroughbred horse races; pay stallion awards that are greater than 20 percent and less than 15 percent of the announced gross purse; reduce or eliminate stallion awards to enhance breeders' awards or awards under subparagraph 3.; and vary the rates for stallion awards, based upon the place of finish, class of race, and state or country in which the race took place; and

3. Pay awards from the funds dedicated for breeders' awards and stallion

awards to owners of registered Florida-bred horses finishing in first, second, or third place in thoroughbred horse races in this state, without regard to any awards paid pursuant to s. 550.2625(6).

(c) Breeders' awards or stallion awards under this chapter may not be paid on thoroughbred horse races taking place in other states or countries unless agreed to in writing by all thoroughbred permitholders in this state, the **Florida Thoroughbred Breeders' Association**, and the Florida Horsemen's Benevolent and Protective Association, Inc.

EXHIBIT 4

§550.2625

(3) Each horseracing permitholder conducting any thoroughbred race under this chapter, including any intertrack race taken pursuant to ss. 550.615-550.6305 or any interstate simulcast taken pursuant to s. 550.3551(3) shall pay a sum equal to 0.955 percent on all pari-mutuel pools conducted during any such race for the payment of breeders', stallion, or special racing awards as authorized in this chapter. This subsection also applies to all Breeder's Cup races conducted outside this state taken pursuant to s. 550.3551(3). On any race originating live in this state which is broadcast out-of-state to any location at which wagers are accepted pursuant to s. 550.3551(2), the host track is required to pay 3.475 percent of the gross revenue derived from such out-of-state broadcasts as breeders', stallion, or special racing awards. **The Florida Thoroughbred Breeders' Association** is authorized to receive these payments from the permitholders and make payments of awards earned. **The Florida Thoroughbred Breeders' Association has the right to withhold up to 10 percent of the permitholder's payments under this section as a fee for administering the payments of awards and for general promotion of the industry.** The permitholder shall remit these payments to the **Florida Thoroughbred Breeders' Association** by the 5th day of each calendar month for such sums accruing during the preceding calendar month and shall report such payments to the division as prescribed by the division. With the exception of the 10-percent fee, the moneys paid by the permitholders shall be maintained in a separate, interest-bearing account, and such payments together with any interest earned shall be used exclusively for the payment of breeders', stallion, or special racing awards in accordance with the following provisions:

(a) **The breeder of each Florida-bred thoroughbred horse winning a thoroughbred horse race is entitled to an award of up to, but not exceeding, 20 percent of the announced gross purse, including nomination fees, eligibility fees, starting fees, supplementary fees, and moneys added by the sponsor of the race.**

(b) The owner or owners of the sire of a Florida-bred thoroughbred horse that wins a stakes race is entitled to a stallion award of up to, but not exceeding, 20 percent of the announced gross purse, including nomination fees, eligibility fees, starting fees, supplementary fees, and moneys added by the sponsor of the race.

(c) The owners of thoroughbred horses participating in thoroughbred

stakes races, nonstakes races, or both may receive a special racing award in accordance with the agreement established pursuant to s. 550.26165(1).

(d) In order for a breeder of a Florida-bred thoroughbred horse to be eligible to receive a breeder's award, the horse must have been registered as a Florida-bred horse with the **Florida Thoroughbred Breeders' Association**, and the Jockey Club certificate for the horse must show that it has been duly registered as a Florida-bred horse as evidenced by the seal and proper serial number of the **Florida Thoroughbred Breeders' Association** registry. The **Florida Thoroughbred Breeders' Association** shall be permitted to charge the registrant a reasonable fee for this verification and registration.

(e) In order for an owner of the sire of a thoroughbred horse winning a stakes race to be eligible to receive a stallion award, the stallion must have been registered with the **Florida Thoroughbred Breeders' Association**, and the breeding of the registered Florida-bred horse must have occurred in this state. The stallion must be standing permanently in this state during the period of time between February 1 and June 15 of each year or, if the stallion is dead, must have stood permanently in this state for a period of not less than 1 year immediately prior to its death. The removal of a stallion from this state during the period of time between February 1 and June 15 of any year for any reason, other than exclusively for prescribed medical treatment, as approved by the **Florida Thoroughbred Breeders' Association**, renders the owner or owners of the stallion ineligible to receive a stallion award under any circumstances for offspring sired prior to removal; however, if a removed stallion is returned to this state, all offspring sired subsequent to the return make the owner or owners of the stallion eligible for the stallion award but only for those offspring sired subsequent to such return to this state. **The Florida Thoroughbred Breeders' Association** shall maintain complete records showing the date the stallion arrived in this state for the first time, whether or not the stallion remained in the state permanently, the location of the stallion, and whether the stallion is still standing in this state and complete records showing awards earned, received, and distributed. The association may charge the owner, owners, or breeder a reasonable fee for this service.

(f) A permitholder conducting a thoroughbred horse race under the provisions of this chapter shall, within 30 days after the end of the race meet during which the race is conducted, certify to the **Florida**

Thoroughbred Breeders' Association such information relating to the thoroughbred horses winning a stakes or other horserace at the meet as may be required to determine the eligibility for payment of breeders', stallion, and special racing awards.

(g) **The Florida Thoroughbred Breeders' Association** shall maintain complete records showing the starters and winners in all races conducted at thoroughbred tracks in this state; shall maintain complete records showing awards earned, received, and distributed; and may charge the owner, owners, or breeder a reasonable fee for this service.

(h) **The Florida Thoroughbred Breeders' Association** shall annually establish a uniform rate and procedure for the payment of breeders' and stallion awards and shall make breeders' and stallion award payments in strict compliance with the established uniform rate and procedure plan. The plan may set a cap on winnings and may limit, exclude, or defer payments to certain classes of races, such as the Florida stallion stakes races, in order to assure that there are adequate revenues to meet the proposed uniform rate. Such plan must include proposals for the general promotion of the industry. Priority shall be placed upon imposing such restrictions in lieu of allowing the uniform rate to be less than 15 percent of the total purse payment. The uniform rate and procedure plan must be approved by the division before implementation. In the absence of an approved plan and procedure, the authorized rate for breeders' and stallion awards is 15 percent of the announced gross purse for each race. Such purse must include nomination fees, eligibility fees, starting fees, supplementary fees, and moneys added by the sponsor of the race. If the funds in the account for payment of breeders' and stallion awards are not sufficient to meet all earned breeders' and stallion awards, those breeders and stallion owners not receiving payments have first call on any subsequent receipts in that or any subsequent year.

(i) **The Florida Thoroughbred Breeders' Association** shall keep accurate records showing receipts and disbursements of such payments and shall annually file a full and complete report to the division showing such receipts and disbursements and the sums withheld for administration. The division may audit the records and accounts of the **Florida Thoroughbred Breeders' Association** to determine that payments have been made to eligible breeders and stallion owners in accordance with this section.

(j) If the division finds that the **Florida Thoroughbred Breeders'**

Association has not complied with any provision of this section, the division may order the association to cease and desist from receiving funds and administering funds received under this section. If the division enters such an order, the permitholder shall make the payments authorized in this section to the division for deposit into the Pari-mutuel Wagering Trust Fund; and any funds in the **Florida Thoroughbred Breeders' Association** account shall be immediately paid to the Division of Pari-mutuel Wagering for deposit to the Pari-mutuel Wagering Trust Fund. The division shall authorize payment from these funds to any breeder or stallion owner entitled to an award that has not been previously paid by the **Florida Thoroughbred Breeders' Association** in accordance with the applicable rate.

EXHIBIT 5

550.625 Intertrack wagering; purses; breeders' awards.—If a host track is a horse track:

(1) A host track racing under either a thoroughbred or quarter horse permit shall pay an amount equal to 7.0 percent of all wagers placed pursuant to the provisions of s. 550.615, as purses during its current race meet. However, up to 0.50 percent of all wagers placed pursuant to s. 550.615 may, at the option of the host track, be deducted from the amount retained by the host track for purses to supplement the awards program for owners of Florida-bred horses as set forth in s. 550.2625(6). A host track racing under a harness permit shall pay an amount equal to 7 percent of all wagers placed pursuant to the provisions of s. 550.615, as purses during its current race meet. If a host track underpays or overpays purses required by this section and s. 550.2625, the provisions of s. 550.2625 apply to the overpayment or underpayment.

(2) Of all wagers placed pursuant to the provisions of s. 550.615:

(a) If the host track is a thoroughbred track, an amount equal to 0.75 percent shall be paid to the **Florida Thoroughbred Breeders' Association, Inc.**, for the payment of breeders' awards;

(b) If the host track is a harness track, an amount equal to 1 percent shall be paid to the Florida Standardbred Breeders and Owners Association, Inc., for the payment of breeders' awards, stallion awards, stallion stakes, additional purses, and prizes for, and the general promotion of owning and breeding, Florida-bred standardbred horses; or

(c) If the host track is a quarter horse track, an amount equal to 1 percent shall be paid to the Florida Quarter Horse Breeders and Owners Association, Inc., for the payment of breeders' awards and general promotion.

(3) The payment to a breeders' organization shall be combined with any other amounts received by the respective breeders' and owners' associations as so designated. Each breeders' and owners' association receiving these funds shall be allowed to withhold the same percentage as set forth in s. 550.2625 to be used for administering the payment of awards and for the general promotion of their respective industries. If the total combined amount received for thoroughbred breeders' awards exceeds 15 percent of the purse required to be paid under subsection (1), the breeders' and owners' association, as so designated, notwithstanding any other provision of law, shall submit a plan to the division for approval which would use the excess funds in promoting the

breeding industry by increasing the purse structure for Florida-breds.
Preference shall be given to the track generating such excess.

EXHIBIT 6

551.104 License to conduct slot machine gaming.—

(10)(a)1. No slot machine license or renewal thereof shall be issued to an applicant holding a permit under chapter 550 to conduct pari-mutuel wagering meets of thoroughbred racing unless the applicant has on file with the division a binding written agreement between the applicant and the Florida Horsemen's Benevolent and Protective Association, Inc., governing the payment of purses on live thoroughbred races conducted at the licensee's pari-mutuel facility. In addition, no slot machine license or renewal thereof shall be issued to such an applicant unless the applicant has on file with the division a binding written agreement between the applicant and the **Florida Thoroughbred Breeders' Association, Inc.**, governing the payment of breeders', stallion, and special racing awards on live thoroughbred races conducted at the licensee's pari-mutuel facility. The agreement governing purses and the agreement governing awards may direct the payment of such purses and awards from revenues generated by any wagering or gaming the applicant is authorized to conduct under Florida law. All purses and awards shall be subject to the terms of chapter 550. All sums for breeders', stallion, and special racing awards shall be remitted monthly to the **Florida Thoroughbred Breeders' Association, Inc.**, for the payment of awards subject to the administrative fee authorized in s. 550.2625(3).

EXHIBIT 7

**Bylaws of the
Florida Thoroughbred Breeders' Association, Inc.
d/b/a the Florida Thoroughbred Breeders' and Owners' Association**

**ARTICLE I
Charter**

These Bylaws are altered and amended if found to be in conflict with provisions in the Articles of Incorporation.

**ARTICLE II
Offices**

The principal office of the Corporation, hereinafter referred to as the "Association", in the State of Florida shall be located in the building owned by the Florida Thoroughbred Breeders' Association, Inc. in Marion County at 801 SW 60th Avenue, Ocala, Florida 34474. The Association may have such other offices, either within or without the State of Florida, as the Board of Directors may determine or as the affairs of the Association may require from time to time.

**ARTICLE III
Members**

Section 1. (a) Membership in the Association shall be of four classes: Regular, Associate, Honorary, and Corporate Sponsor. A person engaged in the breeding or racing of Thoroughbred horses in the State of Florida, who owns a broodmare, stallion or racehorse (or a part thereof) domiciled in the State of Florida, and who is interested in the aims and purposes of the Association shall be eligible to become a Regular member. A person interested in the objectives of the Association and who desires to have limited use of the facilities of the Association shall be eligible to become an Associate member. A person may be awarded an Honorary membership by the Board of Directors whenever the Board deems such person deserving and the honor warranted. A business entity or company may become a Corporate Sponsor upon terms specified by the Board of Directors.

(b) Only Regular members in good standing shall be authorized to vote, to serve or stand for election as an officer or Director, or to take any role in the conduct of Association business or activities. A Regular member is considered to be in good standing if all of the member's dues, assessments, and obligations to the Association have been paid in full, and the member does not otherwise stand suspended or expelled.

Section 2. Any person eligible for Membership may become a Member by submitting to the Association a completed application for Membership and a year's dues, as prescribed by the Board of Directors.

Section 3. The Board of Directors may, by a three-quarters vote of the Directors present at a meeting of the Board held to consider a complaint against any member, after due notice to him, expel or suspend for a specified time any member for conduct believed by the Board to be not in the best interests of the Association or its objectives.

The member complained of shall be accorded a fair hearing before the Board, which may appoint a grievance committee to receive complaints, investigate them and report them to the Board with or without recommendations.

Section 4. Each Regular member shall be entitled to one (1) vote on each matter submitted to a vote of the members.

Section 5. Membership in this Association is not transferable or assignable. However, a spouse of a member may be entitled to register Florida-Bred foals for the same fee which applies to a member.

Section 6. An Annual meeting of the Regular members shall be held each year in October, to coincide with "Ocala Week" if practical, with at least thirty (30) days written notice provided to each Regular member. The place and time of the meeting, as determined by the Board of Directors, shall be stated in the notice, which shall be accompanied by an agenda for the meeting.

Section 7. Special meetings of the Regular members may be called by the President, by not less than two-thirds (2/3) of the present Board of Directors, or by any fifty (50) members in good standing, with at least ten (10) days written notice provided to each Regular member. The place and time of the meeting, as determined by the Board of Directors, shall be stated in the notice, which shall be accompanied by an agenda for the meeting describing the purpose or purposes for which the meeting is called.

ARTICLE IV **Directors**

Section 1. The affairs of the Association are to be carried on by a Board of Directors, which shall consist of not less than nine (9) or more than fifteen (15) members. The specific number of Directors shall be designated by the Board, but no reduction in this number may prematurely end the term of a serving Director. The President of the Association shall preside at all Board meetings, with the First Vice President or Second Vice President respectively to preside in the President's absence.

Section 2. Vacancies occurring in the membership of the Board shall be filled by the Board of Directors, the successor Director to serve the remaining term of the Director he has replaced.

Section 3. The Annual meeting of the Board of Directors shall be held without other notice than this Bylaw immediately after the Annual meeting of Regular members.

Section 4. The Board of Directors shall have at least four (4) meetings annually, as set by the President, upon ten (10) days written notice to each member of the Board.

Section 5. Special meetings of the Board of Directors may be called by or at the request of the President, a Vice President, or one-third (1/3) of the Directors, on ten (10) days written notice to each member of the Board, with the notice to state the purpose or purposes for which the Special meeting is called.

Section 6. The Board of Directors shall have the power to elect or appoint all necessary officers and committees; to employ those persons deemed necessary to accomplish the Association's purposes; to require any of them to give such bond for the faithful discharge of their duties as may be deemed wise; to fix their compensation; to prescribe their duties; to dismiss any employee or appointed officer; and generally to control all Officers of the Association.

Section 7. The Board of Directors may permit any or all Directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 8. When the Board of Directors is preparing to authorize, approve, or ratify a contemplated contract or other transaction between the Association and one or more of its directors or any business entity in which one or more of its directors are officers or directors or have a financial interest, those directors shall disclose the fact of such relationship or interest to the Board prior to any Board action. If this required disclosure is not made, the contract or transaction shall be either void or voidable as provided in section 617.0832, Florida Statutes.

ARTICLE V **Officers**

Section 1. The Executive Officers of the Association shall be President, First Vice President, Second Vice President, Secretary and Treasurer, or the officers of Secretary and Treasurer may be combined, each of whom must be a Director.

Section 2. The officers of the Association shall be elected annually by the Board of Directors at the Annual meeting of the Board, each officer to serve until the next annual meeting of Directors or until his successor shall have been duly elected and qualified.

Section 3. Removal - Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Association would be served thereby.

Section 4. Vacancies - A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors and the successor appointed by the Board shall serve the remainder of the term.

Section 5. President - The President shall be the principal executive officer of the Association with general supervision of the business and affairs of the Association. He shall preside at and may adjourn all Association meetings and may sign with the Secretary or other proper officer when authorized by the Board of Directors, any instruments which the Board of Directors has authorized to be executed, and, in general, he shall perform all duties incidental to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Meetings of any committee may be called at any time by the President or the chairman of such committees. The President shall be ex-officio member of all committees, unless otherwise ordered.

Section 6. Vice Presidents - In the absence of the President or in the event of his inability or refusal to act, the First Vice President and Second Vice President respectively shall perform his duties and when so acting shall have all the powers of and be subject to all the restrictions upon the President.

Section 7. Treasurer – The Treasurer shall, in general, perform the entire duties incidental to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 8. Secretary - The Secretary or Executive Vice President shall keep the minutes of the meetings of the members and Directors, see that all notices are duly given, and in general, perform all duties incidental to the office of the Secretary or Executive Vice President, and such other duties as may from time to time be assigned to him by the President or by the Board of Directors.

Section 9. Executive Vice President – An Executive Vice President may be appointed by the Board of Directors to perform such duties as assigned by the Board of Directors, the President, Secretary or Treasurer. Said Executive Vice President's duties shall generally include the management and direction of the Association's office; employment and supervision of the necessary persons to staff same; maintaining adequate records of all Florida-Bred foals and stallions based in Florida; and the receipt and proper distribution on behalf of the Association of all breeders' and stallion incentive awards funds. The Association is authorized to charge its membership a fee sufficient to pay for performing said services. The Executive Vice President is also to keep accurate records and minutes of all Board of Directors' meetings.

A Field Secretary may be appointed by the Board of Directors to generally perform such duties as may be assigned by the Board of Directors, the President, or the Executive Vice President, and to staff whatever offices are needed at the various tracks. A Field Secretary shall perform his or her duties under the supervision and direction of the Executive Vice President.

The Board of Directors may appoint a general counsel and/or special counsel to represent the Association and the Executive Vice President in legal cases and matters requiring the services of an attorney, and the Board may be authorized to enter into a contract with said general counsel and/or special counsel.

Section 10. Chief Financial Officer – A Chief Financial Officer may be appointed by the Board of Directors to perform such duties as assigned by the Board, the President, the Treasurer, or the Executive Vice President. The chief financial officer shall perform his or her duties and responsibilities under the supervision and direction of the Executive Committee and the Executive Vice President.

Section 11. If required by the Board of Directors, any officer whose duties involve the receipt, custody or disbursement of funds shall give bond for the faithful discharge of his duties in such sums and with such sureties as the Board of Directors shall determine.

ARTICLE VI **Executive Committee**

The Executive Committee shall keep full minutes and these shall be provided to all Directors without undue delay following Executive Committee meetings.

ARTICLE VII **Finances**

Section 1. All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such a manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Treasurer or an Assistant Treasurer countersigned by the President or Vice President of the Association.

Section 2. Deposits - All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

Section 3. Gifts - The Board of Directors may accept on behalf of the Association any contribution, gift, bequest or devise for the general purpose or for any special purpose of the Association.

ARTICLE VIII
Certificates of Membership

The Board of Directors may provide for certificates evidencing membership in the Association suitable for framing stating the name and address of each member and the date of issuance of the certificates, however, these certificates shall not be intended to be evidence of the issuance of shares of stock or a proprietary interest in the Association.

ARTICLE IX
Fiscal Year

The Fiscal Year of the Association shall be established by the Board of Directors.

ARTICLE X
Annual Dues

Section 1. The initiation fee for Regular and Associate members shall be established by the Board of Directors, subject to periodic evaluation and adjustment. There shall be no initiation fee for Honorary Memberships and for Corporate Sponsors.

Section 2. Dues shall be paid annually, for the calendar year. The annual dues for each Regular and Associate member shall be established by the Board of Directors, subject to periodic evaluation and adjustment. Dues for renewing members must be received on or before March 31 of each year. If dues for a renewing member are not received by that date, the renewing member must submit a new application for Membership, along with the dues and initiation fee. Corporate sponsorship dues shall be set in each instance by the Board of Directors.

ARTICLE XI
Florida-Breds

Section 1. (a) Only a Thoroughbred horse foaled in the State of Florida may be registered with the Association as a Florida-Bred.

(b) Any owner or breeder of a Thoroughbred horse foaled in the State of Florida may appeal to the Board of Directors of the Association to adjudicate any matters pertaining to registration. Such adjudication by the Board of Directors shall prevail.

Section 2. (a) To register a Thoroughbred horse with the Association as a Florida-Bred, applicants must submit to the Association the following:

1. A completed and signed official application form available from the Association for each horse to be registered; and

2. A check in payment of registration fees in accordance with the schedule established pursuant to Section 3 of this Article.

(b) Upon receipt and verification of this material, the horse may be registered in the Florida Foal Book, and the Association certificate or seal affixed to its Jockey Club Certificate thereby attesting that the horse is a registered Florida-Bred, and, therefore, entitled to enter Florida-Bred races and other races for Florida-Breds.

(c) Only the breeder of record as shown on the Jockey Club Certificate, the owner of the horse, or their respective agents, may apply to register a Thoroughbred horse as a Florida-Bred. Such application must be delivered to the Association or postmarked on or before December 31 of the horse's yearling year. An application for registration at any later time may be accepted only if the breeder of record is also the owner of the horse at the time of application.

(d) The breeder of record as shown on the Jockey Club Certificate of a registered Florida-Bred shall be eligible for Breeders' Awards under the Association's annual awards plan submitted and approved pursuant to section 550.26165, Florida Statutes, if the Florida-Bred is registered with the Association when the subject race takes place. The owner of a registered Florida-Bred shall be eligible for Owners' Awards under section 550.2625(6), Florida Statutes, if the Florida-Bred is registered with the Association when the subject race takes place.

(e) The Association shall encourage Breeders of Record, as distinguished by Jockey Club Certificates, to register their foals as Florida-Breds, in that it is they who benefit from Breeders' Awards when earned.

Section 3. As officially designated registration agent for Florida-Breds, the Association shall charge a reasonable fee for its services. The registration fee shall be established by the Board of Directors, subject to periodic evaluation and adjustment. This fee may vary based upon the timing of the Association's receipt of the fee, the age of the Florida-Bred horse at the time of registration, and the breeder's membership in the Association. The fees shall be published in a fee schedule made available to the Membership.

Section 4. (a) To register a Florida-based stallion with the Association and in order to qualify said stallion based in Florida to receive a Stallion Award, applicants for the registration of said stallion must submit to the Association the following:

1. A completed and signed official application form available from the Association for each stallion to be registered; and

2. A check in payment of registration fees in accordance with the schedule established pursuant to this Section.

(b) Upon receipt and verification of the material, a stallion may be registered in the Florida Stallion Register as a stallion permanently standing in the State of Florida and the owner or owners of said stallion shall be eligible for Stallion Awards under the Association's annual awards plan submitted and approved pursuant to section 550.26165, Florida

Statutes, for such registered Florida-Bred foals that said stallion sired if the stallion is registered with the Association when the subject race takes place.

(c) As the officially designated registration agent for Florida-based stallions, the Association shall charge a reasonable fee for its services. The initial fee for registering a stallion shall be established by the Board of Directors, subject to periodic evaluation and adjustment. An annual renewal fee may be required by the Board of Directors in order to maintain eligibility for Stallion Awards. The annual renewal fee shall be established by the Board of Directors, subject to periodic evaluation and adjustment. These fees may vary based upon the timing of the Association's receipt of the fee, and the fees shall be published in a fee schedule made available to the Membership.

(d) In order for an owner of the sire of a registered Florida-Bred horse to be eligible to receive a Stallion Award, the stallion must have been registered with the Association, the breeding of the registered Florida-Bred horse must have occurred in this state, and the stallion must be standing permanently in this state during the period of time between February 1 and June 15 of each year or, if the stallion is dead, must have stood permanently in this state for a period of not less than one (1) year immediately prior to its death. The removal of a stallion from this state during the period of time between February 1 and June 15 of any year for any reason, other than exclusively for prescribed medical treatment, as approved by the Association, renders the owner or owners of the stallion ineligible to receive a stallion award under any circumstances for offspring sired prior to removal; however, if a removed stallion is returned to this state, all offspring sired subsequent to the return make the owner or owners of the stallion eligible for the Stallion Award, but only for those offspring sired subsequent to such return to this state.

(e) The Association shall maintain complete records showing the date the stallion arrived in this state for the first time, whether or not the stallion remained in the state permanently, the location of the stallion, and whether the stallion is still standing in this state.

(f) The Association will encourage all owners or syndicate managers of Florida-based stallions to register said stallions with the Association.

Section 5. The Association shall keep a full record showing all awards earned, received, and distributed. For administering the payment of awards and for general promotion of the industry, the Association may deduct up to ten percent (10%) of the funds received from pari-mutuel permitholders and other sources for such awards.

Section 6. If, after a period of two (2) years, all reasonable efforts have been expended to disburse an award and the person or business entity earning the award cannot be located and does not communicate with the Association in regard to the award, said award shall be forfeited and deposited in the Florida Thoroughbred Breeders' Promotional Trust Fund for future awards payments. Likewise, if a person or business entity earning an award fails to provide the Association with a Social Security Number or Employer's Identification Number, as appropriate, the award in question, after a period of

two (2) years, shall be forfeited and deposited into the Florida Thoroughbred Breeders' Promotional Trust Fund for future awards payments.

ARTICLE XII
Amendments to Bylaws

These Bylaws may be altered, amended or repealed and new Bylaws may be passed by a majority vote of the Board of Directors.

ARTICLE XIII
Elections/Voting

Section 1. (a) At least 120 days prior to the Annual meeting of the Membership at which Directors will be elected, the Association shall provide, upon request by any Regular member in good standing who wishes to qualify as a candidate, an application form adopted for this purpose by the Board of Directors. The application form shall include a petition to be signed by at least twenty-five (25) Regular members in good standing indicating their support for the applicant's candidacy. To qualify as a candidate for placement on the ballot, a fully and accurately completed application must be received by the Association no later than 90 days prior to the Annual meeting.

(b) In addition, at least sixty (60) days prior to the Annual meeting of the Membership at which Directors will be elected, the Board of Directors shall nominate at least one (1) Regular member as a candidate for each three-year term on the Board to be filled, any of whom may also be applicants seeking to qualify as a candidate under paragraph (a).

Section 2. All voting shall be non-cumulative and be by secret ballot in all elections of Directors and the result shall be ascertained by election tellers and declared by the presiding officer of the meeting. The candidates securing a plurality of votes cast shall be elected to serve the term of office until successors have been elected and qualified; i.e. where there are five (5) Directors to be elected in a group, the five (5) candidates with the largest pluralities of the votes cast shall be elected. If a winning candidate declines to assume the office of Director or is not a Regular member of the Association in good standing when elected, then a vacancy in office is created pursuant to Article IV, Section 2.

Section 3. (a) At least thirty (30) days prior to the Annual Meeting of the Membership, the Association shall provide the following to each Regular member who is entitled to vote, pursuant to the member's contact information on file with the Association:

1. Notice and agenda of the meeting. The agenda shall state all questions to be put to a vote of the Membership, whether posed by the Board of Directors or pursuant to the process described in Section 8 of this Article.

2. A ballot with the printed name and membership number of the Regular member entitled to vote. The ballot will list all candidates for election to the Board of Directors

properly nominated or qualified pursuant to Section 1, as well as all questions to be put to a vote of the Membership. The ballot may set forth such other information on the candidates and questions presented as deemed desirable by the Board. The ballot shall permit each Regular member to vote for the director candidates of their choice. The ballot shall also permit each Regular member to individually vote in the affirmative or in the negative on each question put to a vote of the Membership.

(b) The ballot shall be signed by the member and returned to the election teller appointed by the President in the form and manner specified on the ballot.

(c) The close of voting shall occur upon the presiding officer calling the Annual meeting to order. Each ballot that is signed in a manner reasonably sufficient to identify the person as a Regular member entitled to vote, and that is received by the election teller at its designated office no later than 5 p.m. on the business day prior to the Annual meeting or that is hand-delivered to the election teller at the Annual meeting prior to the close of voting, shall have the date and time of receipt noted thereon. A member may submit only one ballot. If more than one ballot is submitted by a member, then none of the ballots from that member shall be considered valid. The election teller may, at the Annual meeting and/or at any time prior to the Annual meeting, count the votes cast on valid ballots received, but the election teller may not disclose any vote tally until the close of voting and until all votes on valid ballots have been counted.

(d) A ballot shall not be considered valid and shall not be counted if it is marked so as to indicate a vote for a greater number of director candidates than there are three-year terms on the Board of Directors to be filled.

Section 4. Upon the request of a Regular member received prior to the close of voting, the member shall be provided with a duplicate ballot if the member has not previously submitted a ballot to the election teller. It shall be the duty of the President to direct responsible personnel to deliver ballots and any accompanying material as provided herein.

Section 5. To be entitled to vote, all of a Regular member's dues, assessments and obligations to the Association must be paid in full as of the date 45 days prior to the Annual or Special meeting in question, and the member must not otherwise stand suspended or expelled as of the close of voting at that meeting.

Section 6. After being counted, all ballots and tally sheets shall be sealed and retained in the custody of the election teller for a period of not less than thirty (30) days, or in the event of an alleged violation, until the final determination of the violation.

Section 7. In the event there is any allegation of a violation of procedure, said violation shall be submitted to the Board of Directors. Any Director whose term in office could be affected by the alleged violation shall be recused. The Directors shall review the election procedures and, in the event the Board determines the election to be invalid, a new election shall be held as early as possible.

Section 8. In the event any fifty (50) Regular members in good standing shall petition the Association no later than forty-five (45) days prior to the Annual or Special meeting requesting that a question or questions be put to a vote of the Membership at that meeting, the question or questions shall be specifically designated on the meeting agenda and on any ballot furnished to the Membership. At its discretion, the Board or Executive Committee may reformulate a question, including breaking it up into multiple questions, in order to promote clarity.

ARTICLE XIV
General Provisions

Whenever these Bylaws call for notice to a person, such notice shall be in writing. Whenever these Bylaws call for a notice or other materials to be provided to a person, such notice or materials may be distributed in any manner recognized in chapter 617, Florida Statutes. All members are responsible for keeping current contact information on file with the Association, including a current mailing address, telephone number, and, if available, facsimile number and electronic mail address.

EXHIBIT 8

DRAFT
MINUTES
OF THE ANNUAL MEMBERSHIP MEETING OF
THE FLORIDA THOROUGHBRED BREEDERS' ASSOCIATION, INC.
D/B/A THE FLORIDA THOROUGHBRED
BREEDERS' AND OWNERS' ASSOCIATION
Thursday, October 13, 2011 – 10:00 A.M.
Golden Hills Golf and Turf Club, Ocala, Florida

The Annual Membership Meeting of The Florida Thoroughbred Breeders' and Owners' Association (FTBOA) was called to order by Fred Brei, President with seventy-eight (78) members present (which did not represent a quorum of membership). However, no voting actions were requested or required.

The invocation was given by Ms. Diane Parks.

Due to omission of the draft minutes of the 2010 Annual Membership Meeting, Mr. Brei stated that the minutes would be posted on FTBOA's website for membership review and approval at a future meeting.

Mr. Brei reported on the status of several topics, including (i) the proposed new software purchase for maintaining the breeders' awards data; (ii) the status of the fraud investigation and the lack of insurance coverage to cover the loss; (iii) Richard Hancock's retirement; (iv) the structure of the search for the new executive vice president and the hiring of Lonny Powell; (v) the restrictions on payment of breeders' awards contained in chapter 550 of the Florida Statutes; and, (vi) the financial impact of simulcasting and ADW on breeders' awards.

Mr. Brei then led a discussion of a number of questions and issues raised from the floor.

Brent Fernung and Dr. Matthews presented additional information regarding the recruiting process for the new executive vice president.

Mr. Brei reported that a 10% bonus will be paid to the 2010 breeders' awards recipients.

There being no further business to discuss, the meeting was adjourned at 12:16 P.M.