

**TEXAS
BUSINESS
ORGANIZATIONS
MANUAL**

2020

Texas Business Organizations Manual
2020 Edition

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2020 Edition



Austin

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TEXAS BUSINESS ORGANIZATIONS MANUAL

2020 Edition

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Preface

The State Bar of Texas is pleased to publish the first edition of the *Texas Business Organizations Manual*. The manual is designed to provide practitioners with basic forms that address many of the issues that arise in the formation and operation of Texas corporations and limited liability companies. Of course, each of these forms is a template only and none of them is intended to be “one size fits all.” Accordingly, when using these forms, the attorney is cautioned to review them carefully and modify them as needed to meet the specific needs and particular circumstances of the client.

The digital version of this manual contains the complete text in word-searchable PDF format, along with word-processing forms. Custom toolbars accompany the word-processing forms and allow you to show, hide, print, and delete all instructional material in the forms as needed, whether you prefer to create forms on screen or print out a draft to work on paper. Other features include prompts to facilitate completing the forms.

We are also excited to announce that the *Texas Business Organizations Manual* now resides online as well as in print and downloadable form. The many advantages of an online subscription include search functions, hyperlinks to statutes, cases, and other online resources, and downloadable forms. Importantly, practitioners wishing to propose changes or edits to the manual will be able to contact the editorial committee at books@texasbar.com for quick review and ongoing edits.

We would like to acknowledge the Corporation Law committee of the Business Law section of the State Bar for its work in producing the *Texas Business Entities Forms Manual: Corporations*, the predecessor to this manual. We would also like to express our appreciation to Casey Barthel for her assistance in crafting the limited liability company agreement forms. Finally, we are indebted to the new editorial committee for its work in updating the manual.



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A detailed chapter table of contents immediately precedes the text of each chapter.

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Part I Introduction to Business Entities

1 Ethics; Considerations in Representation

Discussion of identifying the client when forming a business entity, representing owners, and representing business entities

2 Choice of Entity

Road map to choosing the proper business entity type for the client, with the different characteristics of each entity

3 Formation and Filing

Practice notes on choosing and reserving an entity name, designating a registered agent, and forming the entity with the Texas secretary of state

4 Maintaining a Business Entity

Practice notes on the requirements for the registered agent's office, updating the registered agent's office address, the penalties for failing to properly maintain the registered agent's office, reinstating an inactive entity, correcting filing instruments, and privacy issues

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6 LLC Maintenance

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7 Investing in LLCs

Practice notes on LLC membership percentages, investment documents, and LLC securities

8 LLC Operating Agreements

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23 Ancillary Agreements

Forms for buy-sell agreements, client-services agreements, independent contractor agreements, and mutual nondisclosure agreements

Forms

Forms organized in sequential order by chapter

Introduction

§ 1 Scope of Manual

The *Texas Business Organizations Manual* is organized according to steps involved in the typical formation of limited liability companies, corporations, and partnerships and other professional entities as well as the conduct of operations such as maintenance, mergers, conversions, and termination. Chapters containing practice notes commentary concerning these topics are followed by a comprehensive section of forms.

The manual is designed to provide practitioners with basic forms that address many of the issues that arise in the formation and operation of Texas business organizations. Of course, each of these forms is a template only and none of them is intended to be “one size fits all.” Accordingly, when using these forms, the attorney is cautioned to review them carefully and modify them as needed to meet the specific needs and particular circumstances of the client.

The practice notes commentary provides short synopses of the law, designed to serve as a primer to the basic matters involved in business entity formation and organizational filing requirements. This commentary is, at most, black-letter law and does not try to resolve questions in controversial areas. For the attorney experienced with business organizations law, this commentary is a reminder of some of the basics; for the attorney not so experienced with the law, it is a guide to the major matters that the attorney should consider when forming a business entity.

§ 2 Digital Versions

The *Texas Business Organizations Manual* is available in two digital versions: online and downloadable. The online version, available by subscription, is accessible on a variety of plat-

forms including PC, mobile phones, and tablets. The complimentary downloadable version contains the entire text of the manual as a single Adobe Acrobat PDF file.

Features of both versions include downloadable State Bar of Texas-copyrighted forms from the manual as editable Word files (and, in some cases, as PDF files) as well as printable or downloadable PDF files of forms available from the Texas secretary of state and other agencies. In both versions, applicable Texas and federal case and statute citations in the practice notes and forms instructions are linked to case reports and main code sections cited via Casemaker online. Both versions are searchable and hyperlinked to allow for easy, rapid navigation to topics of interest.

Caveat: Note that the editable Word files of forms included in the digital versions contain instructional language as hidden text. Be aware that this language will be included in your completed forms unless you specifically delete it.

For more information about the online version, visit www.texasbarpractice.com/texas-bar-books-online. For more information about the digital download including usage notes, see the material at the end of this introduction titled “How to Download This Manual.”

§ 3 Format and Content of Forms

The forms (except those promulgated by governmental agencies) were prepared by experts in the business law field, and great care has gone into their preparation. The forms represent the best thinking of the practicing attorneys on the committee. Perfection, however, is hard to achieve, and each attorney using these materials must depend on his or her own expertise and knowledge of the law; there is no substitute in a

particular case for the legal mind. Thus, care should be taken to ensure that any form used fits the specific situation.

A number of basic forms in this manual were prepared by the staff of the Texas secretary of state's office. These forms are designed to meet statutory requirements and to facilitate filings with the office; use of the forms is permissive. Before using these forms, the attorney should verify their currency by visiting the secretary of state's website at https://www.sos.state.tx.us/corp/forms_boc.shtml or by calling (512) 463-5555. These and many other forms are freely available at that site in online-fillable versions, and many may be filed online through SOSDirect.

1. Optional content

Within major sections of the text of forms, optional paragraphs or items are usually identified by boxed instructions. Because the manual can cover only relatively common situations, language needed to address an atypical issue in a particular case may not appear in the form. The user must take care both to eliminate language appearing in the form that is not appropriate for the particular case and to add any language needed for the particular case that does not appear in the form.

2. Typeface conventions

Two typefaces are used in the forms. Material in Times Roman (like most of this page) is appropriate for inclusion in a finished form. In contrast, Arial type is used for boxed instructions. When Arial type is used within the form itself (rather than in a box), it appears in **boldface** for emphasis.

3. Bracketed material

Several types of bracketed material appear in the forms.

Choice of terms. In a bracketed statement such as “[a majority/two-thirds],” the user must choose between the terms or phrases within the brackets. The choices are separated by forward slash marks. Alternative letters or phrases may also be indicated by the use of brackets. For example, “proxy[ies]” indicates a choice between the words “proxy” and “proxies.”

Optional words. In a phrase such as “[Preformation] Common Stock Subscription,” the user must determine whether to include the word “Preformation.”

Substitution of terms. In a bracketed statement such as “[name of corporation],” the user is to substitute the name of the corporation rather than typing the bracketed material verbatim.

Instructions for use. Material such as “[include if applicable: . . .]” and “[describe item to be considered]” provides instructions for completing the finished form and should not be typed verbatim in the document.

Subtitles. The titles of some forms are followed by a bracketed subtitle that is not to be typed as part of the form title. In the title “Plan of Conversion [Corporation to General Partnership],” for example, the bracketed words simply distinguish the form from another similarly titled form in the same chapter for ease of reference.

4. Blank lines

Signature lines appear as blank lines. Spaces for dates, times, and amounts that would be filled in *after* the document is prepared also appear as blank lines. If an actual date, time, or amount should be inserted in the form when it is prepared, “[date],” “[time],” or “\$[amount]” appears instead.

5. Language in boxes

Language in boxes is not to be typed in the finished document but constitutes instructions,

usually either telling the user whether to use the form language following the box, describing what information should be included at that point in the finished document or attached to it, or providing cautionary reminders about use of the form language. *Caveat*: Instructional language is presented as hidden text and will be included in the finished form unless specifically deleted.

6. Form numbers

Forms are numbered in sequence by chapter. All forms begin with the number of the chapter, which is followed by a hyphen and the number of the form pertaining to the chapter. Form 12-3 consists only of clauses to be inserted in other forms. In this instance the clauses are numbered in sequence using the form number, followed by the number of the clause—for example, clause 12-3-1 in form 12-3.

§ 4 Corrections and Updates

In drafting the manual, the authors and editors devoted a great deal of effort to making it error free, but it undoubtedly contains some errors. We would appreciate your pointing out any errors you find in the manual as well as any revisions you believe are advisable. Please mail any corrections or suggestions to the following address:

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State Bar of Texas
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Periodic updating of the manual is planned to reflect changes in the law. It is also expected that, over time, additional topics will be covered and the scope of coverage of existing topics will be expanded. We welcome your suggestions about new topics that you would find helpful. Please send your suggestions to the address shown above.

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Part I

Introduction to Business Entities



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Ethics; Considerations in Representation

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Chapter 1

Ethics; Considerations in Representation

§ 1.1 Who Is Client When Forming New Business Entity?

As with any legal matter, it is important to identify precisely who the client is for purposes of representation. It is also important that all parties understand who the attorney does and does not represent. When forming a new business entity, the attorney can represent an individual owner, all the owners collectively, or the business entity itself. Clarifying issues of representation is even more critical when forming a new entity because of the numerous potential conflicts of interest that may, and often do, arise when dealing with several parties.

§ 1.2 Representing Owners

The attorney may potentially represent a single owner or several owners during formation of an entity and then transition to representing the entity after formation. This transition should be clearly provided for in the retainer agreement and services contract between the attorney and the individual(s). Further, it may require additional authorizations from other owners or authorized personnel in the business before the transition may take effect. This situation has two potential ethical considerations: (1) representing the individual owner may create potential conflicts of interest that prohibit later representation of the entity, and (2) communicating with other owners may inadvertently create unintended attorney-client relationships, with the attendant duties to avoid conflicts of interest that arise when representing multiple clients.

The Texas Disciplinary Rules of Professional Conduct prohibit an attorney from representing

a person “if the representation of that person (1) involves a substantially related matter in which that person’s interests are materially and directly adverse to the interests of another client . . . or (2) reasonably appears to be or become adversely limited by the lawyer’s or law firm’s responsibilities to another client.” Tex. Disciplinary Rules Prof’l Conduct R. 1.06(b), *reprinted in* Tex. Gov’t Code Ann., tit. 2, subtit. G, app. A (West 2013) (Tex. State Bar R. art. X, § 9). If the conflict is not likely to affect representation, the attorney must obtain written informed consent from the affected clients. *See* Tex. Disciplinary Rules Prof’l Conduct R. 1.06(c) (An attorney may represent a client in the event of a conflict of interest if “(1) the lawyer reasonably believes the representation of each client will not be materially affected; and (2) each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.”).

The comments to the disciplinary rules state clearly that an attorney “should not give advice to an unrepresented person.” Tex. Disciplinary Rules Prof’l Conduct R. 4.03 cmt. Thus, it is best practice when representing one owner to thoroughly document and preferably have written acknowledgment from each nonclient owner that such a nonclient is not the client and has not been given individual legal advice.

In addition to these concerns, the attorney may discover after representation has already begun that previously unknown adverse interests exist between individual owners, or that new adverse

interests have arisen between owners, that prohibit further representation of the initial client.

§ 1.3 **Representing Business Entities**

The Texas Disciplinary Rules of Professional Conduct provide that an attorney employed or retained by an organization represents the entity and that “[i]n dealing with an organization’s directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization’s interests are adverse to those of the constituents with whom the lawyer is dealing or when explanation appears reasonably necessary to avoid misunderstanding on their part.” Tex. Disciplinary Rules Prof’l Conduct R. 1.12(e). The constituents of the organizational client, whether incorporated or an unincorporated association, “include its directors, officers, employees, shareholders, members, and others serving in

capacities similar to those positions or capacities.” Tex. Disciplinary Rules Prof’l Conduct R. 1.12 cmt. 2.

Comment 1 to rule 1.12 recognizes that “[u]nlike individual clients who can speak and decide finally and authoritatively for themselves, an organization can speak and decide only through its agents or constituents such as its officers or employees,” and that “[i]n effect, the lawyer-client relationship must be maintained through a constituent who acts as an intermediary between the organizational client and the lawyer.” Tex. Disciplinary Rules Prof’l Conduct R. 1.12 cmt. 1. Because client communications will be conducted through constituent intermediaries, the constituents should be informed in writing that (1) the lawyer represents only the entity and not any individual constituent of the entity and (2) any information supplied by any of them must be shared with other decisionmakers for the entity but will remain confidential to the outside world.

Chapter 2
Choice of Entity

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Chapter 2

Choice of Entity

§ 2.1 Sole Proprietorships

Control/Ownership: A sole proprietorship is owned by a single person. The entity is not formally incorporated or filed with the secretary of state and thus is the easiest type of business to start in terms of formal paperwork—one simply starts working as that business.

Liability: A major downside of a sole proprietorship is that the owner is completely liable for the entity's debts. Unlike most other types of entities, sole proprietorships provide no corporate protection from lawsuits.

Tax Consequences: A sole proprietorship is considered a pass-through entity. Profits and losses “pass through” the entity to the owner, and its taxes are generally handled on schedule C of the owner's individual tax return.

Formalities: Starting a sole proprietorship has no corporate formalities. To open a bank account in the name of the business, however, most banks will want to see an assumed name certificate (SOS Form 503, form 3-3 in this manual).

Administration/Flexibility: Due to the lack of formality, this is a very flexible choice of entity. For example, sole proprietorships are not required to follow corporate bylaws or resolutions.

Benefits/Drawbacks: The benefit of a sole proprietorship is ease of start-up and operation. The drawback is the lack of any sort of corporate protection from lawsuits and debts of the entity.

§ 2.2 Limited Liability Companies (LLCs)

Control/Ownership: A limited liability company (LLC) is a formally filed entity owned by members of the company. The members may elect to manage the day-to-day affairs of the company themselves or to appoint a manager for that purpose.

Liability: LLCs provide a form of corporate protection for its members, in that the members are generally not liable for the debts or liabilities of the LLC.

Tax Consequences: Profits and losses from an LLC may be either pass-through or treated as those of a C-type corporation. If treated as a pass-through entity, an LLC will generally handle its taxes on schedule K-1 of the owners' individual tax returns. If the LLC is treated as a corporation, it will have to file its own tax return and will pay taxes out of company revenue. Under corporation taxation, any dividends paid to members are taxed on members' individual returns as well. While there are no state income taxes in Texas, the LLC may be subject to a state franchise tax if its revenues are over \$1.1 million.

Formalities: To form an LLC, a certificate of formation (SOS Form 205, form 5-1 in this manual) must be filed with the secretary of state. At a bare minimum, the certificate must list the entity name, the members and their addresses, the purpose, the registered agent and its address, and the name and address of the organizer. Other language may be added to convert the LLC into a different type of LLC (such as a series LLC). After the secretary of state approves the LLC,

the company should create a company agreement spelling out the terms for operating and closing the company, as well as organizational minutes for its corporate book, which would grant the power to open a bank account, obtain a federal tax identification number, and anything else that may be needed for the company to begin operations. Most banks will require a copy of the certificate of formation, the company bylaws, organizational minutes, and the federal tax identification number before the bank will open an account in the LLC's name.

Administration/Flexibility: LLCs may be very flexible, depending on the number of members and the company/operating agreement. Generally speaking, the fewer the members, the more flexible the LLC can be in terms of operation, notwithstanding that business records should be kept in an orderly fashion.

Benefits/Drawbacks: The LLC has become an overwhelming favorite entity choice in Texas due to the flexibility that it offers, the corporate protection it can provide, and the ease of operation, compared to a C corporation.

See part II in this manual for an in-depth discussion of LLCs.

§ 2.3 C and S Corporations

Control/Ownership: Corporations are owned by their shareholders. Each shareholder holds an amount of "shares," which are units of ownership. The shareholders elect a board of directors to oversee the general operations of the corporation. The board of directors then elects officers of the corporation to run the day-to-day operations. Currently, a Texas corporation is required to have only a president and a secretary. However, other officers may be elected, such as vice president, treasurer, and chief financial officer.

Liability: A corporation provides corporate protection for its owners in that the shareholders

are not liable for the debts or liabilities of the corporation.

Tax Consequences: A corporation may be taxed as either an "S" corporation or a "C" corporation with the IRS. S corporation taxes are similar to pass-through taxes on an LLC, but S corporations have certain limitations that C corporations do not. C corporation taxes are traditional in the sense that the corporation files a return and pays taxes out of corporate revenue, and any dividends paid to shareholders will be taxed on the shareholders' individual returns. As with an LLC, while there are no state income taxes in Texas, the corporation may be subject to a state franchise tax if its revenues are over \$1.1 million.

Formalities: To form a corporation, a certificate of formation (SOS Form 201, form 12-1 in this manual) must be filed with the secretary of state. At a bare minimum, the certificate must list the entity name, the directors and their addresses, the purpose, the number of authorized shares, the registered agent and its address, and the name and address of the organizer. After the secretary of state approves the corporation, the corporation should create a set of corporate bylaws as well as organizational minutes for its corporate book, which would grant the power to open a bank account, obtain a federal tax identification number, and anything else that may be needed for the company to begin operations. Most banks will require a copy of the certificate of formation, the company bylaws, organizational minutes, and the federal tax identification number before the bank will open an account in the corporation's name.

Administration/Flexibility: A corporation is arguably the most complex type of entity due to the required formalities, the taxation election, and the multiple levels of governance.

Benefits/Drawbacks: The benefits of a corporation are the corporate protection for shareholders and the ability to elect to be taxed as an

S corporation if the corporation meets those requirements. A C corporation's taxation is a drawback for most small businesses due to the double taxation requirement.

See part III in this manual for an in-depth discussion of corporations.

§ 2.4 Public Benefit Corporations (PBCs)

Control/Ownership: A public benefit corporation (PBC) is a for-profit corporation that must balance the shareholders' monetary interests, the best interests of those persons materially affected by the PBC's conduct, and the public benefit(s) specified in the certificate of formation.

Liability: A PBC provides corporate protection for its owners, in that the shareholders are not liable for the debts or liabilities of the PBC.

Tax Consequences: A PBC may be taxed as either an S corporation or a C corporation with the IRS. S corporation taxes are similar to pass-through taxes on an LLC, but S corporations have certain limitations that C corporations do not. C corporation taxes are traditional in the sense that the corporation files a return and pays taxes out of corporate revenue, and any dividends paid to shareholders will be taxed on the shareholders' individual returns. As with an LLC, while there are no state income taxes, the PBC may be subject to a state franchise tax if its revenues are over \$1.1 million.

Formalities: PBCs have the same formalities as C corporations. In addition, a PBC must have the words "Public Benefit Corporation" or "PBC" in its name and must state a specific social benefit on the certificate of formation. There is no SOS form for establishing a PBC, so organizers will have to create their own. Use SOS Form 201, form 12-1 in this manual, for guidance.

Administration/Flexibility: Although a PBC is essentially a C corporation, it allows a company to consider more than just the shareholders' monetary interests. The PBC can be a useful choice for a company pursuing a public benefit. A PBC must provide shareholders with a biannual notice about its public benefits, its progress, and its success in meeting those goals.

Benefits/Drawbacks: A PBC is a type of for-profit corporation new to Texas as of September 1, 2017. Although a PBC is for-profit, it is intended to produce a public benefit and to operate in a responsible and sustainable manner. However, these entities have additional requirements that C corporations do not.

See chapter 15 in this manual for an in-depth discussion of PBCs.

§ 2.5 Partnerships

§ 2.5:1 General Partnerships

Control/Ownership: A general partnership is owned by at least two people. A general partnership is the easiest type of partnership to form, as it does not require any sort of formal filing with the secretary of state.

Liability: Similar to a sole proprietorship, all liability in a general partnership rests on the partners, and there is no corporate protection. Each partner is jointly and severally liable for the debts and liabilities of a general partnership; however, the law does require that, generally, a creditor of the partnership must exhaust its collection efforts using partnership assets before collecting partnership debts from an individual partner.

Tax Consequences: Profits and losses from a general partnership are considered pass-through to the partners, and its taxes are generally handled on schedule K-1 of the partners' individual tax returns.

Formalities: There are no corporate formalities in terms of starting a general partnership. However, similar to a sole proprietorship, most banks will want to see an assumed name certificate (SOS Form 503, form 3-3 in this manual) to open a bank account in the name of the business.

Administration/Flexibility: Similar to a sole proprietorship, a general partnership is a very flexible choice of entity due to its lack of formality, as it is not required to follow corporate bylaws or resolutions.

Benefits/Drawbacks: Similar to a sole proprietorship, the benefit of a general partnership is the ease of start-up and operation, and the drawback is the lack of any sort of corporate protection from lawsuits and debts of the entity.

§ 2.5:2 Limited Partnerships (LPs)

Control/Ownership: A limited partnership (LP) is formed by one or more general partners and one or more limited partners.

Liability: The general partners have unlimited liability for the LP's debts, similar to partners in a general partnership. Each limited partner, however, is liable only up to the amount of that limited partner's investment in the LP. The operational difference between the two types of partners is the amount of management participation: general partners are set up to have all the management involvement, while limited partners are considered more like "silent investors," with no input toward the operation of the LP. Any limited partners who participate in the management of the LP may lose their limited protection and become subject to the unlimited liability of general partners.

Tax Consequences: Profits and losses from an LP are considered pass-through to the partners, and its taxes are generally handled on schedule K-1 of the partners' individual tax

returns. An LP may be subject to a state franchise tax if its revenues are over \$1.1 million.

Formalities: To form an LP, a certificate of formation (SOS Form 207, form 18-1 in this manual) must be filed with the secretary of state. At a bare minimum, the certificate must list the entity name, the general partners and their addresses, the registered agent and its address, and the address of the entity's principal office. A partnership agreement spelling out the terms of the partnership should be drafted. Most banks will require a copy of the certificate of formation, the partnership agreement, and the federal tax identification number before the bank will open an account in the LP's name.

Administration/Flexibility: Administration of an LP is dependent on the general partners. There is not a large amount of flexibility, due to the fact that any limited partners that participate in management decisions may be stripped of any liability protections they would otherwise have.

Benefits/Drawbacks: LPs are commonly seen in real estate development, as this entity type provides a source of funding without giving management authority to investors, unlike a corporation and its shareholders. However, that same lack of management authority may be considered a drawback to potential investors.

§ 2.5:3 Limited Liability Partnerships (LLPs)

Control/Ownership: Limited Liability Partnerships (LLPs) are a form of a general partnership where each partner receives liability protection.

Liability: All of the partners in an LLP receive liability protection (compared with the partners of a general partnership) and are accountable only if the liability is due to the fault of a partner.

Tax Consequences: Profits and losses from an LLP are considered pass-through to the partners, and its taxes are generally handled on schedule K-1 of the partners' individual tax returns. An LLP may be subject to a state franchise tax if its revenues are over \$1.1 million.

Formalities: To form an LLP, a registration of LLP (SOS Form 701, form 18-3 in this manual) must be filed with the secretary of state. At a bare minimum, the registration must list the entity name, the number of partners, and the type of business the partnership is engaging in. A partnership agreement spelling out the terms of the partnership should be drafted. An annual statement must be filed each year for the LLP.

Administration/Flexibility: Administration of an LLP is dependent on the partnership agreement and the terms it sets out.

Benefits/Drawbacks: LLPs are commonly seen in professional settings, such as attorney firms. However, it can be quite cost-prohibitive, as the filing fees for an LLP are \$200 for each limited partner, and each LLP must carry \$100,000 in liability insurance.

See part V in this manual for an in-depth discussion of partnerships.

§ 2.6 Professional Entities

§ 2.6:1 Professional Corporations (PCs)

A professional corporation (PC) is essentially the same as a C corporation, with the exception that only people in certain professions (attorneys, CPAs, architects—but not doctors) can establish this type of entity. Otherwise, PCs operate in the same fashion and are taxed and controlled as outlined in section 2.3 above. The certificate of formation for a PC is SOS Form 203, form 18-6 in this manual.

§ 2.6:2 Professional Limited Liability Companies (PLLCs)

A professional limited liability company (PLLC) is essentially the same as an LLC, with the exception that only people in certain professions (attorneys, CPAs, architects—but not doctors) can establish this type of entity. Otherwise, PLLCs operate in the same fashion as and are taxed and controlled as outlined in section 2.2 above. The certificate of formation for a PLLC is SOS Form 206, form 18-8 in this manual.

§ 2.6:3 Professional Associations (PAs)

A professional association (PA) is a hybrid of a PC and a PLLC created for physicians. It operates as a PC in terms of shares, bylaws, and so on, but owners are referred to as members instead of as shareholders. A PA may be used for only health professionals. The certificate of formation for a PA is SOS Form 204, form 18-10 in this manual.

§ 2.7 Nonprofit Corporations

Control/Ownership: A nonprofit corporation is owned by its members. The members may operate the entity themselves or select a board of directors. If the members opt for a board of directors, the board will in turn elect officers to run the day-to-day operations. Currently, a Texas nonprofit corporation is required to have only a president and a secretary. However, other officers may be elected, such as vice president, treasurer, and chief financial officer.

Liability: A nonprofit corporation provides corporate protection for its members, in that the members are not liable for the debts or liabilities of the nonprofit.

Tax Consequences: Once a nonprofit corporation is formed, it must apply to the IRS for federal nonprofit status to be exempt from fed-

eral taxes. If the nonprofit achieves exempt status, it should send the determination letter from the IRS to the Texas comptroller to gain exemption from further state franchise taxes and to receive a sales tax exemption.

Formalities: Arguably one of the more difficult entities to form, the nonprofit corporation requires several formalities including a certificate of formation (SOS Form 202, form 17-1 in this manual) and an application to the IRS for federal recognition. As with a C corporation, most banks will require a copy of the certificate of formation, the company bylaws, organizational minutes, and the federal tax identification number before the bank will open an account in the nonprofit's name.

Administration/Flexibility: Nonprofit corporations are not well suited for flexibility, as nonprofits' operations must fall within the framework of allowed nonprofit categories.

Benefits/Drawbacks: The benefit of a nonprofit corporation is exemption from corporate taxes, should federal recognition be achieved. Limitations on nonprofits, however, are severe, including restrictions on what activities they may engage in, restrictions on disposal of assets in the event of a termination, and prohibitions against members receiving any sort of dividends as payment.

See part IV in this manual for an in-depth discussion of nonprofit corporations.

Chapter 3
Formation and Filing

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Chapter 3

Formation and Filing

§ 3.1 Entity Name

§ 3.1:1 Name Availability

One of the first hurdles a practitioner must overcome is the Texas Secretary of State's review of the business entity name selected by the client. The availability of an entity name remains the most frequently deliberated, and heavily contested, reason for rejection of a filing instrument.

§ 3.1:2 Entity Name Standards

General Standards for Name Availability:

Section 5.053 of the Texas Business Organizations Code (TBOC) sets forth the general standards for name availability, namely that a filing entity must be distinguishable in the records of the secretary of state from the name of another existing filing entity or an entity name that is reserved or registered with the secretary of state. *See* Tex. Bus. Orgs. Code § 5.053(a). Administrative rules on the availability of names of entities filed with the secretary of state are contained in 1 Tex. Admin. Code §§ 79.30–.54 and may be viewed at www.sos.state.tx.us/tac.

Entity names may consist of letters of the Roman alphabet, Arabic numerals, or symbols capable of being reproduced on a standard English-language keyboard. No distinction will be made between typeface, font, superscript, or subscript. 1 Tex. Admin. Code § 79.32. Any words not in English will not be translated. 1 Tex. Admin. Code § 79.35.

PRACTICE TIP: On June 1, 2018, the test that an entity name be “distinguishable in the

records” replaced the previous test that an entity name not be “deceptively similar” to another entity name. The intention of this revision was to simplify the naming convention of business entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018.

Applicability: Chapter 79, subchapter C, of the Texas Administrative Code applies to all name availability determinations made for foreign and domestic corporations (for-profit, professional, and nonprofit), limited liability companies, limited partnerships, and professional associations. *See* 1 Tex. Admin. Code § 79.31; *see also* Tex. Bus. Orgs. Code §§ 5.052, 5.053, 9.004(b)(1). The name availability rules do not apply to limited liability partnerships. Tex. Bus. Orgs. Code § 5.063(b).

Name Availability: A proposed name is available for filing if it is distinguishable from an existing, reserved, or registered entity name. *See* Tex. Bus. Orgs. Code § 5.053(a). Names are distinguishable if a comparison of the names reveals sufficient differences or if one or more of the following conditions exist:

1. A difference of at least one key word.
 - a. “Sunshine Community Development” is distinguishable from “Sunshine Community Properties.”
 - b. “United” is distinguishable from “United One.”
 - c. “Real Homes of Austin” is distinguishable from “Real Homes.”

- d. “Texas Cowboys” is the same as “The Texas Cowboys.”
2. The key words are the same but are in a different order.
 - a. “Summit Energy” is distinguishable from “Energy Summit.”
 - b. “Global One” is distinguishable from “One Global.”
 - c. “Austin Auto Parts” is distinguishable from “Auto Parts of Austin.”
3. The key words or contractions of key words are derived from the same root word.
 - a. “Great Products” is distinguishable from “Great Productions.”
 - b. “Magic Professionals” is distinguishable from “Magical Professionals.”
4. The key words are the same but are in a different language.
 - a. “Casa Blanca Productions” is distinguishable from “White House Productions.”
 - b. “Tejas Enterprises” is distinguishable from “Texas Enterprises.”
 - c. “El Rodeo” is the same as “Rodeo” or “The Rodeo.”
5. The key word or words sound the same, but at least one word, on its face, has a different meaning or connotation.
 - a. “Jones Tires” is distinguishable from “Joan’s Tires.”
 - b. “Capitol Investments” is distinguishable from “Capital Investments.”
 - c. “Express Auto” is the same as “Xpress Auto.”
- d. “One World” is the same as “1 World.”
6. The key word or words are the same except for the addition, substitution, or omission of prepositions that alter the names sufficiently to make the names distinguishable.
 - a. “In the Know” is distinguishable from “Know.”
 - b. “Friends” is distinguishable from “Between Friends.”
 - c. “Books for People” is distinguishable from “Books by People.”
 - d. “Look to the Future” is the same as “Look toward the Future.”

1 Tex. Admin. Code § 79.38.

Names That Are the Same: The secretary may not accept for filing proposed entity names that are the same. 1 Tex. Admin. Code § 79.31(c). Names are considered the same if a comparison of the names reveals no differences or if the only difference between the proposed name and the existing names is one or more of the following conditions:

1. The use of uppercase or lowercase letters, distinctive lettering or typeface, or the use of superscript or subscript letters or numerals.
 - a. “ACE Woodworks” is the same as “Ace Woodworks.”
 - b. “H2O Supplies” is the same as “H₂O Supplies.”
 - c. “NXNW” is the same as “NxNw.”
2. The addition, substitution, or omission of punctuation marks, accent marks, periods, spaces, or symbols that do not alter the name sufficiently to make the names distinguishable.

- a. "A.F.G. Consulting" is the same as "AFG Consulting."
 - b. "Explore!" is the same as "Explore."
 - c. "Crossroads Productions" is the same as "Cross Roads Productions."
 - d. "Gotham" is distinguishable from "Got Ham."
3. Except as provided by 1 Tex. Admin. Code § 79.43 (relating to alphabet names), the addition, substitution, or omission of different articles or conjunctions.
- a. "The Truck Stop" is the same as "Truck Stop."
 - b. "Fair View, a Rest Home" is the same as "Fairview Rest Home."
4. The repetition, absence, or difference in letters that does not alter the names sufficiently to make the names distinguishable.
- a. "Texas Strong" is the same as "Texas Strong."
 - b. "Going Strong" is the same as "Goin' Strong."
 - c. "XX Tires" is distinguishable from "X Tires."
- 1 Tex. Admin. Code § 79.39.
- 1. The existence, addition, substitution, or absence of a word, phrase, or abbreviation that identifies or indicates different types of entities.
 - a. "Sampson, Inc." is available with consent from "Sampson, PLLC."
 - b. "Adventure Unlimited, a Limited Liability Company" is available with consent from "Adventure Unlimited, LP."
 - c. "Love Foundation" is the same as "Love Foundation, Inc."
 - d. "ABC, LLC" is the same as "ABC Limited Liability Company."
 - e. "Wild West, Inc." is distinguishable from "Wild West Companies, Ltd."
 - 2. The use of a common abbreviation of the same word.
 - a. "Smith Brothers Plumbing" is available with consent from "Smith Bros. Plumbing."
 - b. "Steel Manufacturing Supplies" is available with consent from "Steel Mfg. Supplies."
 - c. "Sweet Treats of Dallas Ft. Worth" is available with consent from "Sweet Treats of DFW."
 - d. "United States Enterprises" is available with consent from "U.S.A. Enterprises."
 - 3. The use of the singular, plural, or possessive form of a word if the difference does not alter the name sufficiently to make the names distinguishable.
 - a. "On the Banks" is available with consent from "On the Bank."

Names Available with Consent: If the secretary of state determines that a proposed name is not the same as, but is also not distinguishable from, an existing, reserved, or registered entity name, the proposed name may be available with consent from the existing entity. *See* Tex. Bus. Orgs. Code § 5.053(b); 1 Tex. Admin. Code § 79.31(c). A proposed name is available with consent from the existing entity under one or more of the following conditions:

- b. “Child’s Play” is distinguishable from “Children’s Play.”
4. The addition or omission of a state to a name that already includes a city and that does not alter the name sufficiently to make the names distinguishable.
 - a. “Resources of Austin, Texas” is available with consent from “Resources of Austin.”
 - b. “Atlanta Feed Company” is available with consent from “Atlanta, Georgia Feed Co.”
 - c. “Elite Realty of Athens, TX” is distinguishable from “Elite Realty of Athens, GA.”

1 Tex. Admin. Code § 79.40. The consent must accompany the document to which the consent relates at the time of submission. Upon the simultaneous submission of any filing instruments relating to the formation of two or more related entities, consent for the use of a name requiring consent will be implied. For example, consent is not required for the simultaneous formation of a Texas limited partnership named ABC Ventures, Ltd., and its general partner, ABC Ventures, LLC. If a proposed entity name conflicts with more than one entity name, the secretary of state will request that consent be obtained from the entity or name registrant, as applicable, with the longest continuous use of the entity name as determined by the records of the secretary of state. 1 Tex. Admin. Code § 79.41(b)–(d).

The consent must be in writing and signed by an officer or authorized agent of the consenting entity. The signature of the person providing consent must be notarized. Consent given orally cannot be accepted. Consent from more than one entity may be required in some instances. Consent must not state conditions; it must give unequivocal consent. 1 Tex. Admin. Code § 79.42. SOS Form 509 (form 3-1 in this man-

ual) may be used to document an existing entity’s consent.

Effect of Name Clearance: Formation under a given name does not give the newly organized entity the right to use the name in violation of another person’s rights. In fact, the certificate issued by the secretary of state to a domestic filing entity under the TBOC specifically includes a statement that the issuance of the certificate of filing for the formation of an entity or the reservation of an entity name does not authorize the use of the entity name in this state in violation of the rights of another under the federal Trademark Act of 1946 (15 U.S.C. §§ 1051–1127), the Texas trademark law (Tex. Bus. & Com. Code ch. 16), or the common law. This restatement of the common law is codified in TBOC section 5.001. *See* Tex. Bus. Orgs. Code § 5.001.

When the secretary of state is requested to give advice about the availability of an entity name, the secretary of state is reviewing only the names of active domestic and foreign filing entities, as well as name reservations and name registrations on file with the secretary of state. The secretary of state does not consider state or federal trademark registrations, assumed names filed with the county or the secretary of state under chapter 71 of the Texas Business and Commerce Code, names of limited liability partnerships registered with the secretary of state, or other sources that might indicate common-law usage or reveal possible trade name or trademark infringement.

Troublesome Words: Not all entity name issues involve an existing conflicting entity name. Other statutory provisions may prohibit or place restrictions on the use of terms within a business name. Words that might imply a purpose for which the entity could not be organized should not be included in a business entity name. *See* Tex. Bus. Orgs. Code § 5.052. These troublesome words include the following:

1. *Insurance* must be accompanied by other words, such as *agency*, that remove the implication that the purpose of the entity is to be an insurer. Persons forming a Texas captive insurance company under chapter 964 of the Texas Insurance Code or domesticating a foreign captive insurance company should contact the legal staff at the corporations section of the secretary of state's office regarding submission procedures if the company will include the term *insurance* in its entity name.
2. *Bail bonds* and *surety* imply that the entity has insurance powers and should be formed under the Texas Insurance Code.
3. *Bank* and derivatives of that term may not be used in a context that implies the purpose to exercise the powers of a bank. *See* Tex. Fin. Code § 31.005. The Texas Department of Banking can advise practitioners on the use of the words *bank*, *banc*, and the like and will issue a letter of no objection for use when filing documents with the secretary of state.
 - a. Persons seeking a letter of no objection are to contact the corporate activities division of the Texas Department of Banking.
 - b. Submission of a written request and provision of certain information, together with (currently) a \$100 filing fee, is required for consideration of the proposed name regardless of whether approval is granted. Submission of the materials and fee is not a guarantee that the name will be approved. Contact the corporate activities division for current processing time for a letter of no objection.

For additional information, see the department's website at www.dob.texas.gov/.
4. *Trust* generally implies that the entity has trust powers; accordingly, prior approval of the Department of Banking is required. A foreign business trust or foreign real estate investment trust registering under the provisions of the TBOC that uses the term *trust* in its name is not required to obtain a letter of no objection for purposes of filing the application for registration.
5. *Cooperative* and *co-op* should be used only by an entity operating on a cooperative basis. A firm or business that uses such a term in its business name or that represents itself as conducting business on a cooperative basis when not authorized by law to do so commits an offense. The offense is classified as a misdemeanor that is punishable by the imposition of fines, confinement in the county jail, or both. *See* Tex. Bus. Orgs. Code §§ 5.057, 251.452.
6. *Perpetual care* or *endowment care*, or any other terms that suggest "perpetual care" or "endowment care" standards, should be used only in the name of a cemetery that operates as a perpetual care cemetery in accordance with Texas Health and Safety Code chapter 712. *See* Tex. Health & Safety Code § 711.021(h).

Words That Require Prior Approval:

Entities desiring to use the terms *college*, *university*, *school of medicine*, *medical school*, *health science center*, *school of law*, *law school*, *law center*, and words of similar meaning must obtain prior approval of the Texas Higher Edu-

cation Coordinating Board. *See* Tex. Educ. Code § 61.313.

Entities desiring to use the terms *veteran*, *legion*, *foreign*, *Spanish*, *disabled*, *war*, or *world war* in a manner that might imply that the entity is a veterans organization should obtain written approval from a congressionally recognized veterans organization. *See* Tex. Bus. Orgs. Code § 5.062.

Prohibited Words: A domestic or foreign filing entity may not use the term *lotto* or *lottery* in its entity name. *See* Tex. Bus. Orgs. Code § 5.061.

State and federal law generally precludes the use of the words *olympic*, *olympiad*, *olympian*, and *olympus* unless authorized by the United States Olympic Committee. *See* Tex. Bus. & Com. Code § 16.105; 36 U.S.C. ch. 2205.

§ 3.1:3 Name Reservations

If there will be a delay between the name selection and the submission of the filing instrument, the practitioner should submit an application to reserve the name (SOS Form 501, form 3-2 in this manual).

Name Reservation Process: The Texas Business Organizations Code provisions relating to name reservations apply to all filing entity types; consequently, a name reservation may be used in connection with a document submitted by any foreign or domestic filing entity.

Although a name reservation is not limited to a specific entity type, the selection of a specific entity type when submitting a name reservation application in person or by mail will facilitate review of the entity name. A proposed entity name for one entity type may imply or indicate an unlawful purpose for another entity type. For example, the entity name Derma Medical Services implies an unlawful purpose for a for-profit corporation but does not imply an unlaw-

ful purpose for a professional limited liability company. The current filing fee for a name reservation is a standard fee of \$40.

PRACTICE TIP: Once an application for name reservation is filed, the name reservation is recorded exclusively in the name of the person named as the applicant. An application for name reservation that names the practitioner, a service company, or a law firm as the applicant may result in the unexpected rejection of the certificate of formation if the secretary of state cannot determine the connection between the certificate's submitter, or parties named in the certificate of formation, and the applicant shown in the existing name reservation. Consequently, consider who should be named as the applicant of the name reservation. Pursuant to TBOC section 5.101(b), the application for name reservation may be signed by the applicant or by the agent or attorney of the applicant.

Renewal of Name Reservation: TBOC section 5.105 permits the renewal of a current name reservation. The reservation may be renewed for an additional 120-day period by filing a new application for name reservation during the 30-day period preceding the expiration of the current reservation. *See* Tex. Bus. Orgs. Code § 5.105. The current filing fee for a renewal of name reservation is \$40.

The applicant of record must submit the name reservation renewal. If the renewal of reservation lists an applicant other than the applicant of record with the secretary of state, a transfer of the name reservation will be required. *See* Tex. Bus. Orgs. Code § 5.106. The current fee for a transfer of name reservation is \$15.

Termination of Name Reservation: An applicant seeking to terminate a name reservation before the expiration of its 120-day term should file a withdrawal of the name reservation pursuant to TBOC section 5.104(2). There is no fee for filing a withdrawal of a name reservation. *See* Tex. Bus. Orgs. Code § 5.1041.

Date of Record for Name Reservation: In general, the date of filing of a filing instrument that conforms to law is the date of its receipt by the secretary of state. *See* 1 Tex. Admin. Code § 79.9(b). This general rule does not, however, apply to an application for name reservation or to a withdrawal of name reservation. The file date of record for these filings reflects the date the secretary of state actually processes the application or withdrawal and enters the filing into the business entity database.

§ 3.1:4 Assumed Names

Section 5.051 of the TBOC authorizes the use of an assumed name by a domestic or foreign entity having authority to transact business in Texas. *See* Tex. Bus. Orgs. Code § 5.051.

Definition and Filing Requirements: The secretary of state does not check an assumed name for purposes of availability; however, the secretary of state will reject an assumed name certificate if the name shown in the certificate does not meet the definition of an assumed name.

Pursuant to section 71.002(2) of the Texas Business and Commerce Code, an assumed name is defined as—

1. for a corporation, any name other than the name stated in its certificate of formation or comparable document;
2. for a limited partnership, any name other than the name stated in its certificate of formation;
3. for a limited liability company, any name other than the name stated in its certificate of formation or comparable document, including the name of any series of the limited liability company established by its company agreement; and

4. for a limited liability partnership, any name other than the name on its application for registration or comparable document.

See Tex. Bus. & Com. Code § 71.002(2).

For this reason, a foreign filing entity that must obtain its registration under an assumed name (a.k.a. “fictitious name”) should not submit an assumed name certificate that attempts to list the entity’s legal name as its “assumed name.” Although the TBOC may bar the foreign entity from obtaining a registration under its legal name, the legal name of the entity in its jurisdiction of organization is not an assumed name as defined by section 71.002(2).

The filing requirements for assumed name certificates for limited partnerships, limited liability companies, limited liability partnerships, and foreign filing entities are similar to filing requirements for assumed name certificates filed by an incorporated business or profession.

Execution Requirements: The execution requirements for assumed name certificates filed with the secretary of state differ from county-level filing requirements. The execution requirements are similar to the execution requirements for other documents filed with the secretary of state. Business and Commerce Code chapter 71 authorizes the secretary of state to accept photocopies of originally signed assumed name documents and eliminates the notarization requirement for assumed name documents filed with the secretary of state.

Dual Filing: Dual filing of the assumed name certificate is required when the entity is a corporation, limited liability company, limited partnership, limited liability partnership, or foreign filing entity. An assumed name certificate is filed with the secretary of state and with the county clerk.

An entity that maintains a registered office in this state is required to file its assumed name certificate with the secretary of state and with the county clerk of the county in which the entity's—

1. registered office is located, if the entity's principal office is not located in Texas, or
2. principal office is located, if the entity's principal office is located in Texas.

Tex. Bus. & Com. Code § 71.103(b).

An entity that is not required to or that does not maintain a registered office address, such as a domestic general partnership registered as a limited liability partnership, would file its county-level assumed name certificate in the county in which the entity maintains its office address. *See* Tex. Bus. & Com. Code § 71.103(c).

PRACTICE TIP: Due to differences in filing requirements, the assumed name certificate form promulgated by the secretary of state (SOS Form 503, form 3-3 in this manual) should not be used to file an assumed name certificate on the county level.

Assumed Name Certificates for Other Kinds of Entities: Business and Commerce Code chapter 71 authorizes the secretary of state to accept and file an assumed name certificate for a foreign real estate investment trust (REIT); foreign business or statutory trust; or foreign entity that is not characterized as a corporation, limited partnership, limited liability company, or limited liability partnership. A domestic REIT is not authorized to file its assumed name certificate with the secretary of state. A domestic REIT doing business under an assumed name would follow county filing requirements established under sections 71.051 through 71.054 of the Business and Commerce Code.

Correction to Assumed Name Certificate: Business and Commerce Code chapter 71 does not provide for the filing of a correction to an assumed name certificate. If the assumed name certificate filed contains incorrect information or a typographical error, the assumed name certificate may be abandoned and a new assumed name certificate filed.

§ 3.2 Designation of Registered Agent

§ 3.2:1 Registered Agent Consent

Consent Required: Pursuant to TBOC section 5.201(b), a person designated as a registered agent must have consent, in a written or electronic form, to act as registered agent. *See* Tex. Bus. Orgs. Code § 5.201(b).

Form for Consent: TBOC section 5.201(b) requires the secretary of state to develop the form of the written or electronic consent. Pursuant to Texas Administrative Code title 1, section 79.29, an electronic or written consent must contain the following elements:

- (1) the name of the represented entity;
- (2) an express statement of consent to serve as the entity's registered agent;
- (3) the name of the registered agent;
- (4) the signature of the registered agent; and
- (5) the date of execution.

1 Tex. Admin. Code § 79.29(a). SOS Form 401-A (form 3-4 in this manual) may be used to document a registered agent's acceptance of appointment.

The appointment of a person as registered agent by an organizer or managerial official of an

entity is an affirmation by that organizer or managerial official that the person has consented to serve in the capacity of registered agent. *See* Tex. Bus. Orgs. Code § 5.2011(a).

PRACTICE TIP: While not required by the TBOC, the best practice is to maintain the registered agent's consent in the entity's records.

§ 3.2:2 Verification of Registered Agent upon Sale, Acquisition, or Transfer

Before the sale, acquisition, or transfer of a majority-in-interest or majority interest of the outstanding ownership or membership interests of a represented entity, the governing authority of the entity must verify whether the person designated as registered agent before the sale, acquisition, or transfer has consented to continue to serve the represented entity in that capacity. *See* Tex. Bus. Orgs. Code § 5.2011(b).

§ 3.2:3 Penalty for False Statement Concerning Registered Agent

TBOC section 5.207 provides that sections 4.007 and 4.008 impose liabilities and penalties on a false statement in a filing instrument that designates and appoints a person as the registered agent of an entity without that person's consent. *See* Tex. Bus. Orgs. Code § 5.207. Section 4.007 provides for damages, court costs, and reasonable attorney's fees if a person incurs a loss caused by the false statement. *See* Tex. Bus. Orgs. Code § 4.007(a). An offense under section 4.008 is a class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony. *See* Tex. Bus. Orgs. Code § 4.008(b).

§ 3.2:4 Filing Registered Agent's Consent Permitted but Not Required

The signed consent of the registered agent should be sent to and retained by the represented entity. Unless otherwise required by the provisions of the TBOC or other law applicable to the represented entity, the consent of the registered agent is not required to be submitted with or included as part of the filing designating the registered agent ("registered agent filing"). *See* 1 Tex. Admin. Code § 79.29(c).

However, the appointment of a statutory agent for an unincorporated nonprofit association pursuant to section 252.011(c) of the TBOC requires the signature of the appointed agent to be included with the appointment.

The secretary of state will not reject a filing that includes the consent of registered agent. When the consent of agent is submitted with or included as part of the registered agent filing, the consent will be imaged as part of the original document. *See* 1 Tex. Admin. Code § 79.29(d).

A statement of consent of registered agent that is submitted separately for purposes of filing with the secretary of state will be indexed in the filing history of the represented entity if the consent is accompanied by a fee of (currently) \$15, unless the consent is submitted on behalf of a nonprofit corporation or cooperative association, in which case the current fee is \$5. *See* 1 Tex. Admin. Code § 79.29(e), (f).

§ 3.2:5 Rejection of Appointment as Registered Agent

TBOC section 5.206 permits a person designated as a registered agent to reject the appointment as agent if the person was named as registered agent without that person's consent. A person who has been named as the registered agent of an entity without that person's consent

is not required to perform the duties of a registered agent. *See* Tex. Bus. Orgs. Code § 5.206(b). SOS Form 428 (form 3-5 in this manual) may be used to file a rejection of appointment of agent. There is no fee for filing a rejection of appointment.

Effect of Filing Rejection of Appointment:

The filing of a rejection of appointment by the secretary of state immediately terminates the appointment of the agent and the registered office address. On filing, the secretary of state will notify the organizer or managerial official of the entity of the need to appoint a new registered agent and registered office. Failure to appoint a new registered agent and registered

office will result in the involuntary termination of the domestic filing entity or the revocation of the foreign filing entity's registration to transact business in Texas.

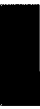
Resignation for Persons Appointed before

January 1, 2010: A person who was appointed without consent before January 1, 2010, would file a statement of resignation of agent pursuant to TBOC section 5.204, which is effective on the thirty-first day after the date the secretary of state receives the notice of resignation. *See* Tex. Bus. Orgs. Code § 5.204(d). There is no fee for filing a resignation of registered agent.

Chapter 4

Maintaining a Business Entity

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Chapter 4

Maintaining a Business Entity

§ 4.1 Maintenance of Registered Agent and Office

In fiscal year 2018, the secretary of state processed 105 allegations that filing entities had failed to maintain registered agents and registered office addresses as required by Texas Business Organizations Code (TBOC) chapter 5, notified 16,237 entities of the resignation of their registered agents, and filed 50 rejections of registered agent appointments.

§ 4.1:1 Requirements for Registered Agent's Office

Pursuant to TBOC section 5.201(c), the registered office address of a filing entity must be a street address where process may be personally served on the entity's registered agent. *See* Tex. Bus. Orgs. Code § 5.201(c). This means that the address provided as a registered office address must be the physical address where the registered agent may be found. It may not be solely the address of a business that provides the entity (or designated agent) with mailbox or telephone answering services.

The registered office address does not need to be the business office address of the represented entity, but it is required to be the business office address of the designated registered agent. *See* Tex. Bus. Orgs. Code § 5.201(b)(3).

A registered agent that is an organization must have an employee available at the registered office address during normal business hours to receive service of process. Any employee of that organization may receive service at the registered office. Tex. Bus. Orgs. Code § 5.201(d).

§ 4.1:2 Failure to Maintain Registered Office

If the secretary of state determines that the registered agent is not located at the street address provided as the registered office address or that the registered office address is merely the street address of a business providing mailbox services, the secretary will notify the entity of its failure to maintain a registered agent and office as required by law.

§ 4.1:3 Updating Registered Office Address

The address of the registered office may be updated by a filing submitted by the entity itself or by the registered agent. An address correction or update made by the designated registered agent pursuant to TBOC section 5.203 should be made using SOS Form 408 (form 4-1 in this manual) rather than SOS Form 401 (form 4-2). A registered agent may file a statement under section 5.203 that applies to more than one filing entity. There are individual fees as well as maximum fees for each different type of entity represented. *See* Tex. Bus. Orgs. Code § 5.203.

PRACTICE TIP: When making a change to the legal name or registered office address of a filing entity, determine whether the entity itself is designated as the registered agent of another entity (e.g., an LLC general partner of a Texas LP is the designated registered agent of the LP). A filing effecting a change to the name or address of the designated agent (in this example, the LLC general partner) does not effect a change or update to the certificate of formation of the represented entity (the LP).

§ 4.2 Franchise Tax

§ 4.2:1 Franchise Tax Account Status

Effective May 5, 2013, the comptroller of public accounts changed the manner in which the account status of a taxable entity is determined and described and ceased to issue online certifications of account status indicating that an entity was in “good standing” through a date certain. An entity’s franchise tax account status can be found at the comptroller’s website, <https://comptroller.texas.gov>.

§ 4.2:2 Account Status Is Determined by Entity’s Right to Transact Business

Before May 5, 2013, the public was able to obtain from the comptroller of public accounts’ website a certification that a taxable entity had met all franchise tax filing requirements with a certification that no tax was due through a date certain. After the revision of the franchise tax in 2008 and the resulting changes to filing requirements, however, the issuance of a “good standing” certification became more complicated. Because of this, the comptroller changed the terminology used to describe a taxable entity’s status to clarify that references made to status referred to an entity’s franchise tax account status.

As of May 5, 2013, the phrases *good standing*, *temporary good standing*, and *not in good standing* are no longer used by the comptroller to describe a business entity’s account status. Instead, the account status of an entity is based on whether the comptroller has forfeited the entity’s right to transact business in Texas pursuant to Texas Tax Code sections 171.251, 171.2515, and 171.256.

The comptroller is authorized to forfeit a taxable entity’s right to transact business when the entity

does not file a franchise tax report or pay a tax or penalty required under chapter 171 of the Tax Code. Before the forfeiture actually occurs, the comptroller mails the entity a notice providing at least forty-five days within which to cure the franchise tax deficiencies.

§ 4.2:3 Comptroller Account Terminology

Active: A person using the comptroller’s website to verify a taxable entity’s “status” must look to the entity’s “Right to Transact Business.” A status of “Active” means that the entity’s right to transact business in Texas has not been forfeited by the comptroller.

Active, Eligible for Termination/Withdrawal: A status of “Active, Eligible for Termination/Withdrawal” means that the entity has met those franchise tax requirements that would make the entity eligible to obtain a certification for purposes of filing a certificate of termination or withdrawal with the secretary of state. This status is displayed when the taxable entity has filed an annual franchise tax report, as well as a final tax report, for the current tax year. A printout from the comptroller’s website showing this status does not, however, satisfy the requirements of TBOC section 11.101(b) or 9.011(c) for purposes of filing the certificate of termination or withdrawal.

Forfeited: A status of “Forfeited” means that the comptroller has forfeited the entity’s right to transact business in accordance with subchapter F of chapter 171 of the Texas Tax Code. The records of the secretary of state may still reflect the status of a domestic taxable entity with this status as “in existence.”

Franchise Tax Ended: A status of “Franchise Tax Ended” with respect to a domestic taxable filing entity means that the entity terminated its existence with its right to transact business intact. With respect to a domestic filing entity,

this status would apply if an entity terminated its existence by virtue of filing a voluntary termination or merger.

Franchise Tax Involuntarily Ended: A status of “Franchise Tax Involuntarily Ended” with respect to a domestic taxable entity means that the existence of the entity ended due to action taken by the secretary of state. The action taken may have been an administrative tax forfeiture or an involuntary termination. To verify the statutory basis for the entity’s inactive status, contact the secretary of state.

Right to Transact Business: A foreign taxable entity’s “right to transact business” for franchise tax liability purposes is not tied to the “transaction of business” for purposes of registration with the secretary of state under TBOC chapter 9. *See Sharp v. House of Lloyd, Inc.*, 815 S.W.2d 245 (Tex. 1991). Consequently, in the case of a foreign entity, an active status does not necessarily indicate that the foreign entity has an active registration to transact business on file with the secretary of state. Similarly, an account status of “Franchise Tax Ended” is not tied to the status of a foreign entity’s registration with the secretary of state.

§ 4.3 Reinstating Inactive Domestic Entity

§ 4.3:1 Forfeited Existence—Texas Tax Code Chapter 171

The secretary of state has statutory authority to forfeit the charter, certificate, or registration of a domestic or foreign corporation, limited liability company, professional association, limited partnership, or foreign business trust that the comptroller of public accounts certifies has not revived its forfeited privileges.

The secretary of state is not required to notify a taxable entity of the forfeiture of its existence or registration. The taxable entity has already

received statutory notification regarding the forfeiture of its corporate or business privileges from the comptroller under subchapter F of chapter 171 of the Texas Tax Code.

On forfeiture, the secretary of state changes the status of the taxable entity from “in existence” to “forfeited existence.” While the secretary of state can provide the effective date of the forfeiture of an entity’s certificate or registration, it is the comptroller who determines the effective date that a taxable entity forfeits its corporate or business privileges under Tax Code sections 171.251 and 17.2515.

The secretary of state has authority to revive the certificate or registration of a taxable entity after forfeiture by the secretary of state. An application for reinstatement and request to set aside a tax forfeiture is governed by sections 171.312 through 171.315 of the Tax Code rather than the TBOC or its source statutes. *See Tex. Bus. Orgs. Code § 11.254.* The revival and reinstatement of a taxable entity follows the same procedures used when reinstating a corporate entity.

Tax Code chapter 171 does not establish a time frame within which an entity must file an application for reinstatement with the secretary of state.

Section 171.313 requires the secretary of state to determine whether a taxable entity has filed each delinquent report and paid any delinquent tax before filing an application for reinstatement and setting aside the forfeiture. *See Tex. Tax Code § 171.313(b).* A tax clearance letter issued by the comptroller stating that the entity is in good standing for purposes of reinstatement fulfills this requirement, must accompany the application for reinstatement, and must be valid through the date of filing of the application for reinstatement.

An application for reinstatement and request to set aside forfeiture under Tax Code chapter 171 must be submitted on behalf of and executed by

a person who was a managerial official or owner of the taxable entity at the time of forfeiture. In the case of a limited partnership, the application for reinstatement would be submitted and executed by a person who was a partner in the partnership at the time of forfeiture.

The specific SOS form for making an application for reinstatement and request to set aside forfeiture is SOS Form 801 (form 4-3 in this manual). The current filing fee for a taxable entity, other than a nonprofit corporation, is \$75. There is no filing fee assessed for an application for reinstatement and request to set aside a tax forfeiture filed on behalf of a nonprofit corporation.

§ 4.3:2 Involuntary Terminations— TBOC Chapter 11

Texas Business Organizations Code section 11.251 authorizes the secretary of state to involuntarily terminate the existence of a domestic entity if the secretary finds that—

- (1) the entity has failed to, and, before the 91st day after the date notice was mailed has not corrected the entity's failure to:
 - (A) file a report within the period required by law or pay a fee or penalty prescribed by law when due and payable; or
 - (B) maintain a registered agent or registered office in this state as required by law; or
- (2) the entity has failed to, and, before the 16th day after the date notice was mailed has not corrected the entity's failure to, pay a fee required in connection with the filing of its certificate of formation, or payment of the

fee was dishonored when presented for payment by the state for payment.

Tex. Bus. Orgs. Code § 11.251(b).

Registered Agent and Office: The most frequent basis for involuntary termination of a domestic entity's existence is an entity's failure to maintain a registered agent or registered office address in Texas as required by law. Typically, notice of delinquency follows the receipt and filing of a resignation of registered agent or rejection of appointment. Notice of the need to designate a new registered agent or office is sent to the entity by certified mail. In fiscal year 2018, the secretary of state received 1,838 notices of nondelivery of the certified mailings sent to domestic entities. If an additional contact address is shown in the records of the secretary of state, additional notice may be sent by regular mail to the secondary address.

Dishonored Payment: Failure to satisfy the statutory fee for a certificate of formation will result in the involuntary termination of a domestic filing entity. An initial notice regarding non-payment or dishonor of payment of the formation fee is sent to the submitting party-payor name and address. If substitute payment is not received within the time frame specified in the initial contact letter, notice of the entity's failure to satisfy the formation fee and intent to involuntarily terminate the entity is sent to the registered agent at the registered office address of record by regular mail. The time frame for curing this deficiency-delinquency is fifteen days. The time given is shorter than the ninety days provided to cure other delinquencies because a person submitting payment also receives notice from the person's financial institution or credit card issuer.

Reinstatement: An involuntarily terminated entity may reinstate its existence by filing a certificate of reinstatement under TBOC section 11.253 and by correcting the circumstances that

gave rise to the involuntary termination and any other circumstances that may exist of the types described by section 11.251(b). *See* Tex. Bus. Orgs. Code § 11.253. Additional fees and filings may be required depending on the circumstances that led to the involuntary termination and any intervening events that may require an amendment to the domestic entity’s certificate of formation.

Pursuant to section 11.253(d), a certificate of reinstatement after involuntary termination may be filed at any time. However, the entity is considered to have continued in existence without interruption from the date of its involuntary termination only if the entity is reinstated before the third anniversary of the date of its involuntary termination. *See* Tex. Bus. Orgs. Code § 11.253(d).

A domestic entity that was involuntarily terminated for its failure to pay a fee required in connection with the filing of its certificate of formation is required to submit the certificate of reinstatement together with a fee sufficient to cover the filing fee for the reinstatement and the amount owed to the secretary of state.

A domestic entity that was involuntarily terminated for its failure to maintain a registered agent or registered office as required by law need not provide a separate statement of change of registered agent or office with its certificate of reinstatement. Each entity requesting reinstatement must provide a current registered agent and registered office in the certificate of reinstatement. A certificate of reinstatement that does not include current registered agent and registered office information cannot be filed and will be rejected.

SOS Forms 811 and 814 (forms 4-4 and 4-5, respectively, in this manual) have been promulgated for filing a certificate of reinstatement. SOS Form 811 is the generic certificate of reinstatement form. SOS Form 814 is designed specifically for use by professional associations that

have been involuntarily terminated for failing to file an annual statement. If these forms are not used, the certificate of reinstatement must satisfy the requirements of section 11.253(b) and (c).

A certificate of reinstatement submitted on behalf of a domestic filing entity, other than a nonprofit corporation, requires a tax clearance letter issued by the comptroller stating that the entity is in good standing for purposes of reinstatement.

§ 4.3:3 Reinstatement after Voluntary Termination

Texas Business Organizations Code sections 11.201 and 11.202 permit the reinstatement of a domestic entity that has been voluntarily terminated if the owners, members, governing persons, or other persons specified by the Code approve the reinstatement in the manner provided by the title governing the entity and—

1. the termination was by mistake or inadvertent;
2. the termination occurred without the approval of the entity’s governing persons when approval is required by the title governing the entity;
3. the process of winding up before termination had not been completed by the entity; or
4. the legal existence of the entity is necessary to convey or assign property, to settle or release a claim or liability, to take an action, or to sign an instrument or agreement.

Tex. Bus. Orgs. Code § 11.201(a).

The certificate of reinstatement of an entity that has been voluntarily terminated must be filed no later than the third anniversary of the effective date of the termination. Tex. Bus. Orgs. Code § 11.202(a).

An application for reinstatement following a voluntary termination submitted on behalf of a domestic filing entity, other than a nonprofit corporation, made pursuant to section 11.202 requires a tax clearance letter issued by the comptroller stating that the entity is in good standing for purposes of reinstatement. Tex. Bus. Orgs. Code § 11.202(e).

§ 4.3:4 Events That Might Give Rise to Rejection of Reinstatement

Entity Name Issues: Before filing for reinstatement, the secretary of state must determine whether the name of the entity seeking reinstatement is still available for purposes of its reinstatement. If the entity’s name is no longer available for its use at the time of submission of the reinstatement filing, the instrument cannot be filed. In the case of a domestic entity, the reinstatement must be accompanied by a certificate of amendment to change the name of the domestic entity. In the case of a foreign entity, the reinstatement must be accompanied by an amendment to the registration for purposes of adopting an assumed name under which the entity may register to transact business.

No Registered Agent: Before submitting an application for reinstatement and request to set aside forfeiture, the practitioner should determine whether there is a need to update the entity’s registered agent or registered office address. If the entity’s registered agent submitted a resignation to the secretary of state during the period the entity was in a tax-forfeited status, the application for reinstatement and request to set aside forfeiture will be rejected. Acceptance of the application will be conditioned on the simultaneous submission of a statement of change of registered agent and registered office.

Entity Expired: While the vast majority of entities are formed with a perpetual duration, a domestic entity seeking reinstatement of its existence may be unable to do so if its certificate

of formation provides for a limited duration. If the duration of an entity expires between termination-forfeiture and reinstatement, the entity ceases to exist due to the expiration of its duration and no longer has an existence that may be reactivated. Consequently, a reinstatement may be filed after a tax forfeiture or involuntary termination as long as the entity would otherwise have continued to exist.

§ 4.3:5 Issues Faced by Involuntarily Terminated or Forfeited Entity

Pursuant to TBOC section 11.356(b), a terminated entity may not continue its existence for the purpose of continuing the business for which it was formed unless the entity is reinstated. Tex. Bus. Orgs. Code § 11.356(b).

Section 11.001 defines a “terminated entity” as a domestic entity the existence of which has been—

1. terminated in a manner authorized or required by the TBOC, unless the entity has been reinstated in the manner provided by the TBOC, or
2. forfeited pursuant to the Texas Tax Code, unless the forfeiture has been set aside.

Tex. Bus. Orgs. Code § 11.001(4).

A terminated domestic filing entity continues in existence until the third anniversary of the effective date of its termination only for the purposes set forth in section 11.356, which include—

1. prosecuting or defending in the entity’s name an action or proceeding brought by or against the terminated filing entity and
2. permitting the survival of an existing claim by or against the terminated filing entity.

Tex. Bus. Orgs. Code § 11.356(a)(1), (a)(2).

Pursuant to section 11.001, an “existing claim” means—

1. a claim against an entity that existed before the entity’s termination and that is not barred by limitations, or
2. a contractual obligation incurred after termination.

Tex. Bus. Orgs. Code § 11.001(3).

An existing claim by or against a terminated filing entity is extinguished unless an action or proceeding is brought on the claim no later than the third anniversary of the date of termination of the entity. *See* Tex. Bus. Orgs. Code § 11.359.

While the secretary of state may accept and file an application for reinstatement submitted on behalf of an entity that has been involuntarily terminated or forfeited, the secretary’s reinstatement of the entity may not cure the issues that may be faced by the forfeited or involuntarily terminated entity. *See* Tex. Bus. Orgs. Code § 11.253.

Pursuant to sections 171.251 through 171.252 of the Tax Code, the managerial officials of a taxable entity that has forfeited its right to do business are liable for the debts of an entity created or incurred in Texas after the date on which the report, tax, or penalty is due and before the corporate privileges are revived. These officials are liable as if the entity were a partnership and the managerial officials were partners in such partnership. Although the Tax Code provisions speak of “officers” and “directors,” the provisions also apply to noncorporate entities. *See Bruce v. Freeman Decorating Services, Inc.*, No. 14-10-00611-CV, 2011 WL 3585619 (Tex. App.—Houston [14th Dist.] Aug. 15, 2011, pet. denied) (mem. op.). This liability is not affected by the restoration of the taxable entity’s corporate privileges.

While a taxable entity whose existence has been forfeited under the Tax Code or involuntarily terminated under the TBOC may submit an application for reinstatement at any time, the secretary of state’s filing of the application and reactivation of the existence of an entity does not revive any claims that may have been extinguished under subchapter H of chapter 11 of the TBOC. *See Emmett Properties, Inc. v. Halliburton Energy Services, Inc.*, 167 S.W.3d 365 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (corporation bringing suit and reinstating its existence more than three years after its forfeiture by secretary of state cannot sue on preforfeiture claims).

§ 4.4 Certificates of Correction

§ 4.4:1 Procedure to Correct Filing Instrument

A domestic or foreign filing entity may correct a filing instrument that was filed with the secretary of state when the instrument is an inaccurate record of the action referred to in the instrument, contains an inaccurate or erroneous statement, or was defectively executed. *See* Tex. Bus. Orgs. Code §§ 4.101–.105.

A certificate of correction must be executed by a person authorized by the TBOC to execute the instrument being corrected. *See* Tex. Bus. Orgs. Code § 4.101(b). This means that an entity’s organizer must sign a certificate of correction to a certificate of formation. If the organizer is identified as John Doe, and Mary Smith, an initial member of the limited liability company, signs the certificate of correction, it will be rejected. However, if the organizer is identified as a corporation, limited liability company, or partnership (e.g., ABC Servco, Inc.), the certificate of correction need not be signed by the same person who signed the certificate of formation on behalf of the legal entity but may be signed by an authorized managerial official of the organizer.

A certificate of correction is not to be used as a less expensive alternative to a certificate of amendment. The secretary of state may subject a certificate of correction to greater scrutiny and may reject the submission of a certificate of correction if—

1. it appears that an amendment rather than a correction is being made to a formation instrument,
2. multiple corrections have been filed to correct the same filing instrument,
3. the filing instrument to be corrected has been on file for more than one year, or
4. the certificate of correction attempts to change a domestic nonprofit corporation to a special purpose nonprofit corporation governed by a law other than the TBOC.

Documents may be corrected to contain only those statements that lawfully could have been included in the original instrument. The certificate of correction may not be used to alter, include, or delete a statement that by its alteration, inclusion, or deletion would have caused the secretary of state to determine that the document did not conform to law. This means that a certificate of correction cannot be used to change the type of document filed. For example, a certificate of correction cannot be used to change a certificate of formation of a domestic entity to an application for registration of a foreign entity (or vice versa) or an application for registration as a limited liability partnership to a certificate of formation for a limited partnership (or vice versa).

The filing of the certificate of correction relates back to the original date of the filing, except for those persons who are adversely affected by the correction, for whom the filing instrument is considered to have been corrected on the date the certificate of correction is filed. *See* Tex. Bus. Orgs. Code § 4.105(a), (b).

Corrections do not void or revoke the original filing; TBOC section 4.105(c) provides that any acknowledgment of filing issued by the secretary of state with respect to the effect of the filing is considered to apply to the instrument as corrected. *See* Tex. Bus. Orgs. Code § 4.105(c).

An assumed name certificate is not a filing instrument governed by the TBOC. Consequently, an assumed name certificate is not an instrument that can be corrected by filing a certificate of correction under TBOC chapter 4. If the information is materially misleading or inaccurate, the practitioner should consider filing a new assumed name certificate. *See* Tex. Bus. & Com. Code § 71.152.

§ 4.4:2 Corrections to Mergers or Conversions

Generally, the filing instrument to be corrected relates to a single entity. In the case of a filing instrument that involves multiple entities as parties to the transaction evidenced by the instrument, certain procedures should be taken to facilitate processing.

Only one correction filing is required to correct errors in the merger, conversion, or exchange filing instrument. If the practitioner is using SOS Form 403 (form 4-6 in this manual) to submit the certificate of correction, the best practice is to show the name and file number of any surviving entity to a merger, the converted entity in a conversion, and the acquiring entity in an interest exchange in the field that asks for the name of the entity submitting the correction instrument.

The certificate of correction should also include the name and file number of any merging filing entities, the name and file number of the converting entity, or the name of each acquired domestic filing entity, as applicable. The additional names and file numbers may be included on the form itself or provided as an attachment

to the form. Failure to include the names and file numbers of the other filing entities will not be grounds for refusal of the correction instrument; however, providing the additional information saves the secretary of state time and ensures that the correction instrument is properly indexed.

Even though the correction instrument may apply to multiple entities, the certificate of correction need not be signed by all parties that were required to sign the instrument being corrected. It is sufficient if the correction instrument is signed on behalf of a surviving party to the merger, the converted entity in a conversion, or an acquiring entity in the interest exchange.

The current fee for filing the certificate of correction is \$15 regardless of the number of entities that may be affected by the correction instrument.

§ 4.5 Delayed Effectiveness

§ 4.5:1 Effectiveness Delayed to Specific Date and Time

In general, a filing instrument takes effect on filing by the secretary of state. However, TBOC section 4.052 allows an instrument to take effect after the time the filing instrument would otherwise take effect. *See* Tex. Bus. Orgs. Code § 4.052.

PRACTICE TIP: The review and processing of a filing instrument that will have its effectiveness delayed is facilitated if the filing instrument clearly and expressly provides a separate section or paragraph relating to the delayed effectiveness of the filing.

If the effectiveness of a filing instrument is to be delayed to a specific date and time, the future date may not be later than ninety days from the date of signing, and the time cannot be stated as “12:00 A.M.” or “12:00 P.M.” *See* Tex. Bus. Orgs. Code § 4.052(b). In addition, the time

must be stated as a specific time. For example, it is not sufficient to state that the instrument will be effective on a certain date “immediately after” or “immediately before” a stated time.

PRACTICE TIP: When drafting filing instruments for multijurisdictional transactions, note that all delayed effective dates and times will be recorded as the date and time in the time zone of the filing office—central standard time. For example, a delayed effective date and time stated in the filing instrument as June 1, 2020, at 12:01 A.M. eastern standard time will be evidenced in the certificate of filing and in the records of the secretary of state as May 31, 2020, at 11:01 P.M.

Delayed effectiveness is not permitted for name reservations, name registrations, statements of event or fact, or abandonment of filings before effectiveness. *See* Tex. Bus. Orgs. Code § 4.058. Due to the effect and nature of a certificate of correction, the effectiveness of a correction may not be delayed.

§ 4.5:2 Effectiveness Conditioned on Event or Fact

A filing instrument the effectiveness of which is conditioned on the occurrence of a future event or fact (“delayed condition”) must clearly and expressly state—

1. the manner in which the event or fact will cause the instrument to take effect and
2. the date of the ninetieth day after the date the instrument is signed.

Tex. Bus. Orgs. Code § 4.053(a)(2).

TBOC section 4.055 requires the entity to file a statement confirming (1) that each event or fact on which the effect of the instrument is conditioned has been satisfied or waived and (2) the date and time on which the condition was satisfied or waived. *See* SOS Form 805 (form 4-7 in

this manual). The statement must be filed not later than the ninetieth day after the instrument is filed.

If the statement of event or fact is not filed, the filing instrument is not effective. In this case, the parties must either—

1. file a subsequent filing instrument to make the action or transaction evidenced by the original filing effective or
2. file a statement of abandonment of filing under section 4.057.

See Tex. Bus. Orgs. Code § 4.056.

§ 4.5:3 Actions Taken at Time of Filing

When delaying the effectiveness of a filing instrument, it is important to note that the secretary of state updates its computer records and takes action to reflect the changes effected by the filing instrument as of the date of filing. *See* 1 Tex. Admin. Code § 79.73. This means that the filing history of the entity will be changed to show the filing of the filing instrument, the date of its filing, and the future date of its effectiveness or a notation (“condition”) to denote that the effectiveness is conditioned on the occurrence of a future event or fact.

The secretary of state also takes action to effect the actions referenced in the filing instrument at the time of filing. For example, a certificate of formation that has its effectiveness delayed to a future date and time will be reflected in the records of the secretary of state and will have an active status of “in existence.” In the case of a merger with a delayed effectiveness provision the secretary of state will change the status of any nonsurviving domestic party to the merger from an active status (“in existence”) to an inactive status (“merged”) on the date of filing.

Certificates of fact reflect what is evidenced in the computer records of the secretary of state. Consequently, a practitioner will not be able to obtain a certificate of status for the nonsurviving party to the merger that indicates that the status of the entity is “in existence” once the secretary of state accepts and files a certificate of merger even if the effectiveness of the merger was delayed to a later date and time.

§ 4.6 Privacy Issues

§ 4.6:1 Documents Subject to Public Access and Disclosure

Unless otherwise exempted by constitutional provision, statutory provision, or judicial decision, all documents on file with the secretary of state’s corporations section, including correspondence, and information contained therein are subject to public access and disclosure under chapter 552 of the Texas Government Code.

§ 4.6:2 Social Security Numbers

The TBOC does not require an individual to include a Social Security number in any filing instrument required or permitted to be filed with the secretary of state. While individual Social Security number information is not a statutory filing requirement, sometimes persons voluntarily provide such information in documents that are accepted, indexed, and recorded by the corporations section.

The secretary of state will redact entire Social Security numbers on documents displayed on the secretary of state’s online access system, displayed on SOSDirect, and used for the production of copies in response to public information requests. Unredacted copies of the documents will be retained for access by secretary of state staff in response to requests from law enforcement or other authorized requestors.

§ 4.6:3 Public Information Report

Many people remain unaware of the extent of access to public information reports.

Much of the information provided to the comptroller of public accounts under the Texas Tax Code is confidential under state law; however, the Tax Code specifically provides that the information contained in a public information report (PIR) is not confidential. *See* Tex. Tax Code §§ 171.203, 171.207(2).

The purpose of the PIR is to provide a “snapshot” of the entity as of the date the report is filed. It is required to be filed only annually, in May. An entity is not required to file (nor is the comptroller required to accept) an “updated PIR” whenever an event occurs that changes the information provided in the report. Consequently, the information contained in the PIR may no longer be current when the information is accessed by a third party.

Once a corporation, limited liability company, limited partnership, or professional association files its PIR with the comptroller, the comptroller forwards the report to the secretary of state. The secretary of state indexes the PIR against the entity’s record. The corporations section maintains the PIR management information in its database. When changes to management information are reflected in a PIR, the information is updated by the secretary of state. Management information is accessible electronically through SOSDirect.

An individual whose name was included on a PIR but who was not an officer or director on the date the report was filed may file a sworn statement to that effect with the comptroller. The comptroller will then forward the sworn statement to the secretary of state to update the management information accordingly.

§ 4.6:4 Home Addresses and Other Expectations of Privacy

The secretary of state provides any information deemed to be public information to both the public and private sectors and cannot limit or restrict the purposes for which the information may be used by a requesting party.

If a client has an expectation of privacy regarding home address information, the practitioner should not use that address as the registered office address. Of course, if the registered agent has no address other than a home address, there can be no expectation of privacy.

When required to provide management address information in a filing instrument or public information report, the better practice is to provide a business office address rather than a home address.

§ 4.7 Restated Certificates of Formation—Issues

§ 4.7:1 Names and Addresses of Governing Authority

TBOC section 3.059 requires a restated certificate of formation to restate the text of the certificate of formation, as amended, corrected, or restated, in its entirety. *See* Tex. Bus. Orgs. Code § 3.059. While organizer information may be omitted, the secretary of state requires a restated certificate to include the number, names, and addresses of the entity’s governing authority. Sections 3.060(a), 3.061(a), and 3.0611 permit the entity to update the certificate of formation provision relating to the governing authority by providing the names and addresses of the current governing authority. These sections provide supplemental filing requirements for restated certificates of formation that are filed by professional corporations, nonprofit corporations, and limited liability companies. The use of the term *may* within the cited sections does not mean that

the requirement is optional or discretionary. The term *may* permits the entity to provide updated information in lieu of the information initially provided in its certificate of formation. Updating the information would not be seen as a “further amendment.” Also note that an update to the governing authority is not deemed to be a “further amendment” made to the certificate of formation.

§ 4.7:2 **Entities Created by Merger or Conversion**

As noted in section 4.7:1 above, a restated certificate of formation restates the text of its certificate of formation, as amended, corrected, or restated, in its entirety. If the domestic filing entity was formed pursuant to a plan of merger or conversion, the additional statements required

under TBOC section 3.005(a)(7) must be included. *See* Tex. Bus. Orgs. Code § 3.005(a)(7).

§ 4.7:3 **Legislative Change**

TBOC section 3.059 was amended by the Eighty-third Legislature, Senate Bill 847, effective September 1, 2013, to eliminate the requirement that a restated certificate of formation that makes further amendments must “identify by reference or description each added, altered, or deleted provision.” *See* Tex. Bus. Orgs. Code § 3.059. Now a restated certificate of formation that makes further amendments may simply state language to the effect that “the Certificate of Formation is amended and restated in its entirety as shown in the attachment.”

Part II

Limited Liability Companies

A limited liability company (LLC) is an entity type that offers its owners liability protection similar to that of a corporation while allowing owners to avoid some of the legal formalities and tax rules that apply to corporations. An LLC is neither a corporation nor a partnership but has attributes of both. It is one of the most flexible and efficient ways to structure an entity.

The owners of the LLC are “members” who share equally in the company’s profits and losses unless otherwise agreed to by the members. *See* Tex. Bus. Orgs. §§ 101.052(c), 101.101–.104, 101.205. Members may be individuals, partnerships, corporations, or any other legal entity. *See* Tex. Bus. Orgs. Code §§ 1.002(69–b), 101.102(a). LLCs may have any number of members. *See* Tex. Bus. Orgs. Code § 101.101(a). In a member-managed LLC, all members are responsible for managing the business. *See* Tex. Bus. Orgs. Code § 101.251(2). In a manager-managed LLC, the business is managed by managers who may be, but are not required to be, members of the LLC. *See* Tex. Bus. Orgs. Code §§ 101.251(1), 101.306.

Chapters 5 through 11 in this manual provide more information on the particulars of forming and operating an LLC. For information on dissolution, see chapter 21, particularly sections 21.3:1 and 21.5:1.



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LLC Formation

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Chapter 5

LLC Formation

§ 5.1 Overview of LLC Formation in Texas

In Texas, the formation of a limited liability company (LLC) is a relatively simple process. Section 101.051 of the Texas Business Organizations Code (TBOC) allows for the creation of a Texas LLC by the filing of a certificate of formation (SOS Form 205, form 5-1 in this manual) with the Texas secretary of state.

§ 5.2 Formation Process Overview

In general, the formation of a Texas LLC requires the following steps:

1. Prepare a certificate of formation, which must comply with the requirements of section 3.005 of the TBOC, including the following:
 - a. the name of the entity to be formed;
 - b. the purpose for which the filing entity is formed;
 - c. the name and address of the registered agent;
 - d. whether the LLC is to be manager-managed or member-managed, along with the name and address of the initial governing authority;
 - e. the duration of the LLC; and
 - f. that address of the organizer for the filing entity.
2. Transmit the certificate of formation to the Texas secretary of state for review and filing.
3. Prepare the LLC's company agreement and any other documents that are necessary or advisable with the LLC's formation.

PRACTICE TIP: Formation documents can be filed using the Texas secretary of state's electronic filing system (SOSDirect). Alternatively, you may mail or fax the formation documents to the Texas secretary of state. You may also request expedited handling for a minimal additional fee.

§ 5.3 Entity Name

§ 5.3:1 Name Availability

Section 5.053 of the TBOC sets forth the general standards for name availability, and chapter 79, subchapter C, of the Texas Administrative Code provides additional administrative rules on the availability of names for entities filed with the Texas secretary of state.

PRACTICE TIP: It is best to run name availability searches (either on SOSDirect or by calling the Texas secretary of state) before filing the certificate of formation to avoid unnecessary delays caused by name availability issues.

§ 5.3:2 Entity Name Standards

A proposed name is available for filing if it is distinguishable from the names of existing filing entities in the secretary of state records, or from the names of LLCs already reserved or regis-

tered with the secretary of state. Entity names may consist of letters of the Roman alphabet, Arabic numerals, or symbols capable of being reproduced on a standard English-language keyboard.

PRACTICE TIP: On June 1, 2018, the test that an entity name be “distinguishable in the records” replaced the previous test that an entity name not be “deceptively similar” to another entity name. The intention of this revision was to simplify the naming convention of business entities. In practice, this greatly increases the chances that your client’s desired entity name will be available.

§ 5.3:3 Distinguishable Names

Names are distinguishable if a comparison of the names reveals sufficient differences or if one or more of the following conditions exist:

1. a difference of at least one key word (for example, “United” is distinguishable from “United One”);
2. the key words are the same but are in different orders (for example, “Summit Energy” and “Energy Summit”);
3. the key words or contractions of key words are derived from the same root word (for example, “Magic Professionals” and “Magical Professionals”);
4. the key words are the same but are in different languages (for example, “Casa Blanca Productions” and “White House Productions”);
5. the key words sound the same, but at least one word, on its face, has a different meaning or connotation (for example, “Capitol Investments” and “Capital Investments”); or
6. the key words are the same except for the addition, substitution, or omission of prepositions that sufficiently alter

the name to make the names distinguishable (for example, “Books for People” and “Books by People”).

§ 5.3:4 Indistinguishable Names

The secretary of state will not accept proposed entity names that are indistinguishable. Names are considered indistinguishable if a comparison of the names reveals no differences or if the only difference between the proposed name and the existing name is one or more of the following conditions:

1. the use of uppercase or lowercase letters, distinctive lettering or typeface, or superscript or subscript letters or numerals (for example, “ACE Woodworks” and “Ace Woodworks”);
2. the addition, substitution, or omission of punctuation marks, accent marks, periods, spaces, or symbols that do not alter the name sufficiently to make the names distinguishable (for example, “Cross Roads Productions” and “Crossroads Productions”);
3. except as provided by section 79.43 of the Texas Administrative Code relating to alphabet names, the addition, substitution, or omission of different articles or conjunctions (for example, “The Truck Stop” and “Truck Stop”); or
4. the repetition of, absence of, or difference in letters that does not alter the names sufficiently to make the names distinguishable (for example, “Texxas Strong” and “Texas Strong”).

§ 5.3:5 Consent to Use of Similar Name

If the secretary of states determines that a proposed name is not distinguishable from an existing, reserved, or registered entity name, the LLC

wanting to use the name must obtain the consent of the entity currently using the name. This consent must be in writing, signed by an officer or authorized agent of the consenting entity in front of a notary public, and accompany the document to which the consent relates at the time of submission. Upon the simultaneous submission of filing instruments for two or more related entities, consent for the use of a name will be implied. For example, consent is not required for the simultaneous formation of a Texas limited partnership named ABC Ventures, Ltd., and its general partner, ABC Ventures, LLC. If a proposed LLC name conflicts with more than one entity name, the secretary of state will request that consent be obtained from the entity or name registrant with the longest continuous use of the name as determined by the records of the secretary of state. SOS Form 509 (form 3-1 in this manual) may be used to document an existing entity's consent.

§ 5.3:6 Troublesome Words

Not all LLC name issues involve a conflicting entity name. Other statutory provisions may prohibit or restrict the use of terms within an LLC's name. Words that might imply a purpose for which the LLC could not be organized should not be included in an LLC name. For example, (1) "insurance" must be accompanied by other words, such as "agency," that remove the implication that the purpose of the LLC is to be an insurer; (2) "bail bonds" and "surety bonds" imply that the LLC has insurance powers and should be formed under the Texas Insurance Code; (3) "bank" and derivatives of that term may not be used in a context that implies the purpose to exercise the powers of a bank; and (4) "trust" generally implies that the LLC has trust powers.

The use of some words is admissible only with prior approval by a governing board or agency. For example, (1) LLCs desiring to use the terms "college," "university," "medical school,"

"school of law," "law school," and words of similar meaning must obtain prior approval of the Texas Higher Education Coordinating Board; (2) an LLC desiring to use the term "veteran," "legion," "foreign," "Spanish," "disabled," "war," or "world war" in a manner that might imply that the LLC is a veterans organization should obtain written approval from a congressionally recognized veterans organization; and (3) LLCs desiring to include the word "engineer" in their names must comply with the rules and regulations of the Texas Board of Professional Engineers.

PRACTICE TIP: Depending on the purpose for which the LLC is being formed, it is worthwhile to consider whether a professional entity is necessary or desirable.

§ 5.3:7 Prohibited Words

An LLC may not use the term "lotto" or "lottery" in its name. State and federal law generally preclude the use of the words "olympic," "olympiad," "olympian," and "Olympus" unless authorized by the United States Olympic Committee.

§ 5.3:8 Name Reservations

If there will be a delay between the name selection and the submission of the filing instrument, the practitioner should submit an application to reserve the name (SOS Form 501, form 3-2 in this manual). This name reservation may be renewed or terminated in accordance with the TBOC.

PRACTICE TIP: Once an application for name reservation is filed, the name reservation is recorded exclusively in the name of the applicant. An application for name reservation that names any person or entity other than the client as the applicant may result in the unexpected rejection of the certificate of formation if the secretary of state cannot determine the connection

between the applicant and the parties named in the certificate of formation. Consequently, consider who should be named as the applicant of the name reservation.

§ 5.4 Purpose

LLCs may be formed for any lawful purposes not expressly prohibited under the TBOC title 1, chapter 2, or title 3. While the TBOC allows a general purpose, other laws, including the Internal Revenue Code, may require that a certificate of formation include more specific purposes or language as a basis for granting a license or tax-exempt or tax-deductible status. Any specific purposes of an LLC should be set forth in the “Supplemental Provisions/Information” section of the certificate of formation.

§ 5.5 Designation of Registered Agent

§ 5.5:1 Who Can Be Registered Agent

The registered agent of an LLC can be either (1) a domestic entity or a foreign entity that is registered to do business in Texas or (2) an individual resident of the state of Texas. The LLC cannot act as its own registered agent; however, it is common for a manager, managing member, officer, or other governing authority of the LLC to act as its registered agent.

§ 5.5:2 Consent to Registered Agent

A person designated as a registered agent must consent to act as registered agent. SOS Form 401-A (form 3-4 in this manual) may be used to document a registered agent’s acceptance of appointment. The appointment of a person as registered agent by an organizer or managerial official of an LLC is an affirmation by the organizer or managerial official that the designated person has consented to serve in the capacity of registered agent. Unless otherwise required by the provisions of the TBOC or other applicable law, the consent of the registered agent is not required to be submitted with or included as part of the certificate of formation.

§ 5.6 Governing Authority

A Texas LLC may be either manager-managed or member-managed. If the LLC will be manager-managed, the certificate of formation must state the name and address of each initial manager. If the LLC will be member-managed, the certificate of formation must state the name and address of each initial member.

§ 5.7 Duration

An LLC exists perpetually unless provided otherwise in the certificate of formation. If your client wants to form a Texas LLC with a stated duration, that limited duration should be set forth in the “Supplemental Provisions/Information” section of the certificate of formation.

§ 5.8 Organizer

The certificate of formation must state the name and physical address of each organizer. Unless the entity is formed under a plan of merger or

conversion, at least one organizer is required. This must be a natural person at least eighteen years old or a legal entity. It is common to have the practitioner act as the LLC's organizer.



Chapter 6
LLC Maintenance

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Chapter 6

LLC Maintenance

§ 6.1 Amendment of Certificate of Formation

An LLC may amend its certificate of formation at any time. *See* Tex. Bus. Orgs. Code § 3.051(a). The certificate of amendment (SOS Form 424, form 4-8 in this manual) may amend the certificate of formation only with provisions that (1) would be permitted if the amended certificate of formation were a newly filed original or (2) effect a change, exchange, reclassification, subdivision, combination, or cancellation in the membership interest or the rights of members of the LLC. Tex. Bus. Orgs. Code § 3.051(b).

§ 6.2 Assumed Names

§ 6.2:1 Definition

A domestic or foreign LLC having authority to transact business in Texas may use an assumed name. Tex. Bus. Orgs. Code § 5.051. The secretary of state does not check an assumed name for purposes of availability; however, the secretary of state will reject an assumed name certificate (SOS Form 503, form 3-3 in this manual) if the name shown in the certificate does not meet the definition of an assumed name. An assumed name for an LLC is defined as any name other than the name stated in its certificate of formation. Tex. Bus. & Com. Code § 71.002(2)(H).

PRACTICE TIP: A foreign LLC that must obtain its registration under an assumed name should not submit an assumed name certificate that attempts to list the LLC's legal name as its assumed name. Although the TBOC may bar the foreign LLC from obtaining a registration

under its legal name, the LLC's legal name in its jurisdiction of organization is not an assumed name as defined by Texas Business and Commerce Code section 71.002(2).

§ 6.2:2 Filing Requirements

The filing requirements for LLC assumed name certificates are similar to the filing requirements for assumed name certificates filed by an incorporated business or profession.

PRACTICE TIP: As of September 1, 2019, it is no longer necessary to make a dual assumed name certificate filing at the county level.

§ 6.2:3 Corrections

Texas Business and Commerce Code chapter 71 does not provide for the filing of a correction to an assumed name certificate. If the assumed name certificate on file contains incorrect information or a typographical error, the assumed name certificate may be abandoned, and a new assumed name certificate may be filed.

§ 6.2:4 Renewal or Abandonment

Unless otherwise provided in the assumed name certificate, each assumed name certificate for an LLC must be renewed every ten years. An assumed name certificate can be renewed by filing a new certificate with the secretary of state in the same manner as the original. If at any point an LLC wishes to no longer use its assumed name, the LLC may file an abandonment of assumed name certificate (SOS Form 504, form 4-9 in this manual) with the Texas secretary of state.

§ 6.3 Maintenance of Registered Agent and Office

§ 6.3:1 Failure to Maintain Registered Agent and Office

The LLC must maintain a current registered agent and registered office located in the state of Texas. If the secretary of state determines that the LLC's registered agent is not current, that the registered agent is not located at the street address provided as the registered office address, or that the registered office address is merely the street address of a business providing mailbox services, the secretary of state will notify the LLC of its failure to maintain a registered agent and office as required by law. Failure to continuously maintain a current registered agent and registered office in Texas may result in the involuntary termination of the domestic LLC or the revocation of the foreign LLC's registration.

§ 6.3:2 Updating Registered Agent or Office Address

If the registered agent or office address changes, the LLC or the registered agent must file a change of registered agent/office (SOS Form 401, form 4-2 in this manual) with the secretary of state. A registered agent may file a statement that applies to more than one filing entity. Tex. Bus. Orgs. Code § 5.203(d).

PRACTICE TIP: When making a change to the legal name or registered office address of a filing entity, determine whether the LLC itself is designated as the registered agent of another entity (for example, an LLC general partner of a Texas LP is the designated registered agent of the LP). A filing effecting a change to the name or address of the designated agent (in this example, the LLC general partner) does not effect a change or update to the certificate of formation of the represented entity (the LP).

§ 6.4 Public Information Report

§ 6.4:1 Annual Franchise Tax Report

Pursuant to section 171.203 of the Texas Tax Code, regardless of whether an LLC is required to pay any franchise taxes, it is nonetheless required to file a report with the comptroller containing (1) the name of the LLC; (2) the name of each entity that owns a 10 percent or more interest in the LLC; (3) the name, title, and mailing address of each officer, manager, and managing member of the LLC; (4) the name and address of the LLC's registered agent; and (5) the address of the LLC's principal office and principal place of business. Tex. Bus. Orgs. Code § 171.203(a). This public information report is required to be filed annually in conjunction with the LLC's franchise tax return or no-tax-due return, as applicable. Tex. Bus. Orgs. Code § 171.203(b). The LLC must also send a copy of the public information report to each person named in the public information report. Tex. Bus. Orgs. Code § 171.203(d).

§ 6.4:2 Failure to File Franchise Tax Report

If an LLC fails to file the required annual public information report when due, the comptroller will send the LLC a notice of intent to forfeit allowing the LLC forty-five days to file the required public information report to avoid forfeiture. If the LLC fails to file the required public information report within that forty-five-day period, the comptroller will forfeit the LLC's right to transact business in Texas. Once an LLC's right to transact business in Texas has been forfeited, the LLC will no longer have the right to sue or to defend itself in a court in Texas, and each manager and officer of the LLC will be personally liable for the debt of the LLC. Additionally, the managers and officers of the LLC may have personal liability for acts and omissions of the LLC that occur while the LLC's right to transact business is forfeited.

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Chapter 7

Investing in LLCs

§ 7.1 Define What Is Being Purchased

When making an investment in an LLC, the investor should determine whether the acquisition consists of a percentage ownership interest or a particular number of units. A primary difference between LLCs and corporations is that the business owners are called members rather than shareholders, and the members typically own a percentage interest in the company instead of shares. To simplify the investment process, some LLCs define their members' ownership interests by units that equal the percentage interest. For example, an LLC might contain one hundred units equal to 100 percent interest in the company and might want to sell thirty units to an investor (a 30 percent company interest) in exchange for a particular cash investment

§ 7.2 Investment Documents

The primary document needed to invest in an LLC will be either a unit purchase agreement (UPA) or a membership interest purchase agreement (MIPA), depending on how ownership interests are defined. This document should include the key terms of the deal:

- amount of consideration to be invested in the company (can be cash, other assets, or services);
- amount of units/interest given to the investor;
- vesting schedule, including any benchmarks;
- other requirements of either the issuer or the investor;

- restrictions on transferability of the units/interest;
- securities information;
- tax matters;
- events of default and recourse; and
- dispute resolution terms.

PRACTICE TIP: The UPA/MIPA should include specific clarification on whether the securities are exempt from registration, any legends to be included on ownership certificates, and any investor responsibilities for securities and tax matters.

Often, the LLC's operating agreement or company agreement will need to be amended to reflect the investor's status as a member and other negotiated terms as appropriate. Properly drafted buy-sell provisions are crucial to maintaining control of the company in case any members voluntarily or involuntarily transfer their interests to third parties. A proper buy-sell agreement should—

- define events of member default and company recourse;
- define how fair value of units/interest will be determined;
- define voluntary and involuntary transfer events and consequences;
- review and potentially modify company management roles and definitions; and
- review and potentially modify member voting matters.

For an example of a buy-sell agreement, see part 3 in form 23-1 in this manual.

PRACTICE TIP: The LLC should provide mechanisms for the units/interest to revert to the LLC in case of default by the investor. This can be done through including buyout clauses and assigning a low value to the units/interest in case an event of default occurs.

§ 7.3 Securities Matters

Since LLC investments meet the definition of securities in the Securities Act of 1933 and its state law equivalents, such investments must comply with federal and state securities laws. 15 U.S.C. § 77b(a). The transaction must either be registered with the Securities and Exchange Commission (SEC) and relevant state securities boards or qualify for an exemption to registration. Common exemptions for LLC investments can qualify under rule 504 or 506 of Regulation D (17 C.F.R. §§ 230.501–.508). Be sure to also

check state blue-sky laws (state-level securities regulations) for the state(s) affected by the investment. Form D is a bare-bones description of the transaction that will still need to be filed with the SEC (and likely a similar form filed with the state securities board), even if the transaction is exempt from registration. Talk to a securities attorney about your particular transaction to be sure of compliance requirements.

PRACTICE TIP: To qualify for a rule 504 or 506 exemption from registration, the investing party cannot purchase the securities with intent to resell them within six months. Language verifying this requirement and the investor's intent will need to be in the UPA/MIPA, and operating agreements typically restrict investors from transferring securities to third parties for longer periods.

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Chapter 8

LLC Operating Agreements

§ 8.1 Operating Agreements Overview

Aside from the certificate of formation, the operating agreement (or company agreement) is the primary governing document of an LLC. The operating agreement, which is not publicly filed, covers much more material than the certificate of formation. Topics should include—

- division of the members' ownership interests;
- initial and potentially future capital contributions;
- taxation matters, including any representatives to the IRS;
- management roles, restrictions, and procedures;
- member voting rights and procedures;
- roles and rights of future additional members;
- events of member/manager default and company recourse;
- buy-sell agreement to maintain company control;
- restrictions on transferability of ownership interest; and
- dispute resolution.

PRACTICE TIP: When possible, ownership interests should not be evenly divided among the members. New business owners will often request even apportionment; however, this can easily lead to standstills on important decisions. It's better for members to have a conversation at formation regarding majority vote on certain

matters. Additionally, if the majority interest holder is a woman or ethnic minority, the company will be eligible for contract preference with many local government entities.

PRACTICE TIP: As with all contracts, an effective operating agreement requires that the parties think through all practical scenarios and address how each will be handled. For multi-member LLCs, the members may obtain independent legal and financial advice to decide how best to negotiate the agreement. The attorney drafting the operating agreement should not give advice on competing interests. However, the drafter can provide a list of topics for the parties to discuss and prepare the document based on their agreement.

§ 8.2 Consequences of Not Having Proper Operating Agreement

Operating agreements should be carefully tailored to fit the individual company's needs. As with any contract, templates can be a helpful starting point but should be customized for each point that applies to the LLC and its members. Without a properly drafted operating agreement, LLCs are potentially subjecting themselves to—

- audit troubles due to lack of evidence of company structure, tax questions, and other matters;
- lengthy and costly litigation between the company and its members or among the members themselves;
- potentially co-owning a business with an adverse party, such as a former spouse or an executor of a member's estate; and

- violating securities laws.

PRACTICE TIP: In addition to having an operating agreement, multimember LLCs may need a partnership agreement for matters pertaining to the individual members. This can include defined company roles, a buy-sell agreement, a noncompete clause, a nonsolicitation clause, and any other personal obligations of the members.

§ 8.3 Management Roles

LLCs may be member-managed (managed by its constituent members) or manager-managed (managed by an appointed manager, which can be an individual or an entity). The operating agreement should define manager authority and restrictions, which must be customized to the particular company, including its size, operational needs, and members' needs. Managers typically handle most of a company's operational business, while members have input on larger structural matters such as admission of new members and dissolution of the company. Any management meeting frequency and procedural requirements should be defined, as well as any alternates or replacement triggers and procedures.

§ 8.4 Buy-Sell Agreements

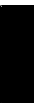
Buy-sell provisions may exist as a stand-alone contract or may be included as part of a larger operating or partnership agreement. These provisions are crucial for maintaining company control when members voluntarily or involuntarily transfer their ownership interests. An involuntary transfer can occur, for example, upon a member's incapacitation, death, or divorce or by court order. For a company to have recourse in the event of an involuntary transfer, buy-sell provisions should include a procedure for members and the company to repurchase transferred interests from implicated transferees (for example, a member's former spouse or the executor of member's estate).

Voluntary transfers occur when members sell their interests in the company. The company should have a clear process to repurchase members' interests before they can be sold to third parties. If these matters are not addressed ahead of time, the remaining owners may be compromised into the scenario of running a company with an adverse party and adverse legal representatives.

PRACTICE TIP: To minimize disputes, the operating agreement, or buy-sell agreement, should include a clear standard for determining the fair value of members' interests.

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Chapter 9

LLC Taxation

Limited liability companies (LLCs) can be taxed in various ways based on default treatment rules and LLC elections. There are two default taxation treatments for LLCs (disregarded entity and partnership) and two elections (S-Corp and C-Corp).

§ 9.1 Default Taxation Treatments

§ 9.1:1 Disregarded-Entity Treatment

When an LLC is owned by a single person or a married couple, it is treated as a disregarded entity by default (similar to a sole proprietorship that does not operate under any legal entity structure). This means that revenues and expenses are reported on the owner's personal 1040 tax return. This is the least cumbersome and easiest form of taxation because it does not require the LLC to file any tax information with the IRS.

§ 9.1:2 Partnership Treatment

When two or more nonmarried persons own an LLC, it is treated as a partnership by default, which is a pass-through entity for taxation purposes (meaning profits and losses flow through to the owners just like with disregarded entities). The IRS does not recognize the LLC structure as a business entity like it does partnerships and corporations. When taxed as a partnership, the LLC must file IRS Form 1065 showing the company's profits or losses and, in accordance with the company agreement, must issue a schedule K-1 to every member reporting that member's portion of the LLC's reported profits and losses. This form of taxation is the standard for multi-member LLCs that do not want to deal with the additional reporting and filing requirements of the two available taxation elections.

§ 9.2 Taxation Treatment Elections

The following LLC taxation treatments are applied solely upon election by an LLC to be taxed as a corporation. Note that S-Corps and C-Corps are *not* legal entity types; they are merely tax elections available to both LLCs and corporations.

§ 9.2:1 S Corporation Election

To be eligible for S corporation taxation treatment, an LLC must have no more than one hundred members that are, with a few exceptions, human beings (no corporate, LLC, or partnership members are allowed). No member may be a "nonresident alien," and the LLC can have only one class of LLC units (cannot use preferred units, but different voting classes are allowed). An LLC desiring to elect S corporation treatment must file IRS Form 2553 within seventy-five days of formation or seventy-five days from the first day of the year in which it desires to be taxed as an S corporation. LLCs that make this election are opting to be taxed as a corporation under subchapter S of the Internal Revenue Code, but the taxes still flow through to the owner(s) of the LLC. This structure is popular for single-owner-employee LLCs that do not want to be treated as disregarded entities and that do not want to be subject to self-employment taxes on the entirety of the LLCs' profits.

§ 9.2:2 C Corporation Election

Owners of LLCs may choose to be taxed as a C corporation primarily for certain tax advantages, access to fringe benefits, greater flexibility for the carrying of profits and losses forward and backward, and certain corporation-only business financing. To be taxed as a C corporation, the LLC must file IRS Form 8836. While there are several advantages to the C corporation election, there are also several disadvantages, such as double taxation at the corporate and individual levels, more complex taxation reporting requirements, and restrictions on certain deductions.

Determining an entity's taxation scheme is generally just as important as determining what entity structure works best for the client's goals and potential liability exposure. It is always a good idea to advise your clients to seek competent tax advice in conjunction with working with you in their corporate development.

§ 9.3 New Partnership Representative for LLC Taxed as Partnership

In the past, LLCs that were taxed as partnerships appointed a tax matters partner (TMP). Beginning in 2018, following the passage of the Bipartisan Budget Act of 2015, the IRS implemented new rules to, in theory, ease the burden on the IRS for auditing partnership tax returns. These new rules require the LLC to designate a partnership representative (PR), who is given extreme authority for taxation issues on behalf of the LLC. The PR may be an individual (such as a member of the LLC or the LLC's attorney, accountant, or other advisor) or an entity; however, if an entity is listed, a designated individual (DI) of that entity must also be identified. The PR acts *solely* on behalf of the LLC for all issues regarding IRS tax audits (including litigation) and the elections made on form 1065.

Form 1065 requires the PR to choose whether to elect out of the centralized partnership audit scheme. A "yes" election means that any audit adjustments get pushed to the members of the LLC, which requires the members to amend their personal returns to account for the adjustment.

A "no" election means that the LLC pays any audit adjustments (this is not available for trusts and disregarded entities, including single-member LLCs). A "no" election is generally typical since the members of the LLC during the period covered in an audit must account for any adjustments.

The naming of a PR seems like a nonissue when forming an LLC and its associated internal structures, but the new role of the PR can be damning on an LLC and its members if that individual or entity becomes adversarial or even a nonmember. Unlike the TMP of old, a PR does not have to be a member of the LLC, so even if a member is removed or withdrawn, if that member is listed as the PR, it still retains power over its former LLC. It is imperative that careful thought is given to PR designations, and if a member listed as the PR is removed, the LLC's company agreement should be immediately amended to reassign the PR position.

§ 9.4 Tax Audits

Entities taxed as partnerships, including multi-member LLCs that make such an election, are subject to the Bipartisan Budget Act of 2015 (BBA, amended 2018) § 1101, 26 U.S.C. §§ 6221–6241, which drastically changes audit and collection procedures for tax years beginning after December 31, 2017.

The BBA creates a new centralized regime, wherein the IRS audits and collects underpayments due from a partnership at the entity level instead of the partner (personal) level. This change shifts audit-driven liabilities for under-

paid taxes, interest, and penalties from the partners in place during the underpaid tax year (the audited or “reviewed year”) to the partners in the tax year in which the adjustments become final (the “adjustment year”). *See* 26 U.S.C. § 6225(a), (d). It is possible that the partners in the adjustment year are not the same as, or do not have the same percentage interests as, the partners in the reviewed year. This shift in liability may result in potential conflicts between partners, including a desire by adjustment-year partners to seek reimbursement from reviewed-year partners.

The BBA replaces the tax matters partner (TMP), a position formed by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), with a partnership representative (PR). *See* 26 U.S.C. § 6223(a). It is not at all clear yet whether the IRS or courts will find that a partnership’s TMP can function as its PR. Thus, entities in existence before January 1, 2018, should (1) retain or include language designating a TMP in their operating agreements until the statute of limitations for audits expires for those tax years governed by TEFRA, limiting the TMP’s authority to tax years ending before January 1, 2018, and (2) appoint a PR for tax years beginning on or after January 1, 2018. Unlike a TMP, a PR can be anyone, including a sole individual or entity, and does not have to be a partner or member of the company. *See* 26 U.S.C. § 6223(a).

§ 9.5 Opting Out of New Audit Regime

Partnerships and multimember LLCs taxed as partnerships may opt out of the new audit regime and elect to be governed by the previous audit rules in a number of ways, including the following.

§ 9.5:1 Election-Out

Partnerships that furnish no more than one hundred schedule K-1s for their partners are eligible to opt out of the new default audit rules if all the partners are eligible partners at all times during the taxable year and are individuals, domestic C corporations, certain foreign entities, deceased partners’ estates, or S corporations. 26 U.S.C. § 6221(b)(1). A partnership is not eligible to elect out under section 6221 if any of its partners is a partnership, disregarded LLC, trust, foreign entity that would not be treated as a C corporation if it were domestic, estate of a nonpartner deceased individual, or person holding the partnership interest on behalf of another person. *Treas. Reg.* § 301.6221(b)-1(b)(3)(ii). Schedule K-1s issued by a partner that is an S corporation to its shareholders are counted for purposes of determining whether a partnership has furnished no more than one hundred schedule K-1s. 26 U.S.C. § 6221(b)(2). The partnership must make the election on a timely filed return each taxable year and notify the partners of the election. The return must also include information about the partners, such as names and taxpayer identification numbers. 26 U.S.C. § 6221(b)(1), (b)(2).

The partnership agreement may contain provisions that (1) make this election mandatory, if qualified under the statute, and (2) prohibit the partnership or partners from allowing the transfer of partnership interests or taking any other actions that would disqualify the partnership from making the election.

§ 9.5:2 Push-Out Election

When a partnership receives a notice of final partnership adjustment, the partnership has forty-five days from the issuance of the notice to elect to push out the imputed underpayment to the reviewed-year partners by furnishing them an adjustment statement, similar to a schedule K-5. This election generally benefits partners in the adjustment year at the expense of partners

from the reviewed year. The IRS may not permit the push-out election for tiered partnerships. 26 U.S.C. § 6226(a).

Again, the partnership agreement may include provisions that (1) require the partnership to make this election on a timely basis and in all audit situations and (2) prohibit the partnership or partners from taking any actions that would disqualify the partnership from making the election.

§ 9.5:3 Tax Indemnification Provisions

Partnership agreements, partnership share purchase agreements, or other internal agreements can include tax indemnification provisions that allocate any liabilities arising from imputed underpayments according to the partners' inter-

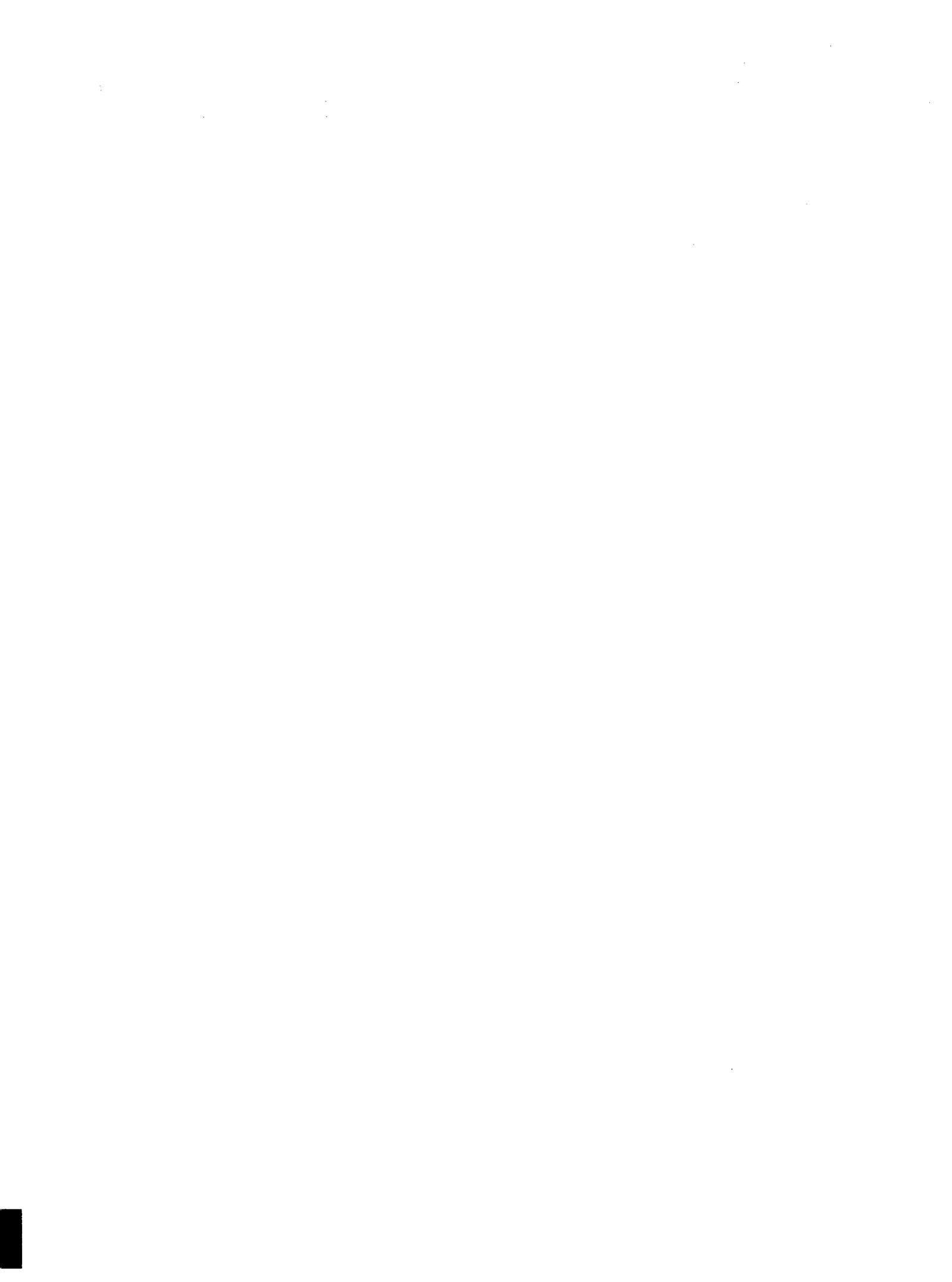
ests in the reviewed year. Indemnification provisions should also provide that the indemnification is mandatory, rather than being subject to a partnership election or other decision. Agreements for the purchase of partnership interests by new partners from existing partners should include tax indemnity provisions to cover adjustments under the Bipartisan Budget Act of 2015 audit regime. Note that any allocations resulting from these tax indemnity provisions must have substantial economic effect for the IRS to allow the agreement to ultimately control in the determination of the partners' distributive shares. *See* 26 U.S.C. § 704(b); Treas. Reg. § 1.704-1(b)(2).

See form 9-1 in this manual for optional provisions relating to partnership representatives and audit procedures to include in LLC agreements.

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Chapter 10

Series LLCs

§ 10.1 Series LLCs Explained

Series LLCs began in Texas in 2009 and are still a relatively new development in the limited liability structuring arena. In short, a series LLC takes the traditional multientity parent-subsubsidiary structure used for holding assets and compartmentalizing liabilities and rolls that multiple-entity structure into a single entity. Series LLCs are governed by subchapter M of the Texas Business Organizations Code (TBOC) (beginning at section 101.601). Series LLCs consist of what is called the “umbrella” LLC, which is akin to the parent in a parent-subsubsidiary structure, and “cells,” which are the underlying series LLCs that make up each series of the umbrella, similar to the subsidiaries in a parent-subsubsidiary structure. After the umbrella LLC is formed with the Texas secretary of state, the series LLCs are created by filing assumed name certificates (SOS Form 503, form 3-3 in this manual) for the different operations. These DBAs must then have their own distinct company agreements and other ancillary operational documents. Series LLCs are becoming popular largely among multiproperty owners and businesses with diverse services and streams of goods. The benefit of series LLCs to these types of businesses is that it is much easier to isolate liabilities from other operations than in the traditional parent-subsubsidiary method. Series LLCs are also much cheaper to form due to fewer necessary filing fees up front. To fully enjoy the liability isolation of each series, the series LLC must be run as any other LLC with separate bank accounts, operational documents, and so on.

A series LLC is formed in the same manner as a traditional LLC, by filing a certificate of forma-

tion (SOS Form 205, form 5-1 in this manual) with the Texas secretary of state. The one difference is that TBOC section 101.604 requires language placing the public on notice of the existence of the series LLC. The TBOC provides exemplar language that satisfies that notice requirement. It is generally easiest to place the following language into SOS Form 205 before filing:

- (1) the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and shall not be enforceable against the assets of the limited liability company generally or any other series; and
- (2) none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the limited liability company generally or any other series shall be enforceable against the assets of a particular series.

Tex. Bus. Orgs. Code § 101.602(a).

Effectively, each series operates as its own LLC and can sue and be sued; contract, acquire, sell, and hold title to assets (personal property, real property, and intangible property) belonging to that series; grant liens and security interests in the series’ assets; own or manage another organization; and generally act and exercise any power necessary to achieve the series’ goals or activities. Tex. Bus. Orgs. Code § 101.605.

§ 10.2 Series LLCs vs. LPs

Limited partnerships (LPs) have long been the standard for real estate investment because they allow passive investors to invest in and fund land development without assuming operational risks. Series LLCs, on the other hand, are not used for large-scale land development because that same protection is not available. If the corporate veil were pierced due to fraud, passive investors in a series LLC would face a higher

risk of liability, just as members of standard LLCs would. Today, series LLCs are typically used by single-owner and small-scale real property investors because these investors usually have singular operational control, but with multiple properties. LPs continue to be the dominant structure for large-scale land development, as they can use an operational LLC to control the LP and retain the risk placed on a general partner, allowing passive investors to come and go as limited partners.

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Chapter 11

Nonprofit LLCs

§ 11.1 Nonprofit LLC Purpose

Titles 2 and 3 of the Texas Business Organizations Code (TBOC) do not restrict the purpose of an LLC to the rendition of a for-profit business, trade, or profession. Before the TBOC went into effect, it was the secretary of state's position that the formation of a nonprofit LLC was inconsistent with the provisions of the Texas Limited Liability Company Act (repealed) and the laws made applicable to an LLC—namely, the Texas Business Corporations Act (repealed) and the Texas Revised Limited Partnership Act (repealed). Because the TBOC does not restrict the purpose, an LLC may be formed to engage in a nonprofit purpose. Other state law regulating a particular activity may contain restrictions that would prohibit an LLC from engaging in the regulated activity.

An LLC may be organized solely for one or more nonprofit purposes specified by TBOC section 2.002. Nonprofit purposes include—

- (1) serving charitable, benevolent, religious, eleemosynary, patriotic, civic, missionary, educational, scientific, social, fraternal, athletic, aesthetic, agricultural, and horticultural purposes;
- (2) operating or managing a professional, commercial, or trade association or labor union;

- (3) providing animal husbandry; or
- (4) operating on a nonprofit cooperative basis for the benefit of its members.

See Tex. Bus. Orgs. Code § 2.002.

§ 11.2 Nonprofit LLC vs. Nonprofit Corporation

An LLC with a nonprofit purpose is distinct from a nonprofit corporation or other nonprofit association. *See* Tex. Bus. Orgs. Code § 1.002(58), (59). A TBOC provision that applies specifically to a nonprofit corporation does not apply to an LLC formed for a nonprofit purpose. *See* Tex. Bus. Orgs. Code § 1.002(58)–(60). For example, the default tax-exempt provisions found in TBOC section 2.107 apply to a nonprofit corporation but do not apply to a nonprofit LLC.

There is no statutory basis for distinguishing between an LLC formed for a for-profit purpose and an LLC formed for a nonprofit purpose. Filing fees established under TBOC sections 4.151 and 4.154 apply to all LLCs regardless of purpose.

Section 171.088 of the Texas Tax Code permits an entity that is not a corporation to qualify for a tax-exempt status if its activities would qualify it for a specific tax exemption were the entity formed as a corporation. *See* Tex. Tax Code § 171.088.



Part III
Corporations



Chapter 12
Corporate Ownership

*There are no practice notes for this chapter.
This chapter's forms start on page 484.*



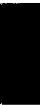
Chapter 13
Corporate Agreements

*There are no practice notes for this chapter.
This chapter's forms start on page 608.*



Chapter 14
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Chapter 15

Public Benefit Corporations

§ 15.1 Overview of Public Benefit Corporations

Effective September 1, 2017, Texas has a new type of corporation known as a public benefit corporation (PBC). The statutory provisions regarding the PBC (referred to as a “B-Corp” in some other states) are found in Tex. Bus. Orgs. Code §§ 21.951–.959. *See* Acts 2017, 85th Leg., R.S., ch. 776, § 4 (H.B. 3488), eff. Sept. 1, 2017.

A PBC is formed with the intent to produce a public benefit or benefits and to operate in a responsible and sustainable way. Tex. Bus. Orgs. Code § 21.953(a). Public benefit means a positive effect, or a reduction of a negative effect, on one or more categories of persons, entities, communities, or interests, other than shareholders in their capacities as shareholders. The effects may include those of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological nature. Tex. Bus. Orgs. Code § 21.952(1).

Unlike a for-profit corporation, which must operate solely for the purpose of maximizing the financial return to the shareholders, the PBC balances the shareholders’ interests with that of the public benefit declared by the PBC and the best interests of those persons materially affected by the PBC’s conduct. Tex. Bus. Orgs. Code § 21.953(b). The board of directors must manage or direct the business or affairs of the PBC in a manner that balances those same interests. Tex. Bus. Orgs. Code § 21.956(a). When making a decision implicating this balance, a director satisfies the duties to shareholders and the PBC if the decision is both informed and disinterested and is not a decision that no person of

ordinary, sound judgment would approve. Tex. Bus. Orgs. Code § 21.956(c). The certificate of formation for the PBC may include a provision that any disinterested failure to satisfy these requirements does not constitute an act or omission not in good faith or a breach of the duty of loyalty. Tex. Bus. Orgs. Code § 21.956(d). A director does not owe any duty to any person because of any interest the person has in the specified public benefit or benefits or any interest materially affected by the PBC’s conduct. Tex. Bus. Orgs. Code § 21.956(b).

§ 15.2 Distinguished from Nonprofit and Social Purpose Corporations

The Texas Business Organizations Code (TBOC) is clear that the PBC is not a nonprofit corporation. *See* Tex. Bus. Orgs. Code §§ 2.008, 3.007(e), 21.954(e). The PBC is also distinguished from a “social purpose” corporation already allowed under the Code. Tex. Bus. Orgs. Code § 3.007(d).

If a corporation elects to be a PBC, it is subject to the remaining provisions of the TBOC applicable to for-profit corporations. Tex. Bus. Orgs. Code § 21.951(b). In the event of a conflict between the PBC subchapter and the other for-profit corporation TBOC provisions, the PBC subchapter controls. Tex. Bus. Orgs. Code § 21.951(c).

§ 15.3 Certificate of Formation Requirements

Tex. Bus. Orgs. Code § 3.007(e) provides that a PBC must include the following in its initially

filed certificate of formation or in a certificate of formation amended in accordance with Tex. Bus. Orgs. Code § 21.954: (1) one or more specific public benefits, as defined by Tex. Bus. Orgs. Code § 21.952, to be promoted by the corporation; and (2) instead of the statement required by Tex. Bus. Orgs. Code § 3.005(a)(2), a statement that the filing entity is a for-profit corporation electing to be a public benefit corporation.

The secretary of state has not yet promulgated a form to use in forming a PBC. Therefore, the required language would need to be included either in a form custom-drafted by the practitioner or on SOS Form 201 in the “Supplemental Provisions/Information” box. See form 12-1 in this manual.

§ 15.4 Corporate Name Requirements

The name of the PBC may contain the words “public benefit corporation,” the abbreviation “P.B.C.,” or the designation “PBC” instead of the words “company,” “corporation,” “incorporated,” or “limited” (or any abbreviation thereof). Tex. Bus. Orgs. Code § 21.953(c), (e). In the event the name does not include public benefit corporation, P.B.C., or PBC, it must provide notice in some other way to its shareholders that it is a public benefit corporation (unless the shares are registered under the Securities Act of 1933). Tex. Bus. Orgs. Code § 21.953(c), (d). Such notice would presumably be accomplished by the requirement that the stock certificate (or the notice required by section 3.205 for uncertificated ownership interests) specify that the corporation is a public benefit corporation. Tex. Bus. Orgs. Code § 21.955.

§ 15.5 Notice Requirements

A PBC, at least biennially, shall provide to its shareholders (or to the public if required by the

certificate of formation or the bylaws) a statement pertaining to the PBC’s promotion of the public benefit or benefits and promotion of the best interests of those materially affected by the PBC’s conduct. This statement must include:

1. the objectives the board of directors has established to promote the public benefit or benefits and interests;
2. the standards the board of directors has adopted to measure the PBC’s progress in promoting the public benefit or benefits and interests;
3. objective factual information based on those standards regarding the PBC’s success in meeting the objectives for promoting the public benefit or benefits and interests; and
4. an assessment of the PBC’s success in meeting the objectives and promoting the public benefit or benefits and interests.

Tex. Bus. Orgs. Code § 21.957.

All notices of shareholder meetings must contain a statement to the effect that the corporation is a public benefits corporation governed by chapter 21, subchapter S, of the TBOC. Tex. Bus. Orgs. Code § 21.957.

§ 15.6 Converting between For-Profit Corporation and Public Benefit Corporation

See Tex. Bus. Orgs. Code § 21.954 regarding entities desiring to be governed as a PBC (or convert shares to such) or a PBC desiring to convert to a non-PBC entity, all of which require the approval of the owners of two-thirds of the outstanding shares of the corporation entitled to vote on the matter. However, a nonprofit corporation or nonprofit association may not convert to a PBC. Tex. Bus. Orgs. Code § 21.954(e).

§ 15.7 Derivative Actions

A shareholder of a PBC may maintain a derivative action on behalf of the PBC to enforce compliance by its board of directors with the requirements to manage or direct the business

and affairs of the PBC in a manner that balances its various interests. Tex. Bus. Orgs. Code § 21.958. See Tex. Bus. Orgs. Code § 21.958(a) for the definition of “shareholder” in the context of derivative suits.



Chapter 16
Corporate Reorganization

*There are no practice notes for this chapter.
This chapter's forms start on page 719.*



Part IV

Nonprofit Corporations

Just like any other form of entity, a nonprofit corporation is recognized at both state and federal levels. At the state level, chapter 22 of the Texas Business Organizations Code (TBOC) covers essential aspects of structure and governance for nonprofit corporations. At the federal level, a nonprofit corporation can be recognized as an exempt organization under the provisions of section 501(a) of the Internal Revenue Code (IRC).

Of the twenty-nine forms of exempt organizations under the IRC, twenty-five are under section 501(c), one is under 501(d), and one is under 501(e). Other than 501(c)(3) charitable organizations, the most common are 501(c)(4) for civic leagues and social welfare organizations; 501(c)(6) for business leagues, sports leagues, and chambers of commerce; and 501(c)(7) for social and recreational clubs.

Chapter 17 in this manual largely covers nonprofit corporations under section 501(c)(3) that are tax-exempt for the following purposes: charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. These types of entities are also known as “charitable organizations” and are the most popular and common form of exempt organization at the federal level because they typically allow donors to take tax deductions for charitable contributions.

PRACTICE TIP: Tax exemption under state and federal laws is not automatic with nonprofit corporation formation. Exemption must be applied for at both the state level (with the Texas Comptroller of Public Accounts) and the federal level after the corporation is approved by the secretary of state. Certain types of nonprofit corporations (for example, churches and religious places of worship, primary and secondary schools, and disaster relief organizations) may also apply for exemption from property taxes assessed by local taxing units such as cities, counties, and school districts.

Texas recognizes a nonprofit corporation as the only form of incorporated entity eligible for exemption under state law. An unincorporated association may also be recognized as a nonprofit; however, as the name implies, it is not a corporation and thus is outside the scope of this chapter.

One important distinction between a nonprofit corporation and any other form of entity (for example, a corporation, limited liability company, or limited partnership) is that the nonprofit corporation does not allow any part of its income to be distributable to any members, directors, or officers (see the definition of “nonprofit corporation” under section 22.001 of the TBOC). No persons may own any equity in a nonprofit corporation, and there is no “owner” of a nonprofit corporation beyond the concept of a “public benefit” for a particular purpose set out in the corporation’s governing documents. In fact, dividends are expressly prohibited for a nonprofit corporation under section 22.053 of the TBOC.

On the other hand, a nonprofit corporation is permitted to pay compensation to its directors, officers, employees, and other persons, as long as such compensation is reasonable. Further, a nonprofit corporation is allowed to confer benefits to the corporation’s members in conformity with the corporation’s purposes (for example, prayer space, intangible religious benefits to members of a church or similar

place of worship, or access to educational resources to students). Special rules permit liquidating distributions to members upon dissolution, particularly to members that are 501(c)(3) nonprofit corporations themselves.

PRACTICE TIP: “Nonprofit” corporation is a bit of a misnomer. It is not that these forms of entities do not make a “profit” in a financial sense from their operations or investments—it is just that those profits are not distributed to any person, except in the form of reasonable compensation and benefits for exempt purposes. Some of the wealthiest entities in the United States are nonprofit corporations (for example, churches with property holdings and private schools and universities). Note, however, that profit earned through the “commercial business” of a nonprofit corporation may be subject to unrelated business income tax at rates similar to those levied on for-profit corporations.

A nonprofit corporation is governed by its board of directors. Under Texas law, a nonprofit must have a minimum of three directors. The board is appointed and maintained from the formation of the corporation throughout its setup, growth, and maintenance until its dissolution. The board is assisted by officers; a nonprofit corporation in Texas must have a president, secretary, and treasurer at a minimum, and the president and secretary have to be separate persons.

Some nonprofit corporations allow for one or more classes of members that are typically empowered to elect all or some of the directors and officers. *See* Tex. Bus. Orgs. Code § 22.151. Some nonprofit corporations do not have provisions for members, and thus the board of directors is empowered to increase, decrease, or replace board members or to fill vacancies on the board. Voting can be done by single vote for each position, or even cumulatively if set out in the corporation’s governing documents.

PRACTICE TIP: It is important that the founders of a nonprofit corporation consider from the outset whether the entity will have members. While this decision can be changed, doing so later requires a higher threshold of votes, and the entity must file an amendment with the secretary of state to recognize the change. In addition, provisions should be included for selecting replacement candidates as soon as possible after seats become available.

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Chapter 17

Nonprofit Corporations Overview

§ 17.1 Nonprofit Corporation Formation (State Level)

A nonprofit corporation is formed by filing a certificate of formation that conforms to Texas Business Organizations Code (TBOC) requirements with the secretary of state (SOS Form 202, form 17-1 in this manual). In particular, the certificate must be in writing, submitted by the duly authorized organizer(s), and signed by an organizer. The nonprofit corporation's certificate of formation typically differs from those for LLCs and other entities by being customized to contain language relating to tax exemption issues. Once formed, the nonprofit corporation can begin transacting business in the state of Texas like any other entity (subject to obtaining a license to do business).

The name of the nonprofit corporation must appear on the certificate of formation. Texas law does not require nonprofits to include "corporation," "incorporated," or similar designations in their names, but some organizers prefer to include them or their abbreviations to show the incorporated nature of the entity. The certificate of formation must also include the purpose for which the corporation is organized; this language is scrutinized by the IRS during its tax exemption application process (detailed later in this chapter). In addition, for IRS satisfaction, the certificate of formation needs to include certain language limiting the rights of profits, prohibiting other actions by persons, or both. The final required language relates to dissolution and distribution of assets upon winding up and the permitted scope of such actions by a nonprofit corporation.

PRACTICE TIP: Search for similar entities on the secretary of state website. Their certificates of formation will contain language that has already been approved for tax exemption at the federal, state, and other levels of government. This language can be set out in your entity's governing documents to ensure it is approved for tax exemption. In some instances, this language can also be found on the organization's website or on third-party websites like Charity Navigator's. It is important to use these precedents to draft the largely bespoke certificates of formation.

PRACTICE TIP: Have clients who want to establish a nonprofit corporation put together a business plan for their nonprofit so they can understand the goals and requirements of a nonprofit corporation. The founders of a nonprofit corporation should, at a minimum, think about what they want the nonprofit to accomplish, what actions can (and cannot) be taken by individuals, and where they ultimately want the nonprofit to rest upon termination. The business plan can also take into consideration some of the financial goals, which can be tied into the nonprofit corporation's tax exemption application with the IRS.

The certificate of formation should include the names of at least three individuals who will serve as initial directors for the corporation. The initial directors will serve until the organizational meeting is held and permanent directors can be selected. There is no limit on how many directors can serve, but three to nine is the most common range of director seats on a nonprofit corporation. The certificate of formation should also specify if the corporation will have members. As with other entities, the rest of the

required language in the certificate of formation for a nonprofit corporation sets out the registered agent's name and address, the name and address of the organizer, and the effective date of incorporation.

PRACTICE TIP: The certificate of formation can include more detailed language governing the director election process, the directors' indemnification or exculpation, methods of voting with or without a meeting, the qualifications and residency requirements for directors, the methods for removing or replacing a director, and other language as necessary.

After the certificate of formation is filed, it is important for the nonprofit corporation (or its advisors) to draft other governing documents in preparation for the organizational meeting. These documents include bylaws, meeting minutes (or unanimous written consent by directors in lieu of a meeting), consent and resignation of the organizer, a codification of the conflicts of interest, document retention and donation policies, and other documents as the initial board deems necessary. These documents will be submitted to the IRS as part of the tax exemption application process. Once they are prepared, and soon after the certificate of formation is filed with the secretary of state, a meeting should ideally be held in person or by remote means or, alternatively, via a detailed unanimous written consent circulated to every director of the corporation.

§ 17.2 Federal Tax Exemption for Nonprofit Corporations

For the purpose of this discussion, we will focus on IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, required for the federal tax exemption for nonprofit corporations.

PRACTICE TIP: The IRS updates and amends forms often. Make sure that you obtain

the latest versions of IRS Form 1023 and the Instructions for Form 1023.

When filing the certification of formation (even when using the state of Texas forms) practitioners must consider and meet the requirements of IRS Form 1023 to obtain exemption. The certificate of formation requires a purpose, and if the entity is to be tax-exempt, that purpose must be deemed acceptable by the IRS. Acceptable purposes for IRS Form 1023 are “charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals.” Internal Revenue Serv., Dep’t. of the Treasury, Instructions for Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code 7 (2020).

In addition, the certificate of formation must state how the assets of the organization will be distributed upon dissolution. If using the state of Texas forms, this should be listed in the “additional language” area. The IRS approves the following language:

Upon the dissolution of this organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

Instructions for Form 1023 8.

PRACTICE TIP: Do not deviate from the simple language provided by the IRS in the certificate of formation. In addition, use the IRS Sample Conflict of Interest Policy for the organization bylaws, which can be found in appendix A of the Instructions for Form 1023. This language

is acceptable to the IRS and will not be questioned by revenue agents. Bylaws can always be amended after the application for tax exemption is accepted.

For the organization's exempt status to be effective as of the date of the approved certificate of formation, IRS Form 1023 should be filed within twenty-seven months of the secretary of state's approval. If the application is filed after that twenty-seven month period, however, the exemption date will be effective as of the date IRS Form 1023 is filed.

IRS Form 1023 requires a narrative description of the organization's activities and the organization's financial data. If the organization is new and has not conducted activities or does not have financial data, that should be noted on the application, and the answers to these questions should outline the planned activities and the anticipated revenues and expenses. The level of detail depends on whether the organization uses IRS Form 1023 or IRS Form 1023-EZ. Each question should be answered in detail but as succinctly as possible.

PRACTICE TIP: If the application is not complete or the narrative and financial data are not clear, the application will be sent to a revenue agent, which will delay the application process by several months. The trick is being clear without being overly wordy.

The IRS considers any organization applying for exempt status using IRS Form 1023 to be a private foundation unless the organization meets certain criteria, which generally amount to a determination of whether the organization is a public charity. A public charity receives a significant amount of its funds through public support. To gain this public charity status, the entity must meet both the "one-third public support test" and the "not-more-than-one-third investment income and net unrelated business income test." Instructions for Form 1023 14.

Every organization that qualifies for tax exemption as an organization described in section 501(c)(3) is a private foundation unless it falls into one of the categories specifically excluded from the definition of that term (referred to in section 509(a)). In addition, certain nonexempt charitable trusts are also treated as private foundations. Organizations that fall into the excluded categories are institutions such as hospitals or universities and those that generally have broad public support or actively function in a supporting relationship to such organizations.

Internal Revenue Serv., Dep't. of Treasury, Private Foundations, IRS (Dec. 20, 2019), www.irs.gov/charities-non-profits/charitable-organizations/private-foundations.

PRACTICE TIP: It is important to understand where an organization plans to obtain its funding. If you are unsure if the organization truly qualifies for public charity status or private foundation status, let the IRS choose. This will prevent the application from being held up by a revenue agent.

§ 17.3 Governance of Nonprofit Corporations

A nonprofit corporation's certificate of formation should clearly state who is authorized to manage the organization and the specific acts they are authorized to perform.

§ 17.3:1 Management by Members

A nonprofit corporation may be managed by members if that is plainly set out in the certificate of formation. *See* Tex. Bus. Orgs. Code § 22.202(a). It is important, however, to consider the practicality of having members manage corporate affairs, given, for example, frequent

changes in membership status. If the organization has various levels of membership, the certificate of formation should be clear on which levels have voting privileges.

§ 17.3:2 Management by Board of Directors

Absent a designation in the certificate of formation, management of a nonprofit corporation will be vested in the board of directors. Tex. Bus. Orgs. Code § 22.202(b). The board must consist of at least three directors. Tex. Bus. Orgs. Code § 22.204. Any organization that operates with fewer than three directors is not in compliance with the TBOC. Maintaining an odd number of directors is best to establish a clear majority when voting.

It is important that any organization has a process to elect or appoint the board of directors. These acts should be completed during the annual meeting. If the board is large (seven or more directors), using alternate term years is preferable. For example, three board positions may be up for election or appointment during even-numbered years and four during odd-numbered years. This ensures the continuity of the board.

Directors must perform their duties “in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the corporation.” Tex. Bus. Orgs. Code § 22.221(a).

Good Faith: Directors must act honestly and trustworthily in their duties and obligations. The directors should not attempt to take advantage of the corporation and should avoid self-dealing.

Care: Directors must be vigilant when conducting the affairs of the organization. This means that they have to monitor the finances of the organization, attend regular meetings, evalu-

ate the records of staff, and operate in accordance with the organization’s bylaws.

Best Interests of Corporation: Directors must act reasonably based on the objective facts available to them at the time a decision is made. Objective facts include what the directors know and what they should have known. When acting in the best interest of the corporation, directors should consider both the short-term and long-term interests of the organization.

Many organizations have nonvoting advisory boards. This is acceptable if the bylaws clearly state that an advisory board is allowed. If so, the bylaws must also include the advisory board’s roles and responsibilities. The advisory board should have a clear appointment or designation process that is consistently followed and approved by the board of directors.

PRACTICE TIP: Many nonprofit organizations are started by people who want to do good, but who are ill-equipped to handle the responsibilities of running a public organization. It is important to express to your clients the importance of documenting and maintaining proper board responsibilities. Many founding organizers want to control their organizations. This is not possible through charitable nonprofit organizations that seek tax exemption. Making the distinction between what is allowed in a for-profit organization versus a nonprofit organization can help keep the directors on track.

§ 17.4 Annual Meetings and Recordkeeping for Nonprofit Corporations

Nonprofit organizations must hold an initial meeting to adopt bylaws and to elect officers. Tex. Bus. Orgs. Code § 22.104(a). It is recommended that a business attorney attend this meeting to explain organizational documents to the board of directors. Meeting minutes should document the election process and the vote.

PRACTICE TIP: Meeting minutes are important to any organization. The minutes should be detailed enough to assist the board in deciding significant issues.

In addition to documenting adopting bylaws and electing officers, the initial meeting minutes should reflect an authorization to open a bank account and to file a tax exemption application (if applicable) and should indicate an acknowledgment of any members and of any other initial acts by the board of directors.

If the organization is member-managed, a separate meeting should be held to allow the members to vote in accordance with the bylaws.

The organization should establish a specific date and time each year that it will hold an annual meeting of the board of directors and, if applicable, members. If the organization has regularly set meetings outside of the annual meeting, the board and any members should receive timely notice providing the time and place of the meetings.

PRACTICE TIP: Meeting minutes can be discovered as legal evidence. Minutes should detail the discussions and resulting votes from any action, should be kept in the regular course of business, and should be stored accordingly.

Members have the right to inspect the books and records of a nonprofit corporation. Tex. Bus. Orgs. Code § 22.351. If a member issues a written demand for the books and records, the organization must comply and provide a time and place for inspection.

The organization must maintain current and accurate financial records. Tex. Bus. Orgs. Code § 22.352(a). The board of directors must ensure that annual reports are produced each year. Tex. Bus. Orgs. Code § 22.352(b). This financial report is public information. *See* Tex. Bus. Orgs. Code § 22.353(b). Failure to maintain financial records, prepare an annual report, or make the

report available to the public is a class B misdemeanor. Tex. Bus. Orgs. Code § 22.354. Exemptions to this requirement are listed in TBOC section 22.355.

PRACTICE TIP: Each organization should have a written document management policy that states the length of time and manner in which documents should be held and when and how they should be destroyed. This policy should be provided to staff and volunteers and should become a regular business practice of the organization.

§ 17.5 Periodic Reports for Nonprofit Corporations

Domestic and foreign nonprofit corporations are subject to periodic reporting requirements with the secretary of state.

A nonprofit corporation is required by TBOC section 22.357 to file a periodic report that lists the names and addresses of its current registered agent and office and its current officers and directors. The Texas secretary of state is authorized to require a nonprofit corporation to file the report (SOS Form 802, form 17-3 in this manual) not more than once every four years. *See* Tex. Bus. Orgs. Code § 22.357.

The report is due no later than the thirtieth day after the date the secretary of state sends notice to the corporation that the report is due. *See* Tex. Bus. Orgs. Code § 22.359. The secretary of state sends all notices relating to the filing of the periodic report, including any notice of forfeiture or delinquency, to the designated registered agent at the registered office address on file. *See* Tex. Bus. Orgs. Code § 22.358.

The notice sent by the secretary includes a pre-printed periodic report form that includes the current information of record.

PRACTICE TIP: There is no “anniversary date” for the filing of a nonprofit periodic report.

A nonprofit corporation may avoid the consequences of noncompliance, however, by voluntarily submitting a periodic report to the secretary of state on a routine basis on an “anniversary date” of its own choosing. Periodic reports also may be filed electronically through the secretary of state’s online access system, SOSDirect.

§ 17.6 Nonprofit Mergers

Certain restrictions and limitations apply to mergers involving Texas nonprofit corporations.

Pursuant to TBOC section 10.010(a), a nonprofit corporation may not merge into another entity if the nonprofit corporation would lose or impair its charitable status because of the merger. *Tex. Bus. Orgs. Code* § 10.010(a). Note, however, that the secretary of state does not determine whether a proposed merger will affect a nonprofit corporation’s charitable status.

One or more domestic or foreign for-profit entities or non-code organizations may merge into one or more domestic nonprofit corporations if the nonprofit corporations continue as the surviving entity or entities. *Tex. Bus. Orgs. Code* § 10.010(b). A nonprofit corporation may merge with a foreign for-profit entity, but only if the nonprofit corporation continues as the surviving entity. *Tex. Bus. Orgs. Code* § 10.010(c). One or more nonprofit corporations and non-code organizations may merge into one or more foreign nonprofit entities that continue as the surviving entity or entities. *Tex. Bus. Orgs. Code* § 10.010(d).

Although an unincorporated nonprofit association is a TBOC entity, it is not authorized to engage in a statutory merger under chapter 10 of the code. Section 252.017 specifically provides that the only provisions of the TBOC that apply to an unincorporated nonprofit association are chapters 1 and 4 and, if a nonprofit association has designated an agent for service of process,

the provisions of subchapter E of chapter 5. Pursuant to section 1.106(c), this specific provision of chapter 252 would supersede the provisions of chapter 10. *See Tex. Bus. Orgs. Code* § 1.106(c).

The fee for filing a merger transaction of a nonprofit corporation with a for-profit entity is \$300. The fee for filing a merger transaction where the only parties to the merger are nonprofit corporations is \$50.

§ 17.7 Conversion of Nonprofit Corporations

§ 17.7:1 Conversion of Nonprofit into For-Profit Entity Prohibited

TBOC section 10.108 specifically prohibits the conversion of a nonprofit corporation to a for-profit entity. *See Tex. Bus. Orgs. Code* § 10.108.

§ 17.7:2 Conversion of Nonprofit Corporations into Other Entities

While section 10.108 prohibits a nonprofit corporation from converting into a for-profit entity, the secretary of state will accept a certificate of conversion that converts a domestic nonprofit corporation to a nonprofit limited liability company, a nonprofit corporation created under another Texas statute, or a foreign nonprofit corporation.

§ 17.8 Failure to File Periodic Report—Chapter 22 TBOC Involuntary Terminations

§ 17.8:1 Effect of Failure to File Periodic Report

Failure to file the nonprofit periodic report when due results in the forfeiture of the corporation’s right to conduct its affairs in Texas. *See Tex.*

Bus. Orgs. Code § 22.360(a). Notice of forfeiture is mailed to the corporation's registered agent at the registered office address. *See* Tex. Bus. Orgs. Code § 22.361.

Forfeiture of the corporation's right to conduct its affairs does not impair the validity of a contract or act of the corporation or prevent the corporation from defending an action, suit, or proceeding in a court of this state, but the corporation may not maintain an action, suit, or proceeding in a court of this state. *See* Tex. Bus. Orgs. Code § 22.362(c).

A Texas nonprofit corporation that fails to file the delinquent periodic report and revive its right to conduct business within 120 days of the mailing of the notice of forfeiture is involuntarily terminated by the secretary of state. *See* Tex. Bus. Orgs. Code §§ 22.363, 22.364.

§ 17.8:2 Reinstatement

A nonprofit corporation that has involuntarily terminated its existence for its failure to file a periodic report is reinstated by following the specific reinstatement procedures set forth in TBOC section 22.365 and *not* the procedures established under section 11.253. *See* Tex. Bus. Orgs. Code § 22.365.

A nonprofit corporation involuntarily terminated under TBOC section 22.364 would file the delinquent report together with the maximum filing fee of \$25. The corporation would not submit a certificate of reinstatement.

TBOC section 22.365 does not set forth a time frame within which the delinquent report must be filed and the corporation reinstated.

Section 22.365(a) requires the secretary of state to determine whether the corporation has paid all fees, taxes, penalties, and interest due and accruing before the termination and an amount equal to the total taxes from the date of termination to the date of reinstatement that would have

been payable if the corporation had not been terminated. *See* Tex. Bus. Orgs. Code § 22.365(a). If the nonprofit corporation is not tax-exempt, a tax clearance letter issued by the comptroller of public accounts stating that the entity is in good standing for purposes of reinstatement fulfills this requirement. The tax clearance letter must accompany the delinquent report and must be valid through the date of filing of the report.

§ 17.9 Dissolution of Nonprofit Corporations

TBOC chapters 11 and 22 state the procedures for winding up and terminating a nonprofit corporation. Section 22.302 of the TBOC provides details specific to nonprofits managed by members, managed by boards of directors with voting membership, managed by boards of directors with no members, and managed by memberships without voting rights. The appropriate notice provisions must be followed in each case. TBOC section 22.164 defines dissolution as a fundamental action and subsequently requires appropriate approvals to dissolve or terminate a nonprofit corporation.

In addition to following the procedural formalities, the nonprofit corporation must create a plan of distribution in accordance with TBOC section 22.304 and with the corporation's dissolution clauses, whether in its certificate of formation, its bylaws, or both. All liabilities and obligations must be paid, satisfied, and discharged in accordance with TBOC section 11.053. Then any property held on a condition requiring return, transfer, or conveyance because of the termination of the corporation must be returned. The remainder of the property may then be distributed to other organizations that are exempt under section 501(c)(3) of the Internal Revenue Code (IRC) or that are described in IRC section 170(c)(1) or (c)(2). Lastly, a district court will distribute any remaining assets to organizations exempt under IRC section 501(c)(3) or described in section 170(1) or (2).

PRACTICE TIP: The certificate of formation must include how the assets of the organization will be distributed upon dissolution in order to obtain the federal tax exemption.

§ 17.9:1 Filing Certificate of Termination with Secretary of State

When winding up activities are complete, the organization must file a certificate of termination (SOS Form 652, form 21-2 in this manual) with the secretary of state. The certificate of termination must be signed by an officer of the nonprofit corporation. The existence of the nonprofit ends upon filing the certificate of termination, unless a later date is given or the certificate states that it is effective when a stated event or

fact takes place (the termination must be effective within ninety days of the date of signing).

§ 17.9:2 Filing with IRS

Organizations recognized under IRC section 501(c)(3) that are required to file annual information returns must file the appropriate IRS Form 990, marked as a final return, to inform the IRS about its termination. The final IRS Form 990 must be filed within four months and fifteen days after the effective date of the nonprofit corporation's termination. The corporation should then complete an IRS Form 990 or 990-EZ schedule N (Liquidation, Termination, Dissolution, or Significant Disposition of Assets) with the applicable information.

Part V

Partnerships and Professional Entities

The law governing partnerships is codified in Texas Business Organizations Code title 4. Texas allows four types of partnerships: general partnerships, limited partnerships, limited liability partnerships, and limited liability limited partnerships. The practice notes in chapter 18 in this manual contain basic information regarding the structures of these partnerships and the situations that can inform decisions to use them.

While this edition does not contain practice notes for professional entities, this manual does contain forms for professional corporations (PCs), professional limited liability companies (PLLCs), and professional associations (PAs) (forms 18-6 through 18-11 in this manual).

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Chapter 18

Partnerships and Professional Entities Overview

§ 18.1 General Partnerships

Texas has a long history of recognizing general partnerships. At common law, a general partnership was recognized where multiple individuals jointly shared interest, control, profits, and losses of a business enterprise. The Texas Business Organizations Code (TBOC) defines a general partnership as “an association of two or more persons to carry on a business for profit as owners.” Tex. Bus. Orgs. Code § 152.051. The secretary of state does not require any formal filings to form a general partnership. The TBOC states that a general partnership is created, whether or not individuals intend for the business relationship to be considered a general partnership, if the following factors are met:

- (1) receipt or right to receive a share in profits of the business;
- (2) expression of an intent to be partners in the business;
- (3) participation or right to participate in control of the business;
- (4) agreement to share or sharing:
 - (A) losses of the business; or
 - (B) liability for claims by third parties against the business; and
- (5) agreement to contribute or contributing money or property to a business.

Tex. Bus. Orgs. Code. § 152.052(a). Individuals engaging in business together must be cognizant of these factors as they may form a general partnership regardless of intent. In situations where

a different type of organization or structure (for example, a limited liability company or joint venture) is expressly intended, a “No Partnership” clause should be inserted into any contracts.

While a general partnership is formed de facto, the best practice is for the partners to execute a partnership agreement. A partnership agreement should contain all the essential terms governing the function of the partnership. Keep in mind that even a partnership agreement will not offer any personal liability protection to the partners. For liability protection, consider using one of the associations discussed below.

General partnerships have flow-through taxation. All partners share in the profits and losses pursuant to their pro rata share of the partnership. The pro rata share is, by default, equally split among the partners, but can be changed in a partnership agreement.

§ 18.2 Limited Partnerships

A limited partnership (LP) is created by filing a certificate of formation (SOS Form 207, form 18-1 in this manual) with the secretary of state. An LP must have at least one general partner and at least one limited partner. *See* Tex. Sec’y of State, SOS Form 207 cmt. (2015); *see also* Tex. Bus. Orgs. Code § 3.011. Unlike the general partnership, a limited partnership often has partners who are not actively participating in the business enterprise. An LP is commonly used to shield these passive investors from liability. The passive investors become limited partners while all the liability is assumed by the general partners.

The general partners are the active partners in the business enterprise, assuming the managerial role of the partnership while allowing for a retention of control vested in the limited partners. The amount of limited partner control and the general partners' obligations are outlined in the limited partnership agreement. A general partner can be an individual or an entity. Practitioners commonly see general partners with a small ownership interest in the LP—usually 1 percent, with the limited partners comprising the other 99 percent—however, contrary to popular belief, a general partner is not required to hold an ownership interest in the LP. The TBOC provides that “[a] written partnership agreement may provide that a person may be admitted as a general partner in a limited partnership, including as the sole general partner, without acquiring a partnership interest in the limited partnership.” Tex. Bus. Orgs. Code § 153.151(d).

As with a general partnership, the LP partners' tax liability flows through to each partner's individual tax return. Also as with a general partnership, the apportionment can be altered via the limited partnership agreement. The major tax difference between a general partnership and a limited partnership is that the limited partnership is an actual entity with ownership interests. This is important because any change in apportionment of profits and losses that does not equal the ownership interest is subject to the IRS special allocation rules in Internal Revenue Code § 704.

§ 18.3 Limited Liability Partnerships

Limited liability partnerships (LLPs) are familiar to most attorneys, at least by name, as this organizational structure is common to law firms. LLPs shield partners from each other's liabilities. An LLP is registered by filing a limited liability partnership application (SOS Form 701, form 18-3 in this manual) with the secretary of state. A limited liability partnership is not a

formed legal entity like a limited partnership, a limited liability company, or a corporation, but is instead the registration of an already-existing general partnership or limited partnership in which the general partners of the underlying entity want to gain personal liability protection. “Except as provided by the partnership agreement, a partner is not personally liable to any person, including a partner, directly or indirectly, by contribution, indemnity, or otherwise, for any obligation of the partnership incurred while the partnership is a limited liability partnership.” Tex. Bus. Orgs. Code § 152.801(a).

PRACTICE TIP: An underlying LP must be formed before the LLP filing, and the LLP application must be signed by at least one general partner of the LP, or the secretary of state will reject the application. See Tex. Bus. Orgs. Code § 153.352.

One thing to consider is that LLP fees are charged based on the number of general partners in control on May 31 of each year rather than singularly on the entity upon formation. The secretary of state's initial LLP filing fee is \$200 per general partner, with an annual report filing fee of \$200 per general partner. This is important when looking at the cost to maintain the LLP compared with other entity types.

§ 18.4 Limited Liability Limited Partnerships

A limited liability limited partnership (LLLLP) is designed for instances where the general partners want to shield themselves from liabilities incurred by the partnership, unlike the structure of a limited partnership, where the general partners take on all of the liability. LLLPs are relatively new entity structures, statutorily authorized by TBOC section 5.055. There is no specific form for the certificate of formation for an LLLP in Texas; rather, SOS Form 701 (form 18-3 in this manual) is filed, and the applicant

uses an entity abbreviation of “LLLP” when entering the partnership name.

As with a limited partnership, an LLLP will have at least one general partner and at least one limited partner. *See* Tex. Sec’y of State, SOS Form 701 cmt. (2015). Also as with a limited partnership, an LLLP is governed by a partnership agreement.

Although Texas recognizes LLLPs, many states do not. LLLP use is risky in that doing business as a foreign entity in other states may result in unintended liability placed on the general partners in the form of a judgment. It is far better to use a limited partnership with a shell entity set up as a general partner than to establish an LLLP. A common structure for this type of arrangement is a shell C corporation with no assets taking 1 percent ownership as a general partner.

Part VI

Mergers, Conversions, and Terminations

Chapter 19

Mergers

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Chapter 19

Mergers

§ 19.1 Overview of Mergers under Texas Law

Title 1, chapter 10 of the Texas Business Organizations Code (TBOC) allows for one or more domestic entities to combine, or merge, with one or more domestic or foreign entities for a variety of purposes. This merger may take various forms and will result in (1) one or more surviving entities, (2) one or more new entities, or (3) both surviving and new entities. Before beginning the merger process, it is critical to determine which entities will merge, which will survive, and if any new entities will be created as a result of the merger.

PRACTICE TIP: Merger documents cannot be filed using the Texas secretary of state's electronic filing system (SOSDirect). Although you may mail hard copies of the documents, timeliness usually necessitates faxing the documents to the secretary of state. You may also request expedited handling for a minimal additional fee.

§ 19.2 Mergers Governed by Statutes Other than TBOC

Occasionally, a merger transaction will be governed by a statute other than the TBOC, in which case the other statute will govern the form and process of the merger transaction. For example, title 4, chapter 162, of the Texas Utilities Code governs the consolidation or merger of telephone cooperatives.

§ 19.3 Merger Process Overview

In general, a merger transaction requires the following steps:

1. Prepare—
 - a. a certificate of merger (see section 19.4 below);
 - b. a plan of merger (see section 19.5 below);
 - c. any formation and organizational documents for new entities created as a result of the merger; and
 - d. a certificate of amendment (SOS Form 424, form 4-8 in this manual) to effect any amendments to the formation documents of any surviving entity.
2. Have the merger documents authorized by the required number of owners of each entity that is a party to the merger. A merger is a fundamental business transaction; therefore, this authorization must comply with the procedures set forth in the applicable TBOC sections for the specific domestic entity type as well as the requirements of the applicable entity's governing documents.
3. Obtain a tax clearance letter from the Texas comptroller for any Texas entity that is a party to the merger. This requirement can be sidestepped by certifying in the certificate of merger that one or more of the surviving, acquired, or new entities will be liable for the payment of franchise taxes.
4. For an interstate merger (a merger transaction including any foreign entities), file the Texas merger documents

with the Texas secretary of state first. Then, once approved by the Texas secretary of state, file the Texas merger documents in the states where the merging entities previously existed.

PRACTICE TIP: A printout obtained from the Texas comptroller’s online franchise account status search is not sufficient evidence of tax clearance in connection with a merger. If you have not stated that a surviving, acquired, or new entity will be liable for the payment of franchise taxes, you must obtain a certificate of account status from the Texas comptroller (see Texas comptroller form 05-359, available via <https://comptroller.texas.gov/forms>).

PRACTICE TIP: Mergers with foreign entities entail additional hurdles. Texas, and many other states, requires that the merger processes of both Texas and the foreign entity’s formation state be followed. This may mean the documents required (certificate of merger, plan of merger, and so on) will be slightly different. Many practitioners find it easiest to include the information required by Texas, as well as the other states from the outset, to ensure ease of filing.

§ 19.4 Certificate of Merger; Certificate of Formation

Title 1, chapter 10, of the TBOC requires the filing of a certificate of merger when any party to the merger or any entity created pursuant to a plan of merger is a domestic filing entity. The Texas secretary of state provides standard optional certificate of merger forms for various situations, although there is not a form for every possible merger situation. These forms (SOS Forms 621 through 623, forms 19-2 through 19-4 in this manual, respectively) are generally not entity-type-specific but are based on the domesticity of the parties to the merger and

whether a parent entity is merging with a subsidiary entity. The exception is a specific form of certificate of merger for a nonprofit corporation (SOS Form 624, form 19-5 in this manual).

The secretary of state also has separate certificates of formation for any entity that will be formed as a result of the merger transaction. These are dependent on the type of entity being formed. See the chapter in this manual on the specific entity type for the related forms. When forming a new domestic entity in conjunction with a merger transaction, you must also comply with the requirements of the TBOC relating to formation of a new domestic entity.

PRACTICE TIP: The certificate of formation for a new entity formed in connection with a merger transaction must contain the additional statement that the entity is being formed pursuant to a plan of merger. Because the Texas secretary of state’s form of certificate of formation does not include this statement, if you are using the secretary of state’s form, insert the statement as additional text in the “Supplemental Provisions/Information” section.

§ 19.5 Plan of Merger

There is no uniform form of a plan of merger, nor is one provided by the secretary of state, although it must in all events conform to the requirements of TBOC sections 10.002 and 10.003. The plan of merger may also include the permissive provisions set out in TBOC section 10.004. The plan of merger can be, but is not required to be, filed with the certificate of merger and, if there is one, the certificate of formation. It is more common to provide the alternative statements set forth in section 19.6 below than to file the plan of merger with the Texas secretary of state.

§ 19.6 **Alternative to Filing Plan of Merger with Certificate of Merger**

The plan of merger must be filed with the certificate of merger *unless* the certificate of merger includes a statement certifying—

1. the name, organizational form, and jurisdiction of formation of each domestic or foreign entity that is a party to the plan of merger or that will be created as a result of the merger;
2. that the plan of merger has been approved by each party to the merger;
3. any amendments to the certificate of formation, or a statement that no amendments are to be effected by the merger;
4. that the certificate of formation of each new Texas entity to be created as a result of the merger is being filed with the Texas secretary of state as part of the certificate of merger;
5. that an executed plan of merger is on file at the principal place of business of each surviving or new domestic or foreign entity and the address of each principal place of business; and
6. that a copy of the plan of merger will be furnished without cost by each surviving, acquiring, or new domestic or foreign entity to any owner of any domestic entity that is a party to the merger and, for a merger with multiple surviving domestic or foreign entities, to any creditor or obligee of the parties to the merger if a liability or obligation is then outstanding.

See Tex. Bus. Orgs. Code § 10.151. The certificate of merger also must contain a statement that the plan of merger was approved as required by the laws of the jurisdiction of formation of each organization that is a party to the merger and by

the governing documents of those organizations. Tex. Bus. Orgs. Code § 10.151.

Providing the alternative certified statements in lieu of the plan of merger is often more cost-efficient and convenient, given the number of pages and attachments that are typically required in a plan of merger.

§ 19.7 **Special Merger Provisions under TBOC**

TBOC sections 10.006 and 10.152 apply to mergers between parent and subsidiary entities and permit a short-form merger of (1) one or more subsidiary entities into a parent, (2) a parent into a subsidiary, or (3) one or more subsidiaries and the parent into another subsidiary. To effect this merger, the parent organization must own “at least 90 percent of the outstanding ownership or membership interests of each class and series of each of one or more subsidiary organizations,” and at least one of the parties to the merger must be a domestic entity. Tex. Bus. Orgs. Code § 10.006(a). A domestic subsidiary organization is not required to take any action to approve a short-form merger, but the governing authority of a surviving parent organization must approve the merger by a resolution. The short-form merger provisions do not apply if a subsidiary organization is a partnership.

§ 19.8 **Abandonment of Merger; Delayed Effectiveness**

TBOC sections 10.201 through 10.203 govern the abandonment of a merger that has been approved but has not yet become effective. A certificate of merger is effective on filing with the secretary of state unless the effectiveness is delayed pursuant to TBOC section 4.052. In instances of delay, the merger is effective either at a time and date specified on the certificate of merger or upon the occurrence of an event (delayed effective condition). If there is a delayed effective condition, the entity is

required to submit a statement with the Texas secretary of state within ninety days from the initial filing affirming the effective condition has been either satisfied or waived. The mere failure to file this statement, however, does not result in an abandonment of the filed document.

The abandonment of the merger is subject to any contractual rights and must be abandoned in the manner set forth in the plan of merger. If the plan of merger does not contain a provision regarding the procedures for abandoning the plan of merger, the merger must be abandoned in the manner determined by the governing authority of the party abandoning the merger transaction. An abandonment of a merger need not have the approval of the owners of any of the parties to the merger. If the merger has been filed with the secretary of state, the domestic entity must file a statement of abandonment signed on behalf of each entity that signed the certificate of merger in accordance with TBOC section 4.057.

§ 19.9 Common Errors to Avoid in Merger Documents

Generally, the most frequent reason for rejection of a merger document is the failure to set forth all necessary recitations in the certificate of merger or alternative statements.

§ 19.9:1 Omission of Authorization Statement

The most frequent omission in a certificate of merger is the authorization statement. Although a merger document drafted to contain the alternative statements certifies that the plan of merger has been approved, the certificate of merger also must include a statement that “the plan of merger has been approved as required by the laws of the jurisdiction of formation of each organization that is a party to the merger and by the governing documents of those organizations.” Tex. Sec’y of State, Form 622—General

Information (Certificate of Merger—Combination Merger) 3 (2015) (form 19-3 in this manual).

§ 19.9:2 Errors Concerning Effective Date of Merger

The formation and existence of an entity created pursuant to a plan of merger commences on the effectiveness of the merger. Tex. Bus. Orgs. Code § 3.006(b). Consequently, the certificate of formation of an entity created pursuant to the plan of merger cannot have an effective date (or delayed effective date and time) that differs from the effective date of the plan of merger.

§ 19.9:3 Restatement of Certificate of Formation Must Be Filed Separately

While TBOC section 10.004 permits a plan of merger to include amendments to the governing documents of a domestic filing entity, a domestic entity may not effect a restatement of its certificate of formation with only a plan of merger. The restatement of a certificate of formation has a different legal effect than an amendment to one. If the surviving entity wants to amend and restate its certificate of formation, it may do so by submitting a separate filing instrument immediately after filing the certificate of merger.

§ 19.10 Additional Considerations

§ 19.10:1 Withdrawal of Registered Foreign Entities

If a merging entity is a foreign entity that was registered to do business in Texas, it is wise to withdraw that entity’s registration with the Texas secretary of state. See section 21.13 in this manual for guidance on foreign withdrawals.

§ 19.10:2 Name Availability

Although the Texas secretary of state has relaxed the name availability guidelines in recent years, it is still common to run into issues when naming a new domestic entity created as a result of a merger or when changing the name of a surviving entity. For example, if a merging entity is a foreign entity that was registered to do business in Texas and a surviving or new entity wants to use the name previously used by that merging foreign entity, the surviving or new entity cannot use that name until the foreign entity withdraws its registration in Texas. In all events, if a surviving entity wants to change its name or a new entity is created as a result of the merger, you must still conduct a name availability search to ensure the desired name is available.

PRACTICE TIP: If a desired name appears to be unavailable, it is common either to file an assumed name certificate allowing the applicable entity to use a name that is otherwise unavailable or to obtain a consent to use of similar name from the entity that already has the desired name. It is best to run name availability searches (either on SOSDirect or by calling the Texas secretary of state) before beginning the merger process to avoid unnecessary delays caused by name availability issues. You may also file a name reservation to ensure that a currently available name will still be available when you file the merger documents.

§ 19.10:3 Updating Governing Documents

It is common to conduct a review of the governing documents of each surviving entity in connection with a merger transaction and to make any necessary revisions and updates. This is especially important when a surviving entity is changing entity type or is otherwise materially changing its structure. You must also ensure that governing documents are prepared for any new

entity that is created as a result of the merger transaction.

§ 19.10:4 Special Rules for Certain Entities

Note that special provisions in the TBOC apply to partnership mergers (TBOC section 10.009) and nonprofit corporation and nonprofit association mergers (TBOC section 10.010).

§ 19.11 Effect of Merger

Once a merger has been approved by the secretary of state and the merger transaction is complete, then, *inter alia*—

1. the separate existence of each domestic entity that is a party to the merger, other than a surviving or new domestic entity, ceases;
2. all rights, titles, and interests to all real estate and other property owned by each party to the merger is allocated to and vested in, subject to any existing liens or other encumbrances, one or more of the surviving or new entities as provided in the plan of merger;
3. all liabilities and obligations of each entity that is a party to the merger are allocated to one or more of the surviving or new entities as provided in the plan of merger;
4. any proceeding pending by or against an entity that is a party to the merger may be continued as if the merger did not occur; alternatively, the surviving or new entity that received a liability, obligation, asset, or right under the plan of merger that is associated with the proceeding may be substituted in the proceeding;
5. the governing documents of each surviving domestic entity are amended or

restated to the extent provided in the plan of merger; and

6. each new entity whose certificate of formation is included in the plan of

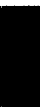
merger is formed as a domestic entity under the TBOC as provided in the plan of merger.

See Tex. Bus. Orgs. Code § 10.008(a).

Chapter 20

Conversions

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Chapter 20

Conversions

§ 20.1 Overview of Conversions under Texas Law

Texas allows a business to convert from one entity type to another, including converting from a foreign (non-Texas) entity to a Texas entity or from a Texas entity to a foreign entity. The process for both intrastate and interstate conversions is similar, although the formation documents for the new entity will differ based on the converted entity structure.

The Texas Business Organizations Code (TBOC) defines “converting entity” as the business that existed before conversion and “converted entity” as the resulting entity after conversion. Tex. Bus. Orgs. Code § 1.002(11), (12). A foreign business is a “non-code organization.” Tex. Bus. Orgs. Code § 1.002(56).

The conversion process generally requires several steps:

1. prepare—
 - a. the plan of conversion,
 - b. the certificate of conversion, and
 - c. the formation and organizational documents for the converted entity type;
2. have the conversion authorized by the required number of owners of the converting entity;
3. obtain tax clearance (if the converting entity is a Texas entity); and
4. either—

- a. for an intrastate conversion, file the certificate of conversion followed by the formation document for the converted entity or
- b. for an interstate conversion, file the certificate of conversion and formation document first in the state where the converted entity will be formed and then, once formed, file the certificate of conversion in the state where the converting entity previously existed.

PRACTICE TIP: Additional hurdles exist for conversions of non-code organizations. Texas, and many other states, requires that the conversion process for both Texas and the non-code entity’s formation state be followed. Tex. Bus. Orgs. Code § 10.102. This may mean the documents required (certificate of conversion, plan of conversion, and so on) will be slightly different. Many practitioners find it easiest to include the information required by Texas as well as any other state from the outset, to ensure ease of filing. In some jurisdictions, a conversion from one state to another is called a domestication rather than a conversion.

§ 20.2 Applicability of Conversion Provisions of TBOC

The conversion provisions in TBOC chapter 10 are applicable to all entities (other than unincorporated nonprofit associations). The secretary of state imposes one filing fee for the certificate of conversion and another fee for filing the certificate of formation for the converted domestic entity. *See* Tex. Bus. Orgs. Code § 4.151.

The conversion provisions do not apply when a domestic limited liability company changes its purpose to become a professional limited liability company and vice versa. A certificate of amendment is sufficient to effectuate this change, because the term “limited liability company” includes professional limited liability companies, so the type of entity does not change.

An unincorporated nonprofit association is not authorized to engage in a statutory conversion under TBOC chapter 10. TBOC section 252.017 specifically provides that the only statutes that apply to an unincorporated nonprofit association are chapters 1 and 4 and, if a nonprofit association has designated an agent for service of process, the provisions of subchapter E of chapter 5. Accordingly, a Texas unincorporated nonprofit association cannot convert to a nonprofit corporation.

§ 20.3 Conversion Process

§ 20.3:1 Plan of Conversion

Although the elements of a plan of conversion are dictated by TBOC section 10.103, the plans have no uniform form. Often the plan will be contained in resolutions, a written action, or meeting minutes. The owners of the converting entity (whether shareholders, members, partners, or something else) must approve the conversion, as well as the management group (whether board of directors, managers, member-managers, or partners). The certificate of conversion and the formation document for the new entity will typically be included in the plan of conversion. As with a plan of merger, the plan of conversion can but is not required to be filed with the certificate of conversion. See forms 20-16 through 20-19 in this manual for sample plans of conversion for different entity types.

§ 20.3:2 Certificate of Conversion

The certificate of conversion is the document filed with the Texas secretary of state. The certificate must include the statements required under TBOC section 10.154(b)(1), including the following:

1. the name, organizational form, and jurisdiction of formation of the converting entity;
2. the name, organizational form, and jurisdiction of formation of the converted entity;
3. that the plan has been approved;
4. the address of the principal place of business of the converting entity, and that the plan is on file there;
5. the address of the principal place of business of the converted entity, and that the plan will be on file there during and after conversion; and
6. that a copy of the plan will be furnished by the converted entity on written request and without cost to any shareholder or comparable interest holder of the converting or converted entity.

See Tex. Bus. Orgs. Code § 10.154(b)(1).

The certificate of conversion also must contain a statement that the approval of the plan of conversion was duly authorized by all action required by the laws under which the converting entity was incorporated, formed, or organized and by its constituent or governing documents. *See* Tex. Bus. Orgs. Code § 10.154(b)(2). The Texas secretary of state provides standard certificate of conversion forms that include the required information. These forms are specific to entity types, from conversion of a corporation to a general partnership to conversion of a foreign entity to a domestic entity. See section 20.4 below for further information.

While the organizational documents of the converted entity are included as part of the plan of conversion and are not required to be filed independently, the statutes anticipate that separate organizational documents for any domestic entity formed by conversion (other than general partnerships) will be submitted with the certificate of conversion.

Where an entity is converting from a Texas entity to a non-code entity, the conversion will also need to comply with the rules and requirements of the new jurisdiction's laws, including the formation documents.

§ 20.3:3 Franchise Taxes; Tax Clearance

The secretary of state cannot accept a certificate of conversion if the required franchise taxes of the converting entity have not been paid. *See* Tex. Bus. Orgs. Code § 10.156. If a converting entity is a taxable entity under the franchise tax statutes and the converting entity is not in good standing for purposes of the conversion, the secretary of state must refuse to file the conversion. See section 20.8 below for additional guidance regarding tax issues.

PRACTICE TIP: A printout obtained from the comptroller of public accounts' online franchise account status search is not sufficient evidence of tax clearance pursuant to TBOC section 10.156. A practitioner must obtain a certificate of account status from the comptroller or include a statement in the certificate of conversion that the converted entity will be liable for the payment of all franchise taxes (see Texas comptroller form 05-359, available via <https://comptroller.texas.gov/forms>).

§ 20.4 Secretary of State Conversion Forms

As noted above, the secretary of state publishes certificate of conversion forms that comply with

the provisions of the TBOC. These forms are not designed for cross-statutory transactions and are entity-specific: SOS Forms 631 through 634 are used when the converting entity is a for-profit or professional corporation; SOS Forms 635 through 638 are used when the converting entity is a limited liability company; and SOS Forms 641 through 644 are used when the converting entity is a limited partnership. SOS Form 645 may be used to convert a professional association to a professional limited liability company. A domestic general partnership, including a general partnership that is registered as a limited liability partnership, seeking to convert to a domestic filing entity may use SOS Form 646. (See forms 20-1 through 20-14 in this manual.)

The secretary of state does not have a form for the specific purpose of "domesticating" or converting a foreign entity to a Texas entity of the same type. The secretary of state has, however, a summary (SOS Form 647, form 20-15 in this manual) that includes general information and a checklist for a conversion of this nature.

The secretary of state conversion forms do not include a plan of conversion or a certificate of formation for a converted entity that is to be a domestic filing entity. When drafting the certificate of formation of a converted entity that is a domestic filing entity, include the additional statements required under TBOC section 3.005(a)(7) and see the plan-of-conversion forms 20-16 through 20-19 in this manual.

§ 20.5 Abandonment of Conversion

Subchapter E of chapter 10 of the TBOC governs the abandonment of a conversion that has been approved but has not become effective. A certificate of conversion is effective on filing with the secretary of state, unless the effectiveness of the transaction is delayed pursuant to TBOC section 4.052.

The abandonment of the transaction is subject to any contractual rights and would be abandoned in the manner set forth in the plan of conversion. If the plan does not contain a provision regarding the procedures for abandoning the plan, the plan of conversion would be abandoned in the manner determined by the governing authority of the domestic entity. *See* Tex. Bus. Orgs. Code § 10.201. An abandonment of a conversion need not have the approval of the domestic entity's owners or members. If the conversion has been filed with the secretary of state, the domestic entity must file a statement of abandonment in accordance with TBOC section 4.057, the general provision applicable to any filing instrument filed with a delayed effectiveness. *See* Tex. Bus. Orgs. Code § 10.202. The abandonment must be signed on behalf of each entity that signed the certificate of conversion. *See* Tex. Bus. Orgs. Code § 4.057(c).

PRACTICE TIP: On filing of a conversion instrument with a delayed effective date or condition, the secretary of state records the filing and takes necessary action at that time to create new entities, change the status of converting entities, and change names when amended by the filed document. Consequently, when a statement of abandonment is submitted as permitted by law, the secretary must determine whether the former name of any entity is available or whether the organizational documents need to be amended to change the name. *See* Tex. Bus. Orgs. Code § 4.057(e); 1 Tex. Admin. Code § 79.82. If the likelihood exists that the parties might abandon a transaction, consider filing a name reservation for the prior or former name of a merged entity that may need to be reactivated.

When the effectiveness of a document is conditioned on the occurrence of a future event other than the passage of time (delayed effective condition), the entity is required to file a statement with the secretary of state within ninety days from the date of execution of the instrument to effect the transaction evidenced by the filing.

See Tex. Bus. Orgs. Code §§ 4.052–.055. Failure to file the statement regarding the satisfaction or waiver of the delayed effective condition does not effect an abandonment of the filed document. To abandon the document, a certificate of abandonment must be filed with the secretary of state.

§ 20.6 Common Errors to Avoid in Conversions

§ 20.6:1 Submitting Certificate of Formation before Certificate of Conversion

Submitting a certificate of formation to form the domestic “converted” entity before submission of the certificate of conversion may require the practitioner to redraft and restructure the transaction as a merger with the newly created entity as the surviving entity. However, for interstate conversions, practitioners should remember to submit the certificate of conversion and the formation documents to the new state in which the converted entity will be formed before submitting the certificate of conversion to the old state (converting entity state).

§ 20.6:2 Failure to Include Additional Statements in Formation Document

Failure to include additional statements relating to the conversion in the formation document of the converted entity is a frequent error. The formation document of a converted entity must include—

1. a statement that the entity is being formed pursuant to a plan of conversion and
2. the name, address, date of formation, and prior form of organization and jurisdiction of organization of the converting entity.

See Tex. Bus. Orgs. Code § 3.005(a)(7).

PRACTICE TIP: If the converted entity is a domestic filing entity and you are using an SOS form for the converted entity, the additional required statements may be set forth in the “Supplemental Provisions/Information” section of the promulgated form.

§ 20.6:3 Failure to Ensure Tax Clearance for Converting Entity

Avoid failing to ensure tax clearance for the converting entity (if a Texas entity) either by including the appropriate tax certificate or by including a statement relating to the payment of such taxes by the converted entity.

§ 20.6:4 Failure to Comply with Other Jurisdiction’s Requirements and to File Documents in Correct Order

For conversions that involve a foreign jurisdiction, both the Texas and the foreign jurisdiction’s requirements must be met. It also should be noted that, for a conversion from one state to another, generally the conversion paperwork should be filed in the new state first, followed by the correct paperwork in the old state to convert out and terminate the entity in the old state. Failure to follow the proper sequencing can result in delays in processing with one state or another.

PRACTICE TIP: Some jurisdictions call certain types of conversions “domestications” and others “conversions.” Practitioners should always check the governing statute of the jurisdiction to confirm which type of conversion or domestication requirements apply based on the type of conversion.

PRACTICE TIP: Conversions are not a common type of filing, and many states do not allow them to be filed online. Additionally, state agen-

cies handling filings (for example, secretaries of state) are not always familiar with filing requirements. Allow extra time for questions as well as for mailing or hand delivering the conversion documents. If you are unsure how to file the required documents or if documents were rejected, call the secretary of state, department of state, or similar organization.

§ 20.7 Tax Results of Converting Entities

For domestic as well as foreign entities, a conversion may result in a change in tax status. A CPA should be consulted during the conversion process to advise on any tax consequences for the entity.

PRACTICE TIP: Conversions of companies taxed as partnerships to corporations and vice versa present particular challenges because this type of transaction may be deemed a sale and liquidation of the company (with income tax due on the gain to the owners). In some situations, from a tax perspective, forming a new entity, a merger, or both may be the better choice than converting the company.

§ 20.8 Problems with Tax Clearance

Failure to obtain tax clearance for the transaction is a common reason for rejection. Texas law requires the secretary of state to determine that a merging or converting entity subject to franchise tax has paid all taxes due before the merger or conversion can be accepted and filed. See Tex. Bus. Orgs. Code § 10.156. The secretary of state will require tax certification or the alternative statement for merging and converting taxable entities. Tax clearance also is a condition for acceptance under the merger and conversion provisions of prior law. The requirement for tax clearance is not limited to specific entity types; consequently, this requirement applies to any taxable entity that is a nonsurviving party to the merger or the converting entity in a conversion.

The secretary of state suggests two alternatives to avoid last-minute refusal to file the merger or conversion for tax reasons:

1. Submit the merger or conversion with a certificate of account status from the comptroller of public accounts for each merging or converting filing entity that is a taxable entity. If the merging or converting entity is a passive entity, provide a statement or certification from the comptroller that the entity is not a taxable entity. A certificate of account status provided for a merging or converting entity must specifically indicate that it is for the purpose of merger or conversion.
2. Include in the plan of merger or conversion, or in the alternative statement provided in lieu of a plan of merger or conversion, a statement that one or more of the surviving, new, or acquiring entities will be responsible for the payment of all fees and franchise taxes and that all of such surviving, new, or acquiring domestic or foreign entities will be obligated to pay any fees and franchise taxes if not timely filed.

§ 20.9 **Corrections to Mergers or Conversions**

The usual correction to a filing instrument concerns only a single entity. In the case of a filing instrument that involves multiple entities as parties to the transaction evidenced by the instrument, however, certain procedures should be taken to facilitate processing.

Only one correction filing is required to correct errors in a merger, conversion, or exchange filing instrument. If the practitioner is using SOS Form 403 (form 4-6 in this manual) to submit the certificate of correction, the best practice is to enter the name and file number of any surviving entity to a merger, the converted entity in a conversion, or the acquiring entity in an interest exchange in the field that asks for the name of the entity submitting the correction instrument.

The certificate of correction should also include the name and file number of any merging filing entities, the name and file number of the converting entity, or the name of each acquired domestic filing entity, as applicable. The additional names and file numbers may be included on the form itself or provided as an attachment to the form. Failure to include the names and file numbers of the other filing entities will not be grounds for refusal of the correction instrument; however, providing the additional information saves the secretary of state time and ensures that the correction instrument is properly indexed.

Even though the correction instrument may apply to multiple entities, the certificate of correction need not be signed by all parties that were required to sign the instrument being corrected. It is sufficient if the correction instrument is signed on behalf of a surviving party to the merger, the converted entity in a conversion, or an acquiring entity in the interest exchange.

The fee for filing the certificate of correction is \$15 regardless of the number of entities that may be affected by the correction instrument.

Chapter 21

Terminations

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Chapter 21

Terminations

§ 21.1 Overview of Terminations under Texas Law

Chapter 11 of the Texas Business Organizations Code (TBOC) governs winding up and terminating a domestic entity.

Winding up of a domestic entity is required on:

- (1) the expiration of any period of duration specified in the domestic entity's governing documents;
- (2) a voluntary decision to wind up the domestic entity;
- (3) an event specified in the governing documents of the domestic entity requiring the winding up, dissolution, or termination of the domestic entity, other than an event specified in another subdivision of this section;
- (4) an event specified in other sections of this code requiring the winding up or termination of the domestic entity, other than an event specified in another subdivision of this section; or
- (5) a decree by a court requiring the winding up, dissolution, or termination of the domestic entity, rendered under this code or other law.

Tex. Bus. Orgs. Code § 11.051.

§ 21.2 Expiration of Stated Period of Duration

An entity perpetually exists unless otherwise stated in its governing documents. If a period of duration is provided, the entity must wind up by the specified end time or date or within the specified number of months or years. *See* Tex. Bus. Orgs. Code § 1.002(69–a).

§ 21.3 Voluntary Decision to Wind Up Entity

Entity owners, members, or the governing authority can determine to wind up the business voluntarily. *See* Tex. Bus. Orgs. Code § 11.001(6).

§ 21.3:1 Voluntarily Winding Up Limited Liability Company

Unless the operating agreement or certificate of formation provides otherwise, approving a voluntary winding up of a limited liability company requires a majority vote of all of the members or, if it has no members, all of the managers. Tex. Bus. Orgs. Code § 101.552

§ 21.3:2 Voluntarily Winding Up General Partnership

Unless the partnership agreement provides otherwise, a voluntary decision to wind up a general partnership “requires the express will of a majority-in-interest of the partners who have not assigned their interests.” Tex. Bus. Orgs. Code § 11.057(a). “Majority-in-interest” means (with respect to either a specified group of partners or to all the partners, depending on the circum-

stance) partners who own more than 50 percent of the current percentage interests in the partnership, or who own more than 50 percent of other interest in the profits of the partnership. *See* Tex. Bus. Orgs. Code § 11.057(f). Unless the partnership agreement provides otherwise, if a general partnership has specified a period of duration, is for a particular undertaking, or provides in its partnership agreement for winding up on the occurrence of a specified event, then a voluntary winding up requires the express will of all of the partners. *See* Tex. Bus. Orgs. Code § 11.057(b).

§ 21.3:3 Voluntarily Winding Up Limited Partnership

Unless otherwise stated in the partnership agreement, all partners must provide written consent to voluntarily wind up a limited partnership. *See* Tex. Bus. Orgs. Code § 11.058(a).

§ 21.3:4 Voluntarily Winding Up Corporation

If a corporation has not commenced business and has not issued any shares, a majority of the organizers or board of directors may wind up the business by providing written consent. *See* Tex. Bus. Orgs. Code § 21.502(2).

Once a corporation has issued shares and commenced business, however, the process of voluntarily winding up becomes more involved. Unless the corporate agreement provides otherwise, voluntarily winding up requires the consent of all shareholders, or, alternatively, the board of directors must adopt a resolution and submit it for approval at an annual or special meeting of the shareholders, and the shareholders must approve the resolution by a two-thirds affirmative vote in accordance with TBOC sections 21.502(2) and 21.364.

PRACTICE TIP: Before convening a meeting to vote on a voluntary decision to wind up an entity, review the TBOC to verify the procedures

regarding notice and voting for the specific entity type, and review the governing documents of the entity. If the governing documents diverge from the procedures outlined in the TBOC, ensure that they do so in an unambiguous manner. Create a detailed record that includes the notice, agenda, minutes of the meeting, and any proxies. Ensure that all documents including consents, minutes, and proxies are signed by the required owner, duly authorized corporate officer, or both.

§ 21.4 Event Specified in Governing Documents

The governing documents of an entity will control the winding up and termination. If the terms of the governing documents are different than the TBOC, the terms set forth in the governing documents will control. The documents will be viewed under the law of contracts.

PRACTICE TIP: When drafting organizational documents, discuss with your clients the process for terminating the entity. To better prepare the terms for termination, discuss what events may lead to the termination. If there is the potential for a deadlock (for example, due to fifty-fifty ownership interest), provide for terms that specifically address how to settle any impasses.

PRACTICE TIP: Draft the documents in a clear and precise manner to avoid any ambiguities. Take steps to ensure that all entity documents contain the same terms regarding winding up and terminating the entity.

§ 21.5 Events Specified in Other Sections of TBOC Requiring Winding Up, Dissolution, or Termination

The provisions in TBOC sections 11.056 through 11.059 set forth entity-specific provisions regarding winding up or termination.

§ 21.5:1 Winding Up Limited Liability Company—TBOC Section 11.056

A limited liability company is required to wind up upon the termination of the continued membership of the last remaining member. If, however, within ninety days after the date of termination, a legal representative or successor of the last remaining member agrees to both continue the company and become a member of the company, winding up is not required. Alternatively, the legal representative or successor may designate another person to become a member of the company. If the designee agrees, winding up is similarly not required. *See Tex. Bus. Orgs. Code § 11.056.*

§ 21.5:2 Winding Up General Partnership—TBOC Section 11.057

A general partnership is required to wind up under the following circumstances:

- (1) in a general partnership for a particular undertaking, the completion of the undertaking, unless otherwise provided by the partnership agreement;
- (2) an event that makes it illegal for all or substantially all of the partnership business to be continued . . . ; and
- (3) the sale of all or substantially all of the property of the general partnership outside the ordinary course of business, unless otherwise provided by the partnership agreement.

Tex. Bus. Orgs. Code § 11.057(c).

A partnership agreement may also require the partnership to wind up on the occurrence of a specified event or at the end of a stated period of

duration. To begin the process, a partner, other than a partner who has agreed not to withdraw, must provide notice to the partnership requesting a windup. Winding up then occurs on the sixtieth day after the date on which the partnership receives that notice, or a later date as specified by the request, unless a majority-in-interest of the partners denies the request for winding up or agrees to continue the partnership. *See Tex. Bus. Orgs. Code § 11.057(d).*

§ 21.5:3 Winding Up Limited Partnership—TBOC Section 11.058

Unless otherwise provided by the partnership agreement, the withdrawal of a general partner of a domestic limited partnership is an event requiring the entity to wind up. *See Tex. Bus. Orgs. Code § 11.058(b).* A limited partnership is also required to wind up when no limited partners remain. *See Tex. Bus. Orgs. Code § 11.058(c).*

§ 21.5:4 Winding Up Corporation—TBOC Section 11.059

A corporation's certificate of formation or corporate bylaws must specify any events that require winding up, dissolution, or termination. *See Tex. Bus. Orgs. Code § 11.059.*

§ 21.6 Court Decree Requiring Winding Up, Dissolution, or Termination of Domestic Entity

A domestic entity, or the owner or member of the entity, may apply for a court to supervise the process of winding up. The court may then either (1) supervise winding up the entity itself; (2) appoint someone to wind up the entity; or (3) make any order, direction, or inquiry necessary to facilitate winding up the entity. *See Tex. Bus. Orgs. Code § 11.054.*

The court will also intervene in circumstances of involuntarily winding up an entity. These circumstances result when the attorney general determines that issues exist with the entity under TBOC section 11.301 and the entity has not cured these issues within thirty-one days of notice. *See* Tex. Bus. Orgs. Code § 11.303. The attorney general may instigate an action for termination of an entity, and a court may require winding up if the court finds any of the following problems:

- (1) the filing entity or its organizers did not comply with a condition precedent to its formation;
- (2) the certificate of formation of the filing entity or any amendment to the certificate of formation was fraudulently filed;
- (3) a misrepresentation of a material matter has been made in an application, report, affidavit, or other document submitted by the filing entity under this code;
- (4) the filing entity has continued to transact business beyond the scope of the purpose of the filing entity as expressed in its certificate of formation; or
- (5) public interest requires winding up and termination of the filing entity because:
 - (A) the filing entity has been convicted of a felony or a high managerial agent of the filing entity has been convicted of a felony committed in the conduct of the filing entity's affairs;
 - (B) the filing entity or high managerial agent has engaged in a persistent

course of felonious conduct; and

- (C) termination is necessary to prevent future felonious conduct of the same character.

Tex. Bus. Orgs. Code § 11.301(a).

§ 21.7 Procedures for Winding Up

The owners, members, managers, or other governing bodies of an entity must begin the process of winding up as soon as reasonably practicable following a triggering event. First, the entity must cease conducting business except as necessary to wind up. *See* Tex. Bus. Orgs. Code § 11.052(a)(1). If the entity is not a general partnership, it must notify each known claimant of the windup in writing. *See* Tex. Bus. Orgs. Code § 11.052(a)(2). It is important that an entity comply with this requirement. Under TBOC section 11.356, a terminated entity continues for only three years after termination for the purpose of pursuing a claim. Therefore, any unraised claims will extinguish if not raised. *See* Tex. Bus. Orgs. Code § 11.356(a)(2). Also see section 21.8 in this chapter below. After providing notice of claims, the entity must collect and sell any entity property that has not been distributed in kind to the entity's owners or members and perform any other action required to complete and terminate the entity. *See* Tex. Bus. Orgs. Code § 11.052(a).

The entity continues to exist until winding up is complete, and it may therefore pursue any legal actions. *See* Tex. Bus. Orgs. Code § 11.052(b). An entity may continue its business for a limited period, including delaying the property distribution, to avoid unreasonable property or business losses. *See* Tex. Bus. Orgs. Code § 11.053(d).

PRACTICE TIP: Be sure to work with all of the entity's advisors, including accountants, to determine all claimants.

During the process of winding up, an entity shall distribute and use entity property to discharge all of its liabilities and obligations. If the property is insufficient to release all of the entity's liabilities and obligations, the entity shall distribute the property as equitably as possible to satisfy its liabilities and obligations, including those owed to owners or members, other than for distributions. *See* Tex. Bus. Orgs. Code § 11.053(b). Any assets that are distributable to creditors or owners who are unknown or cannot be found after the exercise of reasonable diligence must be reduced to cash and deposited with the Texas comptroller in a special account to be maintained by the comptroller. The money must be accompanied by a statement to the comptroller with the name of the creditor or owner, the last known address, the amount of each creditor's or owner's portion of the money, and any other information that the comptroller may reasonably require. *See* Tex. Bus. Orgs. Code § 11.352.

After discharging the liabilities and obligations, "the domestic entity shall distribute the remainder of its property, in cash or in kind, to the domestic entity's owners according to their respective rights and interests." Tex. Bus. Orgs. Code § 11.053(c). When distributing the remainder of its property, it is important that the entity follows all liquidation procedures set forth in the operating agreement.

In addition to the above requirements for winding up, the entity will need to close any bank accounts; cancel (or sell or transfer, if applicable) any business licenses, permits, and assumed names; file final tax returns with the IRS and Texas comptroller; and withdraw/cancel registration from states in which it is registered.

PRACTICE TIP: It is a good idea to maintain a cash reserve and prepay business insurance for three years after the entity has terminated to cover any contingent liabilities.

§ 21.8 Limited Continued Existence and Claims Extinguishment

An entity continues to exist for three years after termination only for the following purposes:

1. to prosecute an action or proceeding brought by the entity, or to defend an action or proceeding brought against the entity;
2. to allow the survival of any existing claims;
3. to hold title to any property remaining after termination, or that is collected by the entity after termination, and to liquidate that property;
4. to distribute property or its proceeds; and
5. to settle any final affairs.

See Tex. Bus. Orgs. Code § 11.356(a).

If a terminated entity brings legal action on an existing claim before the end of the three-year period, or if a third party brings such an action against the entity during that time, and the claim was not otherwise extinguished, the entity will survive for the duration of the action until all judgments, orders, and decrees have been fully executed and all property has been distributed. *See* Tex. Bus. Orgs. Code § 11.356(c).

Once an entity has terminated its existence, it may not continue conducting business beyond these limited purposes unless it files for reinstatement (SOS Form 811, form 4-4 in this manual). *See* Tex. Bus. Orgs. Code § 11.356(b). Also see section 21.11 in this chapter below.

§ 21.9 Procedures to Revoke or Cancel Dissolution

An entity that is winding up voluntarily may revoke its decision to terminate. Revocation is completed in the manner specified in the TBOC

for the type of entity and must be done before the termination of an entity is effective. *See* Tex. Bus. Orgs. Code § 11.151(a). If winding up is triggered by a specified event, the entity has a year from the first anniversary of the date of the event to cancel the termination. *See* Tex. Bus. Orgs. Code § 11.152(a). A windup triggered by the expiration of a specified period of duration may be canceled within three years after the expiration of the period of duration by an amendment to the entity's governing documents. *See* Tex. Bus. Orgs. Code § 11.152(b). In the case of a limited liability company, a voluntary decision to wind up may be revoked by a majority vote of all members unless otherwise provided in the entity's governing documents. *See* Tex. Bus. Orgs. Code § 101.552(a). In the case of a manager-managed limited liability company that has not yet admitted members, a majority of the managers may revoke their decision to wind up the limited liability company. *See* Tex. Bus. Orgs. Code § 101.552(a).

§ 21.10 Termination

Upon the completion of the winding up procedure, the entity will need to obtain a certificate of account status for dissolution or termination issued by the Texas comptroller indicating that the entity has paid all taxes under title 2 of the Texas Tax Code (see Texas comptroller form 05-359, available via <https://comptroller.texas.gov/forms>). To obtain this form, the entity must have paid all delinquent taxes and have filed a final tax return. Upon receipt of the certificate of account status, the entity will submit two signed copies of the certificate of termination (SOS Form 651, form 21-1 in this manual) and the certificate of account status to the secretary of state. Upon receipt, the secretary of state will formally terminate the entity.

§ 21.11 Reinstatement of Terminated Entity

A terminated entity may be reinstated if—

1. the entity terminated by mistake;
2. the entity's governing body did not approve the termination as required by the TBOC;
3. the entity did not fully complete the process of winding up; or
4. the entity must legally exist to—
 - a. assign or convey entity property,
 - b. release or settle any claims or liabilities,
 - c. take legal action, or
 - d. sign an agreement or legal instrument.

See Tex. Bus. Orgs. Code § 11.201(a).

Reinstatement must be done before the third anniversary of the termination date. *See* Tex. Bus. Orgs. Code § 11.202(a). To be reinstated, an entity must obtain approval from the entity's owners, members, or other governing body in the manner provided by the TBOC provisions for that specific entity type. *See* Tex. Bus. Orgs. Code § 11.202(b). The entity shall then file a certificate of reinstatement (SOS Form 811, form 4-4 in this manual). TBOC section 11.202(d) requires the certificate of reinstatement to include—

1. the entity's name and filing number,
2. the effective date of the entity's termination,
3. a statement that the entity's governing body has approved the reinstatement as required under the TBOC, and
4. the registered agent's name and address.

The entity must also file a tax clearance letter from the comptroller stating all franchise tax liabilities have been satisfied. *See* Tex. Bus. Orgs. Code § 11.202. Reinstatement is effective upon approval by the entity's governing body. *See*

Tex. Bus. Orgs. Code § 11.204. The entity then continues as though the termination never occurred. *See* Tex. Bus. Orgs. Code § 11.206.

§ 21.12 Involuntary Termination by Secretary of State

The secretary of state may terminate an entity's existence if the entity fails to file required reports, pay required fees, or maintain a registered agent or registered office in Texas. If the secretary of state finds one of these deficiencies, it shall notify the entity and give it an opportunity to cure. The entity then has ninety days to correct the failure, or the secretary of state will terminate the entity. *See* Tex. Bus. Orgs. Code § 11.251.

PRACTICE TIP: Upon the creation of an entity, notify your clients in writing of the obligation to maintain a registered agent and to file the franchise taxes. Texas Tax Code section 171.255 provides that if the privileges of a corporation are forfeited for failure to file franchise tax reports, the corporation shall be denied the right to sue or defend in state court, and each director or officer of the corporation is liable for the debt of the corporation. This statute also applies to limited liability companies.

An involuntarily terminated entity can be reinstated by the secretary of state if the issues that led to the involuntary termination no longer existed when the termination became effective or if the entity corrects the failures that led to the termination, including paying any fees or penalties, and files a certificate of reinstatement. *See* Tex. Bus. Orgs. Code § 11.253. In addition to a certificate of reinstatement fulfilling the requirements stated in section 21.11 above, the entity must provide a statement that it has corrected the circumstances that led to the involuntary termination (SOS Forms 801 and 811, forms 4-3

and 4-4 in this manual, respectfully). The entity must also file any required amendments to the certificate of formation and a tax clearance letter from the comptroller confirming that all franchise tax liabilities have been satisfied. *See* Tex. Bus. Orgs. Code § 11.253(c).

If the filing entity is reinstated before the third anniversary of the involuntary termination date, the entity is treated as though the termination never occurred. *See* Tex. Bus. Orgs. Code § 11.253(d).

§ 21.13 Withdrawal by Foreign Entity

A foreign entity may withdraw its registration from the state at any time by filing a certificate of withdrawal (SOS Form 608, form 21-3 in this manual). TBOC section 9.011 states that a certificate of withdrawal must include—

1. the entity's name as registered in Texas,
2. the entity type,
3. the entity's formation jurisdiction and the principal office address,
4. that the entity is no longer transacting business in Texas,
5. that the entity—
 - a. revokes the registered agent's authority to accept service of process in Texas and
 - b. consents to the secretary of state accepting service of process on behalf of the foreign entity for any legal action that arose while the foreign entity was authorized to transact business in Texas,

6. the entity's forwarding address where it may receive any service of process accepted by the Texas secretary of state, and
7. an affirmation that the entity paid any money due to the state.

The certificate of withdrawal must be accompanied by a certificate of account status stating that all taxes have been filed and paid (see Texas comptroller form 05-359, available via <https://comptroller.texas.gov/forms>). See Tex. Bus. Orgs. Code § 9.001.

Part VII

Ancillary Agreements



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Trademarks and Service Marks

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Chapter 22

Trademarks and Service Marks

§ 22.1 State vs. Federal Registration

The commentary in this chapter addresses trademark and service mark registration in the state of Texas. For federal registration of trademarks and patents, refer to the Trademarks and Patents sections, respectively, of the United States Patent and Trademark Office website, www.uspto.gov. For copyright registrations, refer to the United States Copyright Office website, www.copyright.gov.

§ 22.2 Definitions

Trademarks identify tangible goods. A trademark is a word, name, symbol, or device, or any combination of those terms, used by a person to identify and distinguish the person's goods, including a unique product, from the goods manufactured or sold by another, and indicate the source of the goods, regardless of whether the source is unknown. Tex. Bus. & Com. Code § 16.001(10).

Service marks identify services. A service mark is a word, name, symbol, or device, or any combination of those terms, used by a person to identify and distinguish the services of one person, including a unique service, from the services of another, and indicate the source of the services, regardless of whether the source is unknown. The term also includes the titles, character names used by a person, and other distinctive features of radio or television programs, regardless of whether the titles, character names, or programs advertise the sponsor's goods. Tex. Bus. & Com. Code § 16.001(8).

The word *mark* is often used generally to refer to both trade and service marks. *See* Tex. Bus. & Com. Code § 16.001(5).

PRACTICE TIP: Trade and service marks are commonly referred to as brand names, logos, or slogans. Trade names, on the other hand, are terms used only to identify a business organization, rather than to distinguish the goods or services provided by the business, and are not registrable. *See* Tex. Bus. & Com. Code § 16.001(9).

§ 22.3 Registration of Marks

Marks used in connection with the sale of goods or provision of services in Texas may be registered with the secretary of state. *See* Tex. Bus. & Com. Code § 16.051. The secretary of state has promulgated certain forms designed to meet statutory requirements and facilitate filings with the office. However, use of the forms is permissive, and applicants may draft their own application as long as they provide all required information in the application. *See* Tex. Bus. & Com. Code § 16.052. The registration of a mark with the secretary of state expires on the fifth anniversary of the date of registration. Tex. Bus. & Com. Code § 16.059. *See* SOS Forms 901 through 904 (forms 22-1 through 22-4 in this chapter).

PRACTICE TIP: The secretary of state provides standard forms that practitioners can use to file a trademark or service mark application. Use of the forms is recommended but not mandatory. The secretary of state's office recommends that applicants mail, rather than fax, applications for trademarks and service marks

to the Secretary of State, P.O. Box 13697, Austin, TX 78711-3697. A cover letter with the applicant's phone number should accompany the application, along with payment by check or, if payment by credit card is desired, SOS Form 807 (form 3-7 in this manual). Once the application is submitted, along with the necessary documents, it undergoes an examination process. Upon approval, the secretary of state mails a certificate of registration to the applicant. See Tex. Bus. & Com. Code §§ 16.053, 16.058.

§ 22.4 Effect of Registration

The registration of a mark with the secretary of state creates a statewide priority of rights in the mark against any other person who subsequently adopts the same or a confusingly similar mark. Registration also provides “constructive notice” to all persons in the state of Texas of the priority of the registered mark and provides the owner with certain procedural advantages when the owner seeks judicial relief for infringement. See Tex. Bus. & Com. Code §§ 16.060, 16.102(b), (c), 16.104. For these reasons, it is beneficial for an owner of a mark who does business in Texas to register a mark with the secretary of state.

Chapter 23
Ancillary Agreements

*There are no practice notes for this chapter.
This chapter's forms start on page 1091.*



Forms

I INTRODUCTION TO BUSINESS ENTITIES

CHAPTER 1 ETHICS; CONSIDERATIONS IN REPRESENTATION

There are no forms for this chapter.

CHAPTER 2 CHOICE OF ENTITY

There are no forms for this chapter.

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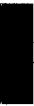
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Form 3-1

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Consent to Use of Similar Name
(SOS Form 509)**

Form 3-1

**General Information
(Consent to Use of Similar Name)**

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney.

Commentary

A proposed name for an entity can be similar to an existing name only if the holder of the existing name provides notarized consent. Tex. Bus. Orgs. Code § 5.053. Existing names include the names of active Texas filing entities, the names and fictitious names of active registered foreign filing entities, reserved names, and registered names.

This form can be used by the holder of an existing name to consent to the use of a similar name as the name of a filing entity or foreign filing entity for the purpose of submitting a filing instrument to the secretary of state. Use of this form is permissive. Consent can be given in any written format, but the signature of the person providing consent must be notarized. A proposed name cannot be “the same as” an existing name, even if the holder of the existing name consents.

The holder of an existing name is not required to give consent. Consent does not authorize the use of a name in Texas in violation of a right of another under the Trademark Act of 1946, as amended (15 U.S.C. Section 1051 et seq.); Chapter 16 or 71, Business & Commerce Code; or common law. The secretary of state does not enforce these rights. Once the secretary of state files an instrument based on written consent to the use of a similar name, consent cannot be withdrawn. The secretary of state cannot enforce any private agreements or conditions the parties may have entered into regarding consent to use of the similar name. *Questions about consent should be addressed to a private attorney.*

Texas Administrative Code, title 1, part 4, chapter 79, subchapter C sets out the rules for determining whether names are the same, distinguishable on the record, or available with consent. These rules may be viewed at www.sos.state.tx.us/tac/index.shtml.


Instructions for Form

- Item 1: Enter the name of the entity or individual who holds the existing name.
- Item 2: Enter the proposed name.
- Execution: The form must be signed by the person who holds the existing name; if the existing name is held by an entity, an individual who is authorized to act on behalf of the entity must sign the form. The signed consent must be notarized.

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- Submission: Submit the form with the relevant filing instrument. *Do not submit separately from the relevant filing instrument.* If written consent is not submitted with the relevant filing instrument, the secretary of state will not be able to take the consent into consideration.

Revised 05/19

<p>Form 509 (Revised 05/19)</p> <p>Submit with relevant filing instrument.</p> <p>Filing Fee: None</p>	 <p>Consent to Use of Similar Name</p>	
---	---	--

(1) _____
Name and file number of the entity or individual who holds the existing name on file with the secretary of state

consents to the use of

(2) _____
Proposed name

as the name of a filing entity or foreign filing entity in Texas for the purpose of submitting a filing instrument to the secretary of state.

(3) The undersigned certifies to being authorized by the holder of the existing name to give this consent. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: _____

 Signature of Authorized Person

 Name of Authorized Person (type or print)

 Title of Authorized Person, if any (type or print)

State of _____

County of _____

This instrument was acknowledged before me on _____ by _____
 (date) (name of authorized person)

(Seal) _____
 Notary Public's signature

Form 3-2

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Application for Reservation or Renewal of Reservation
of an Entity Name
(SOS Form 501)**

Form 3-2

Form 501—General Information
(Application for Reservation or Renewal of Reservation of an Entity Name)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

Sections 5.101 to 5.106 of the Texas Business Organizations Code (BOC) govern the reservation of a name of a corporation, professional association, cooperative association, limited liability company, limited partnership or other filing entity.

Duration: An entity name may be reserved for a period of 120 days. A name reservation may be renewed by filing a new application during the 30-day period preceding the expiration of the current reservation.

Instructions for Form

- **Entity Name:** Set forth the entity name to be reserved. Although an organizational designation is not required for filing the name reservation, the organizational designation, if applicable, must be included in the certification of formation or registration. Appropriate organizational designations are shown in the table below.

Entity Type	Appropriate Organizational Designations							
For-profit Corporation	Corporation	Incorporated	Company	Limited	Corp.	Inc.	Co.	Ltd.
Nonprofit Corporation	Use of an organizational designation is not required for a nonprofit corporation.							
Professional Corporation	The same as for-profit corporations as well as Professional Corporation or abbreviation P.C.							
Professional Association	Professional Association	Association	Associated	Associates		Assoc. or Assn.	P.A.	
Cooperative Association	Cooperative	Coop	Co-Op					
Limited Liability Company	Limited Liability Company	Limited Company	L.L.C.	L.C.		Ltd. Co.		
Professional Limited Liability Company	Professional Limited Liability Company	P.L.L.C.						
Limited Partnership	Limited Partnership	Limited	L.P.	Ltd.				

Abbreviations may be used with or without punctuation.

Section 5.102 of the BOC and the secretary of state's name availability rules provide that a proposed name cannot be reserved if it is the same as, deceptively similar to, or similar to that of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-

mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary determination. Also note that the preclearance of a name or the issuance of a certificate of reservation or formation under a name does not authorize the use of a name in violation of another person's rights to the name.

- **Entity Type:** A name may be reserved by a person intending to organize a Texas corporation, professional association, limited liability company or limited partnership, or a person intending to register a foreign filing entity to transact business in Texas. Although this form is designed to be used by different types of entities, you must indicate the specific entity type to which the name reservation is to apply. This selection facilitates the review of the entity name as a name chosen for one specific entity type may imply or indicate an unlawful purpose for another entity type.
- **Applicant Name and Address:** Specify the name of the person for whom the reservation is made. If the name is being reserved by an existing corporation, limited partnership, limited liability company or other organized legal entity, select and complete option A. If an individual is reserving the name, please select and complete option B. Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.).


Once the application for reservation is filed, the name reservation will be recorded exclusively in the name of the applicant or the applicant's transferee if a notice of transfer is filed with the appropriate fee.

- **Execution:** The applicant or applicant's attorney or agent must sign the application for name reservation. Before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*
- **Payment and Delivery Instructions:** The filing fee for an application for name reservation is **\$40**. The filing fee for the renewal of an existing name reservation is **\$40**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **Withdrawal:** A registrant may withdraw the reservation of a name before the expiration of the reservation period by filing a notice of withdrawal to cancel the name reservation. There is no fee for filing the notice of withdrawal.

Revised 05/11

<p>Form 501 (Revised 05/11) Return in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX 512 463-5709 Filing Fee: \$40</p>	<p style="font-size: small;">This space reserved for office use.</p>  <p>Application for Reservation or Renewal of Reservation of an Entity Name</p>
---	--

Entity Name to be Reserved
 The name must contain an appropriate organizational designation for the type of entity for which the name is to be reserved.

New application Renewal
 If renewal, date and file number for reservation being renewed. Date: _____ File No. _____
dd/mm/yyyy

The undersigned applicant requests that the following entity name be reserved or renewed for a period of one hundred twenty (120) days:

Entity Type
 If the entity is a filing entity not indicated below, check the box for "other" and specify the entity type in the space provided.

The reservation of an entity name is to be used for the following type of entity (choose only one)

- | | | |
|--|--|--|
| <input type="checkbox"/> Domestic For-profit Corporation | <input type="checkbox"/> Domestic Professional Corporation | <input type="checkbox"/> Foreign Limited Liability Co. |
| <input type="checkbox"/> Foreign For-profit Corporation | <input type="checkbox"/> Foreign Professional Corporation | <input type="checkbox"/> Domestic Limited Partnership |
| <input type="checkbox"/> Domestic Nonprofit Corporation | <input type="checkbox"/> Professional Association | <input type="checkbox"/> Foreign Limited Partnership |
| <input type="checkbox"/> Foreign Nonprofit Corporation | <input type="checkbox"/> Domestic Limited Liability Co. | <input type="checkbox"/> Other _____ |

Applicant Name
 (Choose and complete either A or B.)

A. The applicant is an organized entity by the name of:

OR

B. The applicant is an individual by the name of:

<i>First Name</i>	<i>M. I.</i>	<i>Last Name</i>	<i>Suffix</i>

Applicant Address

<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: _____

Signature of applicant, applicant's attorney or agent

Form 3-3

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Assumed Name Certificate
(SOS Form 503)**

Form 3-3
Form 503—General Information
(Assumed Name Certificate)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A domestic or foreign corporation, limited liability company, limited partnership, limited liability partnership, or other foreign filing entity that regularly conducts business or renders a professional service in this state under a name other than its legal name (the name stated in its certificate of formation or comparable document) must file an assumed name certificate with the secretary of state. (Texas Business & Commerce Code [TBCC] § 71.103).

Effect of Filing: The effect of filing is to give notice to the public that the entity is conducting business under that name. The filing of an assumed name shall not constitute actual use of the assumed name for determining priority of name; nor does the filing of assumed name give the registrant any right to use the name when contrary to the common law or statutory right of unfair competition, unfair trade practices, common law copyright or similar law (TBCC § 71.157). Since the filing is a notice filing, the secretary of state does not have the authority to review the name of the certificate to determine if the filing conflicts with another name on file with this office.

Changes to Information: There is no procedure for an amendment to or correction of an assumed name certificate. If there is a material change in the information on the certificate, a new certificate should be filed (TBCC § 71.152). The new certificate should be filed within 60 days after the occurrence of the events which necessitate the filing. An event that causes the information contained in a certificate to become materially misleading includes a change in the name or form of business of the assumed name registrant.

Duration: The assumed name certificate shall be effective for a term not to exceed ten years from the date the certificate is filed and may be renewed by filing a new certificate within six months of the expiration of the original certificate (TBCC § 71.151). A registrant may abandon the assumed name certificate before the expiration of the period of duration by filing an abandonment of the certificate (Form 504).

Noncompliance: The TBCC in sections 71.201 through 71.203 provides both civil and criminal penalties for failure to file the assumed name certificate.

Legislative Change: HB 3609, effective September 1, 2019, was enacted by the 86th Legislature and amended chapter 71 of the Business & Commerce Code to eliminate the county-level filing requirement for a corporation, limited liability company, limited partnership, limited liability partnership, or other foreign filing entity that conducts business under an assumed name.

Instructions for Form

- **Item 1—Assumed Name:** The assumed name certificate must state the assumed name under which the business or professional service is or is to be conducted. An entity may conduct business or professional services under multiple assumed names, but a separate assumed name certificate must be filed for each assumed name. *Please note that if the name entered as the assumed name in item 1*

is *exactly* the same as the legal name of the entity on file with the secretary of state, the certificate will be rejected for failing to provide an assumed name.

- **Item 2—Entity Name:** The assumed name certificate must contain the legal name of the entity as contained in its certificate of formation or comparable document filed with the secretary of state. An incorporated entity, such as a bank or trust company, whose organizational documents are not filed with the secretary of state, would set forth the legal name of the entity as contained in its organizational documents.
- **Items 3 and 4—Type of Entity and File Number:** Identify the type of entity that is filing the assumed name. If there is not a check box that applies to the entity, check “other” and then specify the type of entity in the space provided. It is recommended that the file number, if any, assigned by the secretary of state be provided to facilitate processing of the document.
- **Item 5—Jurisdiction:** The certificate must state the jurisdiction of formation of the entity filing the assumed name certificate.
- **Item 6—Principal Office Address:** Provide the street or mailing address of entity’s principal office.
- **Item 7—Period of Duration:** An assumed name certificate is effective for a term not to exceed a period of ten years from the date of filing the certificate. Check the applicable box to specify the duration which the entity determines should be the duration of the filing of the assumed name certificate. The entity may opt to make the duration the maximum period of ten years, a period of less than ten years or until a date certain which date is not more than ten years from the date of filing.
- **Item 8—County or Counties in which the Assumed Name Used:** The assumed name certificate is required to state the counties in which the assumed name will be used. If the entity will potentially use the assumed name in all counties in Texas, check the box for “All.” If the entity wishes to exclude certain counties but will use the assumed names in most counties, check the box for “All counties with the exception of the following counties” and list the excluded counties. If the entity will only conduct business in specific counties, check the box for “Only the following counties” and list those specific counties.
- **Execution:** A certificate filed with the secretary of state shall be executed by an officer, general partner, member, manager, representative of or attorney in fact for the corporation, limited partnership, limited liability partnership, limited liability company, or foreign filing entity. A certificate executed by an attorney in fact shall include a statement that the attorney in fact has been duly authorized in writing by the principal to execute the certificate. Please review the form carefully. *Pursuant to section 71.203, a person commits an offense under section 37.10, Penal Code, if the person intentionally or knowingly signs or directs the filing of an assumed name certificate that the person knows contains a materially false statement.*
- **Payment and Delivery Instructions:** The filing fee for an assumed name certificate filed with the secretary of state is **\$25**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 08/19

**Form 503
(Revised 08/19)**

Return in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512 463-5709
Filing Fee: \$25



This space reserved for office use.

Assumed Name Certificate

Assumed Name

1. The assumed name under which the business or professional service is, or is to be, conducted or rendered is: _____

Entity Information

2. The legal name of the entity filing the assumed name is: _____

State the name of the entity as currently shown in the records of the secretary of state or on its organizational documents, if not filed with the secretary of state.

3. The entity filing the assumed name is a: (Select the appropriate entity type below.)

- For-profit Corporation
- Nonprofit Corporation
- Professional Corporation
- Professional Association
- Other _____
- Limited Liability Company
- Limited Partnership
- Limited Liability Partnership
- Cooperative Association

Specify type of entity. For example, foreign real estate investment trust, state bank, insurance company, etc.

4. The file number, if any, issued to the entity by the secretary of state is: _____

5. The state, country, or other jurisdiction of formation of the entity is: _____

6. The entity's principal office address is: _____

Street or Mailing Address

City State Country Postal or Zip Code

Period of Duration

7a. The period during which the assumed name will be used is 10 years from the date of filing with the secretary of state.

OR

7b. The period during which the assumed name will be used is _____ years from the date of filing with the secretary of state (not to exceed 10 years).

OR

7c. The assumed name will be used until _____ (not to exceed 10 years).
mm/dd/yyyy

County or Counties in which Assumed Name Used

8. The county or counties where business or professional services are being or are to be conducted or rendered under the assumed name are:

All counties

All counties with the exception of the following counties: _____

Only the following counties: _____

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and also certifies that the person is authorized to sign on behalf of the identified entity. If the undersigned is acting in the capacity of an attorney in fact for the entity, the undersigned certifies that the entity has duly authorized the undersigned in writing to execute this document.

Date: _____

Signature of a person authorized by law to sign on behalf of the identified entity (see instructions)

Form 3-4

Because the registered agent must consent to serve in writing, the best practice is to maintain the consent in the corporate or LLC records. See Tex. Bus. Orgs. Code § 5.201.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Acceptance of Appointment and Consent to Serve as
Registered Agent
(SOS Form 401-A)**

Form 3-4

Form 401-A—General Information
Acceptance of Appointment and Consent to Serve as Registered Agent

The attached form is promulgated by the secretary of state and may be used to evidence the acceptance and consent of a person appointed as the registered agent of an entity. *This form and the information provided are not substitutes for the advice and services of an attorney.*

Commentary

A domestic filing entity and a foreign filing entity registered to do business in Texas are required to continuously maintain a registered agent and a registered office address in Texas. A registered agent must be: 1) an individual resident of Texas; or 2) an organization, other than the organization to be represented, that is registered or authorized to do business in Texas. The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office address may not be solely the address of a company that provides mailbox services or telephone answering service (BOC § 5.201).

House Bill 1787, effective January 1, 2010, amended subchapter E of chapter 5 of the Texas Business Organizations Code (BOC) to establish the requirement that a person appointed or named as an entity's registered agent must have consented, in a written or electronic form, to serve in that capacity.

Consent: The appointment of a person as registered agent by an organizer or managerial official of an entity is an affirmation by the organizer or managerial official that the person has consented to serve in the capacity of registered agent. In addition, before the sale, acquisition, or transfer of a majority-in-interest or majority interest of the outstanding ownership or membership interests of a represented entity, the governing authority of the entity must verify whether the person named as the registered agent of the entity prior to the sale, acquisition, or transfer has consented to continue to serve the represented entity in that capacity.

Form: Section 5.201(b) requires that a person who is to be named as the registered agent of a represented entity in a registered agent filing must consent, in a written or electronic form, to serve in that capacity. A registered agent filing is defined by section 5.200(1) and includes any filing instrument that designates or appoints a registered agent or that effects a change or correction to the registered agent such as a certificate of formation, certificate of amendment, or statement of change of registered agent.

Section 5.201(b) also requires the secretary of state to develop the form of the consent. The consent of a registered agent need not be on a prescribed form or contain all the statements found on the attached promulgated form; however, a written or electronic consent to serve as registered agent should contain:

- a. the name of the represented entity;
- b. an express statement that the person designated consents to serve as the entity's registered agent;
- c. the name of the person designated as registered agent;
- d. the signature of the registered agent; and
- e. the date of execution.

Execution of Consent: If the person named as registered agent is an individual, the individual designated must sign the consent. If the person named as registered agent is not an individual, the consent would be signed by an individual authorized to accept the appointment as registered agent on behalf of the organization named as registered agent.

Filing Not Required: The signed consent of the registered agent should be sent to and retained by the represented entity.

Unless otherwise required by the provisions of the BOC or other law applicable to the represented entity, the consent of the registered agent is not required to be submitted or included as part of a registered agent filing. However, a registered agent filing that includes the written consent of the person designated will be retained in the records of the secretary of state as part of the document.

Permissive Filing: A consent of registered agent that is submitted separately for purposes of filing with the secretary of state will be indexed in the filing history of the represented entity if the consent is accompanied by the fee imposed under chapter 4 of the BOC for the filing of an instrument for which a fee is not expressly provided. The fee is **\$15**, unless the consent is submitted on behalf of a nonprofit corporation or cooperative association. The fee for a nonprofit corporation or cooperative association is **\$5**. The consent may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701.

Rejection of Appointment: A person who has been named as the registered agent of an entity without the person's consent is not required to perform the duties of a registered agent (BOC § 5.206). In addition, a person who has been designated as a registered agent without the person's consent may file a rejection of the appointment with the secretary of state. On filing, the rejection of appointment will terminate the appointment of the registered agent and registered office. Failure to appoint or maintain a registered agent and registered office may result in the involuntary termination of a domestic filing entity or the revocation of a foreign filing entity's registration to transact business in Texas.

Changes by a Registered Agent: A registered agent that changes its name or that changes its address as the address of the entity's registered office should notify the represented entity of the change and file a statement of change with the secretary of state. (Form 408)

A person may resign as the registered agent of an entity by providing notice to the represented entity and the secretary of state. Notice to the secretary of state must be given before the 11th day after the date notice is given to the entity. On compliance with the notice requirements, the appointment of the registered agent and registered office terminate. However, this termination is not effective until the 31st day after the date the secretary of state receives notice (BOC § 5.204(d)).

Changes by a Represented Entity: The failure of a domestic or foreign filing entity to maintain a registered agent and registered office address in Texas may result in the involuntary termination of the domestic filing entity or in the revocation of the foreign entity's registration. Therefore, it is important that an entity file a statement of change of registered agent and/or registered office (Form 401) with the secretary of state to appoint a new registered agent when the person named as registered agent will no longer serve in that capacity or when the registered office address of the entity changes.

False or Fraudulent Filings: Please note that the liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that designates and appoints a person as the registered agent of an entity without that person's consent (BOC § 5.207).

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

Revised 12/09

Form 401-A

Form 401-A
(Revised 12/09)



**Acceptance of Appointment
and
Consent to Serve as Registered Agent
§5.201(b) Business Organizations Code**

The following form may be used when the person designated as registered agent in a registered agent filing is an individual.

<u>Acceptance of Appointment and Consent to Serve as Registered Agent</u>		
I acknowledge, accept and consent to my designation or appointment as registered agent in Texas for		
<i>Name of represented entity</i>		
I am a resident of the state and understand that it will be my responsibility to receive any process, notice, or demand that is served on me as the registered agent of the represented entity; to forward such to the represented entity; and to immediately notify the represented entity and submit a statement of resignation to the Secretary of State if I resign.		
x:	_____	_____
	<i>Signature of registered agent</i>	<i>Printed name of registered agent</i> <i>Date (mm/dd/yyyy)</i>

The following form may be used when the person designated as registered agent in a registered agent filing is an organization.

<u>Acceptance of Appointment and Consent to Serve as Registered Agent</u>		
I am authorized to act on behalf of _____		
<i>Name of organization designated as registered agent</i>		
The organization is registered or otherwise authorized to do business in Texas. The organization acknowledges, accepts and consents to its appointment or designation as registered agent in Texas for:		
<i>Name of represented entity</i>		
The organization takes responsibility to receive any process, notice, or demand that is served on the organization as the registered agent of the represented entity; to forward such to the represented entity; and to immediately notify the represented entity and submit a statement of resignation to the Secretary of State if the organization resigns.		
x:	_____	_____
	<i>Signature of person authorized to act on behalf of organization</i>	<i>Printed name of authorized person</i> <i>Date (mm/dd/yyyy)</i>

Form 3-5

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Rejection of Appointment
(SOS Form 428)**

Form 3-5
Form 428—General Information
(Rejection of Appointment)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A person designated as the registered agent of an entity *on or after January 1, 2010* must consent in a written or electronic form to serve as the entity's registered agent. Section 5.205 of the Texas Business Organizations Code (BOC) permits a person named as an entity's registered agent to terminate the appointment as registered agent when the designation or appointment was made without that person's consent. On acceptance of the rejection of appointment by the secretary of state, the appointment of that person as registered agent and the designation of the registered office terminate. On termination of the appointment, the secretary of state will notify the entity of its need to designate or appoint a new registered agent and registered office.

A person appointed before January 1, 2010 or a person who consented to act as an entity's registered agent at the time of the person's appointment would resign as agent by following the procedures of section 5.204 of the BOC. Use **Form 402** rather than this form to resign as registered agent.

Instructions for Form

- **Items 1-2—Entity Information:** The rejection of appointment must contain the legal name of the entity for which the person filing the rejection is shown as the registered agent. It is recommended that the file number assigned to the entity by the secretary of state be provided to facilitate processing of the document.
- **Item 3—Statement of Rejection of Appointment:** *A rejection of appointment applies to an appointment made on or after January 1, 2010.* By signing the rejection of appointment, a person is certifying that the person did not consent to serve as the represented entity's registered agent on the date on which the filing instrument designating that person as registered agent took effect.
- **Execution:** The rejection of appointment must be signed by the person named as the entity's registered agent. The rejection of appointment need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*
- **Payment and Delivery Instructions:** There is no filing fee for a rejection of appointment.

Submit the completed form in duplicate. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed. In addition, the secretary of state will notify an organizer or a managerial official of the entity of the termination of the appointment and the necessity of designating a new registered agent and office.

Form 428
Revised (01/10)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: No fee



This space reserved for office use.

Rejection of Appointment

The undersigned person, currently listed in the records of the secretary of state as the registered agent authorized to receive service of process for the entity named below, submits this rejection of appointment.

Entity Information

1. The name of the entity for which the undersigned is designated as registered agent is:

State the name of the represented entity as currently shown in the records of the secretary of state.

2. The file number issued by the secretary to the entity is: _____

Statement of Rejection of Appointment

3. The undersigned certifies that the person did not consent to serve as the registered agent of the entity named above on the date on which the registered agent filing in which the person is named as registered agent took effect.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: _____

Signature of person rejecting appointment as agent

Printed or typed name of person rejecting appointment as agent

Form 3-6

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Application for Registration of an Entity Name
(SOS Form 502)**

Form 3-6

**Form 502—General Information
(Application for Registration of an Entity Name)**

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

Sections 5.151 to 5.154 of the Texas Business Organizations Code (BOC) govern registration of entity names. The following organizations may register their names: (1) any organization authorized to do business in Texas as a bank, trust company, savings association or insurance company, or (2) any foreign filing entity not registered to do business in Texas.

Duration: The registration of a name is effective for one year unless the entity files an earlier written notice of withdrawal. An application for registration of an entity name may be renewed for successive one-year periods if an application for renewal of name registration is filed during the 90-day period preceding the expiration of that registration. The filing fee for an application to renew a name registration is **\$40**.

Instructions for Form

- **Entity Name:** Set forth the entity name to be registered. Section 5.153 of the BOC and the secretary of state's name availability rules provide that a registered name cannot be the same as, deceptively similar to, or similar to that of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state. If the applicant is a bank, trust company, savings association or insurance company that has been in continuous existence from a date that precedes the date the conflicting name is filed with the secretary of state, the registration may be filed irrespective of the conflict.

The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.html. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Also note that the preclearance of a name or the issuance of a certificate under a name does not authorize the use of a name in violation of another person's rights to the name.

- **Entity Address:** Set forth a street or mailing address at which the entity may be contacted.
- **Jurisdiction and Date of Formation:** Set forth the date of formation of the organization and the state or country under whose laws the organization is formed.
- **Nature of Business:** Set forth a brief statement of the nature of the organization's business.
- **Certification of Existence:** By signing the application for name registration the person signing is certifying that the organization validly exists and is doing business under the laws of its jurisdiction of formation. In this item, check the applicable box to indicate the nature of the organization. If no

box applies, check "other foreign organization" and specify the organization type in the space provided.

- **Execution:** A governing person or managerial official of the entity must sign the application for name registration. Before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*
- **Payment and Delivery Instructions:** The filing fee for an application for registration of an entity name is **\$40**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

EXECUTION

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: _____

Signature and title of authorized person

Form 3-7

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Payment Form
(SOS Form 807)**

Form 3-7

Payment Form
(Revised 06/16)



<p>Date of Receipt (for office use).</p>

Please select requested processing:

- Expedited Handling** (not available for Authentication Services or Trademark Applications)
(\$25 per corporate document/\$10 for copies/ \$15 for UCC)
- Regular Handling**

<p><u>SUBMITTER INFORMATION:</u></p> <p>Company/Firm or Individual Name: _____</p> <p>Street: _____</p> <p>City/State/Zip: _____</p> <p>Phone: _____ Fax: _____</p> <p>Email: _____</p>	<p style="text-align: center;"><u>INSTRUCTIONS:</u></p> <p>Mark the appropriate handling request. <i>If expedited include an email address.</i></p> <p>Submitter Information: Completely fill out information of the person/company submitting the documents.</p> <p>Document Filing Information: Completely fill out information regarding the document that is being submitted.</p> <p>Payment Information: Check the box with your method of payment. Include the necessary information. For Mastercard, Visa, and Discover, the Security Code is the last three digits in the signature area on the back of your card. For American Express, it is the four digits on the front of the card. <i>Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7% of the total fees incurred.</i></p> <p>Return To: Include a return address to which the documents should be returned. If same as submitter, check the box.</p>
<p><u>DOCUMENT FILING INFORMATION:</u></p> <p>Name listed on document: _____</p> <p>File # (if applicable): _____</p> <p>Type of Document: _____</p> <p>Number of Pages: _____</p>	
<p><u>PAYMENT INFORMATION:</u></p> <p><input type="checkbox"/> Visa <input type="checkbox"/> Mastercard <input type="checkbox"/> Discover <input type="checkbox"/> American Express <input type="checkbox"/> Check/Money Order Enclosed (no electronic check)</p> <p>Card #: _____</p> <p>Exp (MM/YY): _____ Security Code: _____</p> <p>Name on Card: _____</p> <p>Billing Address: _____</p> <p>City/State: _____</p> <p>Zip Code: _____</p> <p>Signature: _____</p>	
<p><input type="checkbox"/> Client Account Account #: _____ Name on Account: _____</p> <p><input type="checkbox"/> LegalEase Account #: 500679 - _____ - _____ Client Reference #: _____</p>	
<p><u>RETURN TO:</u> <input type="checkbox"/> Same as submitter</p> <p>Name: _____</p> <p>Street: _____</p> <p>City/State/Zip: _____</p> <p>Phone: _____ Fax: _____</p> <p>Email: _____</p>	

Form 4-1

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Change by Registered Agent to Name or Address
(SOS Form 408)**

Form 4-1

**Form 408—General Information
(Change by Registered Agent to Name or Address)**

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

This form has been promulgated to comply with the provisions of the Texas Business Organizations Code (BOC). Section 5.203 of the BOC allows a registered agent to change its name or its address by filing a statement of the change with the secretary of state. A registered agent may file a statement under this section that applies to more than one entity and includes multiple types of entities. Please note, however, that there are individual fees as well as maximum fees for each different type of entity so the statement must group the entities by type to properly calculate the fees applicable to each type of entity.

On acceptance and filing of the statement by the secretary of state, the statement is effective as an amendment to the appropriate provision of the certificate of formation of each domestic entity or the registration of each foreign filing entity listed on the statement.

This form cannot be used to change the individual or organization named as the registered agent of an entity. If the intent is to name a new registered agent, use Form 401 rather than this form.

Instructions for Form

- **Registered Agent Information:** List the name of the registered agent as it currently appears in the records of the secretary of state.
- **Entity Information:** The statement of change must contain the legal name of the entity or entities represented by the registered agent. It is recommended that the file number assigned to the represented entity by the secretary of state be provided to facilitate processing of the document. The entity type must be shown for the entity listed. An attachment to the form is provided for listing additional entities.
- **Address of Registered Agent:** Complete this section to effect a change to the registered office address maintained by the agent. The current address at which the registered agent maintained the entity's or entities' registered office must be shown. The new address at which the registered agent will maintain the entity's or entities' registered office must be shown. The registered office must be located at a street address where service of process may be personally served on the registered agent during normal business hours; the registered office may not be solely a mailbox service or a telephone answering service (BOC § 5.201).
- **New Name of Registered Agent:** Complete this section to effect a change to the name of the registered agent. It is not appropriate to file this form if a new or different person will serve as the agent. The use of this form is limited to the circumstances under which the same individual or organization continues to serve as the registered agent under a new name.
- **Notice:** Section 5.203 of the BOC requires that the registered agent give written notice of the change in name or address to each entity represented by the agent and listed on the statement of change.

The notice must be given at least 10 days before the date the statement is submitted for filing with the secretary of state. The statement of change must recite that the notice has been given as required by law.

- **Effectiveness of Filing:** A statement of change becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the instrument to take effect under option C, the entity must, within ninety (90) days of the filing of the instrument, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact.

- **Execution:** Pursuant to section 5.203(b) of the BOC the statement must be signed by the registered agent, or a person authorized to sign on behalf of the agent.

The statement of change need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The statement of change that lists a single entity is \$15. If multiple entities are listed, the fee is the number of entities times the filing fee for the type of entity. There are maximums for each group of entity types. The maximum fees are:

For-profit corporations	\$750
Limited liability companies	\$750
Limited partnerships	\$750
Professional corporations	\$750
Professional associations	\$750
Nonprofit corporations and cooperative associations	\$250

If the registered agent represents different types of entities, and maximum fees would be applicable, please consider submitting the statement of change electronically through SOSDirect (<http://www.sos.state.tx.us/corp/sosda/index.shtml>). SOSDirect will allow you to browse the SOS database to retrieve and attach an electronic file of the entities represented.

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

**Form 408
(Revised 05/11)**

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709

Filing Fee: See instructions



This space reserved for office use.

**Change by Registered Agent to
Name or Address**

Registered Agent Information

The name of the registered agent filing this statement is:

Represented Entity Information

The name of the entity represented by the registered agent is:

The file number issued to the represented entity by the secretary of state is: _____

The entity is a: (Select the appropriate entity type below.)

- For-profit Corporation
- Nonprofit Corporation
- Cooperative Association
- Limited Liability Company
- Foreign filing entity not listed above: _____
- Professional Corporation
- Professional Association
- Limited Partnership
- Limited Liability Partnership

Specify type of entity.

If the registered agent represents more than one entity, then submit a simultaneous statement of change of address/name using SOSDirect or include the names, entity type and file numbers of any additional entities on the attachment included with this form.

Change of Address of Registered Agent

(Complete this section if the registered agent is changing its address.)

The address at which the registered agent maintained the entity's registered office is:

_____ TX
Street Address City State Zip Code

The registered agent is changing its address and such address will become the registered office of the entity or entities named on this statement. The business address of the new registered office is:

_____ TX
Street Address (No P.O. Box) City State Zip Code

New Name of Registered Agent

(Complete this section if the registered agent is changing its name.)

The registered agent is changing its name and such name will become the new legal name of the registered agent of the entity or entities named on this statement. The new name of the registered agent is:

Notice

The registered agent filing this statement has give written notice of the change or changes to each entity listed on this statement at least 10 days before the statement was submitted for filing to the secretary of state.

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____

Signature of authorized person

Printed or typed name of authorized person (see instructions)

Attachment listing Additional Entities

Please list any additional entities that are represented by the registered agent to which this statement of change is applicable. *The entities must be grouped by type.* The full name and file number of each entity must be shown. Fees are calculated by number of the entities listed although there are maximum fees for each group of entities by type. Attach additional sheets if necessary. Simultaneous filing of name and address changes for a registered agent is also available through SOSDirect.

Name of Entity	File Number
Texas and Foreign For-Profit Corporations (\$15 per entity listed. Maximum fee of \$750 applies if more than 50 corporate entities are listed.)	
Texas and Foreign Limited Liability Companies (\$15 per entity listed. Maximum fee of \$750 applies if more than 50 companies are listed.)	
Texas and Foreign Limited Partnerships (\$15 per entity listed. Maximum fee of \$750 applies if more than 50 limited partnerships are listed.)	
Texas and Foreign Professional Corporations (\$15 per entity listed. Maximum fee of \$750 applies if more than 50 corporate entities are listed.)	
Texas and Foreign Professional Associations (\$15 per entity listed. Maximum fee of \$750 applies if more than 50 professional associations are listed.)	

Texas and Foreign Nonprofit Corporations (\$15 per entity listed. Maximum fee of \$250 applies if more than 16 corporate entities are listed.)	

Foreign Limited Liability Partnerships (\$15 per entity listed. Maximum fee of \$750 applies if more than 50 limited liability partnerships are listed.)	

Form 4-2

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Change of Registered Agent/Office
(SOS Form 401)**

Form 4-2

**Form 401—General Information
(Change of Registered Agent/Office)**

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

This form has been promulgated to comply with the provisions of the Texas Business Organizations Code (BOC) regarding changes to registered agent and office of entities filed with the secretary of state. A nonprofit corporation formed for a special purpose under a statute or code other than the BOC may be required to meet other filing requirements than those imposed by the BOC. This form may not comply with the requirements imposed under the special statute or code governing the special purpose corporation. Please refer to the statute or code governing the special purpose corporation for specific filing requirements.

Section 5.202 of the BOC specifies the procedure to be followed when a Texas or foreign filing entity that is subject to the BOC desires to make changes to its registered office or registered agent. Since an entity may be terminated or its registration revoked for failure to maintain a registered office and agent, any change should be submitted promptly. Changes to registered office and agent may also be included as part of a certificate of amendment or restated certificate, as an amendment in a plan of merger, and in the certificate of formation for a converted entity. Use this form if the only changes to be made to the certificate of formation or registration are to the registered office or agent or both.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the statement of change. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

Unincorporated nonprofit associations, Texas financial institutions, or defense base development authorities should use form 707 rather than this form to change the statement of appointed agent.

Instructions for Form

- **Items 1-3: Entity Information:** The statement of change must contain the legal name of the entity. In addition, the name of the entity's current registered agent and current registered office address must be provided. It is recommended that the file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Item 4: Changes to Registered Office and/or Registered Agent.** Complete item 4 to effect a change to the registered agent or registered office address. The registered agent can be either (option

A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The filing entity cannot act as its own registered agent.

If the registered office is changed, complete section C. The registered office must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office address is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or a telephone answering service (BOC § 5.201).

The statement of change must recite that the street address of the registered office is the same as the registered agent's business address.

- **Statement of Approval:** As required by section 5.202(b)(6) of the BOC, the form includes a recitation that the change specified in the statement is authorized by the entity. While the statement of change has the effect of amending the entity's certificate of formation or registration, the BOC does not provide that the procedures to amend the certificate of formation are applicable. In general, the statement of change should be adopted and approved by the governing persons or by a person authorized to act on behalf of the entity.
- **Effectiveness of Filing:** A statement of change becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the instrument to take effect under option C, the entity must, within ninety (90) days of the filing of the instrument, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact.

On acceptance of the statement of change by the secretary of state, the statement is effective as an amendment to the appropriate provision of the entity's certificate of formation or the foreign filing entity's registration.

- **Execution:** Pursuant to section 4.001 of the BOC, the statement of change must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

The statement of change need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be

delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for a change of registered office/agent is **\$15**, unless the filing entity is a nonprofit corporation or a cooperative association. The filing fee for a nonprofit corporation or a cooperative association is **\$5**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

**Form 401
(Revised 05/11)**

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: See instructions

This space reserved for office use.



**Statement of Change of
Registered Office/Agent**

Entity Information

1. The name of the entity is:

State the name of the entity as currently shown in the records of the secretary of state.

2. The file number issued to the filing entity by the secretary of state is: _____

3. The name of the registered agent as currently shown on the records of the secretary of state is:

Registered Agent Name

The address of the registered office as currently shown on the records of the secretary of state is:

Street Address *City* *TX* *State* *Zip Code*

Change to Registered Agent/Registered Office

4. The certificate of formation or registration is modified to change the registered agent and/or office of the filing entity as follows:

Registered Agent Change

(Complete either A or B, but not both. Also complete C if the address has changed.)

A. The new registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The new registered agent is an individual resident of the state whose name is:

First Name *M.I.* *Last Name* *Suffix*

Registered Office Change

C. The business address of the registered agent and the registered office address is changed to:

Street Address (No P.O. Box) *City* *TX* *State* *Zip Code*

The street address of the registered office as stated in this instrument is the same as the registered agent's business address.

Statement of Approval

The change specified in this statement has been authorized by the entity in the manner required by the BOC or in the manner required by the law governing the filing entity, as applicable.

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
 - B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
 - C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____
- The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: _____

Signature of authorized person

Printed or typed name of authorized person (see instructions)

Form 4-3

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Application for Reinstatement and Request to Set Aside
Tax Forfeiture
(SOS Form 801)**

Form 4-3

**Form 801—General Information
(Application for Reinstatement and Request to Set Aside Tax Forfeiture)**

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. *This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.*

Commentary

This form may be used to complete the final step for reinstating a domestic or foreign filing entity that has been forfeited or revoked by the secretary of state under chapter 171, Tax Code. Before submitting this form, an entity seeking reinstatement must: (1) file with the comptroller of public accounts each delinquent report that is required by chapter 171; and (2) pay the tax, penalty, and interest imposed by the Tax Code and due at the time the request to set aside forfeiture is made.

Do Not Use This Form If:

- The entity was voluntarily terminated. See Form 811.
- The existence or registration was terminated or revoked by the secretary of state for a reason other than tax forfeiture. See Forms 811, 814.
- The entity was terminated or revoked by court order.

⌚ Time Frame for Reinstatement ⌚

The request to set aside forfeiture may be submitted at any time after forfeiture so long as the entity would otherwise have continued to exist.

Persons Authorized to Submit Application for Reinstatement

- For-profit or professional corporation: shareholder, director, or officer at the time of forfeiture.
- Professional association: shareholder, member, director, or officer at the time of forfeiture.
- Nonprofit corporation: director, officer, or member at the time of forfeiture.
- Limited liability company: member or manager at the time of forfeiture.
- Limited partnership: partner at the time of forfeiture.
- Statutory or business trust: trustee or beneficial owner at the time of forfeiture.

Registered Agent & Office Updates

Filing entities must maintain accurate registered agent and office information on file with the secretary of state. Neither tax filings nor this application for reinstatement can be used to update the registered agent and office information; rather updates to the registered agent and office require an additional filing. See Form 401.

Instructions for Form

- **Item 1—Entity Name:** Set forth the legal name of the entity as stated in its certificate of formation or registration. If the entity is a foreign filing entity that was granted authority to transact business under a different name, then also set forth the assumed name under which the foreign filing entity was registered to transact business.
- **Entity Name Availability:** The reinstatement cannot be filed if the name of the entity is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or

any name reservation or registration filed with the secretary of state. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at <http://www.sos.state.tx.us/tac/index.shtml>.

If the entity name is no longer available, the application for reinstatement must be accompanied by a letter of consent or an amendment to the entity's formation document or registration, as applicable.

- **Item 2—Secretary of State File Number:** It is recommended that the file number assigned by the secretary of state be provided to facilitate processing and ensure that the correct entity is reinstated.
- **Item 3—Date of Forfeiture/Revocation:** Provide the date of the forfeiture or revocation. If unsure, verification of the date may be obtained by calling the secretary of state at (512) 463-5555, by dialing 7-1-1 for relay services, or by sending an e-mail to corpinfo@sos.state.tx.us.
- **Item 4—Certified Statements:** Although an application for reinstatement need not be notarized, by signing the application for reinstatement, a person certifies to the statements contained in item 4 of the application. Prior to signing, please read the statements on this form carefully. In addition to the penalties imposed by law for the submission of a false or fraudulent document, a person commits an offense under section 171.363 of the Tax Code if the person is an employee, officer, or agent of a taxable entity and the person knowingly enters or provides false information on any report, return, or other document filed by the taxable entity under the provisions of chapter 171, including an application for reinstatement. An offense under section 171.363 is a felony of the third degree.
- **Tax Clearance:** A certificate of reinstatement must be accompanied by a tax clearance letter from the Texas Comptroller of Public Accounts stating that the entity has satisfied all franchise tax liabilities and may be reinstated.

Contact the Comptroller for assistance in complying with franchise tax filing requirements and obtaining the necessary tax clearance letter. The Comptroller may be contacted by e-mail at tax.help@cpa.state.tx.us or by calling (800) 252-1381 or (512) 463-4600.

- **Execution:** The application must be signed by a person who is authorized to apply for and request a reinstatement of the forfeited entity. (See "Persons Authorized to Apply" on page 1 of these instructions.)
- **Payment and Delivery Instructions:** The filing fee for an application for reinstatement is **\$75**, unless the entity is a nonprofit corporation. There is no fee for filing the reinstatement of a nonprofit corporation following a tax forfeiture. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Applicable fees for any additional filing that may be required as a condition for reinstatement (such as an amendment to change the entity's name) must be submitted together with the appropriate filing.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Form 801
(Revised 05/11)

Submit in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512 463-5709
Filing Fee: See instructions



This space reserved for office use.

**Application for Reinstatement
 And Request to Set Aside
 Tax Forfeiture**

1. The entity name is: _____

The entity is a foreign entity that was required to obtain its registration under a name that differs from the legal name stated above. The name under which the entity is registered is:

2. The file number issued to the entity by the secretary of state is: _____

3. The entity was forfeited or revoked under the provisions of the Tax Code on: _____
mm/dd/yyyy

4. The undersigned requests that the forfeiture or revocation of the entity be set aside, and certifies that:

a. The entity has filed each delinquent report that is required by chapter 171 of the Tax Code and has made payment for the tax, penalty, and interest imposed and that is due at the time of this application as evidenced by the attached tax clearance letter; and

b. On the date of forfeiture or revocation, the undersigned person was:

- an officer, director or shareholder of the above-named for-profit or professional corporation; or
- an officer, director, shareholder or member of the above-named professional association; or
- an officer, director, or member of the above-named nonprofit corporation; or
- a member or manager of the above-named limited liability company; or
- a partner of the above-named limited partnership; or
- a trustee or beneficial owner of the above-named statutory or business trust.

Additional Required Documentation or Filings

Comptroller of Public Accounts Tax Clearance Letter

Letter of Consent or Amendment to Certificate of Formation or Registration (Required when entity name is no longer available.)

Execution

The undersigned declares under penalty of perjury, and the penalties imposed by law for the submission of a materially false or fraudulent instrument, that the undersigned is authorized to make this request; that the statements contained herein are true and correct, and that tax clearance was not obtained by providing false or fraudulent information.

Date: _____

BY: _____

 Signature of authorized person (see instructions)

 Printed or typed name of authorized person

Form 4-4

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Reinstatement
(SOS Form 811)**

Form 4-4

**Form 811—General Information
(Certificate of Reinstatement)**

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

This form may be used to reinstate: (1) the existence of a domestic filing entity that has been voluntarily terminated; (2) the existence of a domestic filing entity that has been involuntarily terminated by action of the secretary of state; or (3) the registration of a foreign filing entity whose registration has been revoked by action of the secretary of state.

Do Not Use This Form If:

- The entity's existence or registration was forfeited under the Tax Code. See Form 801.
- The entity is a professional association that was terminated or revoked for failure to timely file an annual statement. See Form 814.
- The entity was terminated or revoked by court order.

⌚ Time Frames for Reinstatement ⌚

- Voluntarily Terminated Domestic Entity: Certificate of reinstatement must be filed no later than the third (3rd) anniversary of the effective date of the termination. (See part 4A of the form.)
- Involuntarily Terminated Domestic Entity: Certificate of reinstatement may be filed at any time so long as the entity would otherwise have continued to exist. However, the entity is considered to have continued in existence without interruption from the date of termination only if the entity is reinstated before the third (3rd) anniversary of the date of involuntary termination. (See 4B.)
- Revoked Foreign Entity Registration: Certificate of reinstatement must be filed no later than the third (3rd) anniversary of the effective date of the revocation. (See 4C.)

Instructions for Form

- **Item 1—Entity Name and File Number:** Set forth the legal name of the entity and the secretary of state file number. For a foreign filing entity that was registered to transact business in Texas under a different name, also set forth the assumed name under which the entity was registered.
- **Item 2—Jurisdictional Information:** To ensure that the correct entity is reinstated, the jurisdiction of organization and the entity's date of organization or registration in Texas should be provided.
- **Item 3—Date of Termination or Revocation:** Provide the effective date of the termination or revocation. In the case of a terminated domestic entity that has delayed the effectiveness of the filing of its certificate of termination, provide the effective date as stated on the certificate.
- **Item 4—Conditions for Reinstatement:** Select the grounds or conditions for reinstatement. Do not check more than one box. If unsure, verify the reason for inactive status by contacting the secretary of state at (512) 463-5555, 7-1-1 for relay services, corpinfo@sos.state.tx.us or on-line through SOSDirect. (Visit <http://www.sos.state.tx.us/corp/sosda/index.shtml> for SOSDirect information.)

4A. Reinstatement of a Texas Entity Following Voluntary Termination: Sections 11.201 and 11.202 of the BOC permit reinstatement no later than the third anniversary of the effective date of termination if the owners, members, governing persons, or other persons specified by the BOC approve the reinstatement in the manner provided by the title of the BOC governing the entity and:

- (1) the termination was by mistake or was inadvertent;
- (2) the termination occurred without the approval of the entity's governing persons when approval is required by the title of the BOC governing the entity;
- (3) the process of winding up before termination had not been completed by the entity; or
- (4) the legal existence of the entity is necessary to convey or assign property, to settle or release a claim or liability, to take an action, or to sign an instrument or agreement.

4B. Reinstatement of a Texas Entity Following Involuntary Termination: Section 11.251 of the BOC authorizes the secretary of state to involuntarily terminate a domestic filing entity, other than a domestic real estate investment trust, if the secretary finds that the entity has failed to:

- (1) file a report within the period required by law or to pay a fee or penalty prescribed by law when due and payable;
- (2) maintain a registered agent or registered office in Texas as required by law; or
- (3) pay a fee required in connection with a filing, or payment of the fee was dishonored when presented by the state for payment.

As a condition to reinstatement, the entity must correct the circumstances that led to termination and any other circumstances of the type described above, including paying any fees, interest or penalties.

4C. Reinstatement of a Foreign Entity Following Revocation: Section 9.101 of the BOC authorizes the secretary of state to revoke the registration of a foreign filing entity if the secretary finds that the entity has failed to:

- (1) file a report within the period required by law or to pay a fee or penalty prescribed by law when due and payable;
- (2) maintain a registered agent or registered office in Texas as required by law;
- (3) amend its registration when required by law; or
- (4) pay a fee required in connection with a filing, or payment of the fee was dishonored when presented by the state for payment.

As a condition to reinstatement, the entity must correct the circumstances that led to revocation and any other circumstances of the type described above, including paying any fees, interest or penalties.

- **Item 5—Registered Agent and Registered Office:** An entity requesting reinstatement must provide the secretary of state with current registered agent and registered office information. The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The entity cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

An entity that was involuntarily terminated or that had its registration revoked for failure to maintain a registered agent or registered office in Texas need not submit an additional filing to change the registered agent or registered office.

Consent: A person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the reinstatement. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal

business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Entity Name Availability:** The reinstatement cannot be filed if the entity name is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state. The administrative rules for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at <http://www.sos.state.tx.us/tac/index.shtml>.

If the entity name is no longer available or written consent for the use of the name is required but cannot be obtained, the entity must amend its certificate of formation or application for registration, as appropriate, to state an available name. The amendment must be submitted at the same time as the certificate of reinstatement.

- **Tax Clearance:** Unless the entity is a nonprofit corporation, a certificate of reinstatement must be accompanied by a tax clearance letter from the Texas Comptroller of Public Accounts stating that the entity has satisfied all franchise tax liabilities and may be reinstated.

Contact the Comptroller for assistance in complying with franchise tax filing requirements and obtaining the necessary tax clearance letter. The Comptroller may be contacted by e-mail at tax.help@cpa.state.tx.us or by calling (800) 252-1381 or (512) 463-4600.

- **Execution:** The reinstatement must be signed by a person authorized to act on behalf of the entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

The certificate of reinstatement need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** Unless the entity is a nonprofit corporation or cooperative association, the filing fee for reinstatement following an involuntary termination or revocation is **\$75**, and the filing fee for reinstatement following a voluntary termination is **\$15**. The filing fee for reinstating a nonprofit corporation or a cooperative association is **\$5**.

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees. Applicable fees for any additional filings required as a condition for reinstatement must be submitted together with the appropriate filing fee for the certificate of reinstatement.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Form 811
(Revised 05/11)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512 463-5709

Filing Fee: See instructions



Certificate of Reinstatement

This space reserved for office use.

1. The name of the entity is:

The entity is a foreign entity that was required to obtain its registration under a name that differs from the legal name stated above. The name under which the entity is registered is:

The file number issued to the filing entity by the secretary of state is: _____

2. The jurisdiction of organization of the entity is: _____
(state or country)

The entity was organized or obtained its certificate of registration on: _____
mm/dd/yyyy

3. The effective date of the entity's termination or revocation is: _____
mm/dd/yyyy

4. The condition giving rise to the termination of the entity's existence or the revocation of its registration is described below. The entity requests reinstatement under the following code provision:
(Select the appropriate box below. Do not check more than one box.)

4A. Reinstatement of a Texas Entity Following a Voluntary Termination (3 year limit)

The domestic filing entity requests reinstatement under section 11.202 of the BOC following the filing of a certificate of termination. The undersigned certifies that the conditions for reinstatement of the entity's certificate of formation are met and that the reinstatement of the filing entity has been approved in the manner provided by the Texas Business Organizations Code.

4B. Reinstatement of a Texas Entity Following an Involuntary Termination

The domestic filing entity requests reinstatement of its certificate of formation after the involuntary termination of its existence by the secretary of state pursuant to subchapter F of chapter 11 of the Code. The entity has corrected the circumstances giving rise to its involuntary termination and has taken any other action required for its reinstatement, including the payment of any fees, interest, or penalties. The undersigned certifies that the reinstatement of the filing entity has been approved in the manner required by the Texas Business Organizations Code.

4C. Reinstatement Following Revocation of Registration of a Foreign Entity (3 year limit)

The foreign filing entity requests the reinstatement of its certificate of registration after its revocation by the secretary of state pursuant to subchapter C of chapter 9 of the BOC. The entity has corrected the circumstances giving rise to its revocation and has taken any other action required for its reinstatement, including the payment of any fees, interest, or penalties.

5. The name of the entity's registered agent and the address of the entity's registered office are as follows: (Select and complete either A or B and complete C)

A. The registered agent is an organization (cannot be the entity seeking reinstatement) by the name of:

OR

B. The registered agent is an individual resident of the state whose name is set forth below:

First Name *M.I.* *Last Name* *Suffix*

C. The business address of the registered agent and the registered office address is:

Street Address *City* *State* *Zip Code*

The street address of the registered office as stated in this instrument is the same as the registered agent's business address.

Additional Documentation or Filings

Comptroller of Public Accounts Tax Clearance Letter (Required, unless entity is a nonprofit corporation.)

Amendment to Certificate of Formation or Registration (Required if entity name is no longer available.)

Other _____
(A certificate of reinstatement may be conditioned on the submission of additional filings. See instructions.)

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person

Form 4-5

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Reinstatement of a Professional Association After
Failure to File Annual Statement
(SOS Form 814)**

Form 4-5

Form 814—General Information

(Certificate of Reinstatement of a Professional Association After Failure to File Annual Statement)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A professional association may be terminated or revoked if the association fails to file the annual statement required by section 302.012 of the Texas Business Organizations Code (BOC). This form may be used to reinstate the existence of a Texas professional association or the registration of a foreign professional association that has been terminated or revoked, respectively, for failing to timely file the annual statement.

Do Not Use This Form If:

- The professional association's existence or registration was forfeited under the Tax Code. See Form 801 at: http://www.sos.state.tx.us/corp/forms_reports.shtml
- The professional association was terminated or revoked by the Secretary of State for a reason other than failure to file an annual statement. See Form 811 at: http://www.sos.state.tx.us/corp/forms_reports.shtml

🕒 Time Frames for Reinstatement 🕒

- Domestic Professional Association: A certificate of reinstatement after involuntary termination for failing to file an annual statement may be filed at any time so long as the association would otherwise have continued to exist. The association is considered to have continued in existence without interruption from the date of termination; however, only if the association is reinstated before the third (3rd) anniversary of the date of involuntary termination.
- Foreign Professional Association: An application for reinstatement after revocation for failing to file an annual statement must be filed no later than the third (3rd) anniversary of the date of revocation.

Instructions for Form

- **Item 1—Association Name and File Number:** Provide the legal name of the association and the Secretary of State file number. For a foreign professional association that was registered to transact business in Texas under a different name, also provide the assumed name under which the association was registered.
- **Item 2—Jurisdictional Information:** It is recommended that the jurisdiction of organization and the association's date of formation or registration in Texas be provided to ensure that the correct professional association is reinstated.
- **Item 3—Date of Involuntary Termination or Revocation:** Provide the effective date of the involuntary termination or revocation of the association's existence or registration.
- **Item 4—Conditions for Reinstatement:** The certificate of reinstatement must include a statement that the circumstances giving rise to the involuntary termination or revocation have been corrected. To correct the circumstances, the association must submit each delinquent annual statement (Form 803) due at the time of submission of the reinstatement. *If the reinstatement is not accompanied by each delinquent annual statement, the reinstatement must be rejected.* To verify the number of statements due, contact the Reports Unit at (512) 475-2705.

- **Item 5—Registered Agent:** A professional association that requests reinstatement is required to provide the Secretary of State with current registered agent and registered office information. *This information is required even if the information is also included in each annual statement that accompanies the reinstatement.* The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The association cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: A person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the reinstatement. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

- **Item 6—Registered Office Address:** The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service. (BOC § 5.201) A post office box is not sufficient as a registered office address unless the registered office is located in a town with a population of less than 5,000.
- **Additional Documentation and Filings:**
Tax Clearance from Comptroller of Public Accounts: A Certificate of Reinstatement must be accompanied by a tax clearance letter from the Texas Comptroller of Public Accounts stating that the filing entity has satisfied all franchise tax liabilities and may be reinstated. Contact the Comptroller for assistance in complying with franchise tax filing requirements and obtaining the necessary tax clearance letter by email at: tax.help@cpa.state.tx.us by calling (800) 252-1381 or (512) 463-4600.

Annual Statement: An annual statement (Form 803) and applicable filing fee are due at the time of reinstatement for each delinquent year. Form 803 is at: http://www.sos.state.tx.us/corp/forms_reports.shtml

Amendment to Certificate of Formation or Registration: A Certificate of Reinstatement must be accompanied by an amendment to the certificate of formation or registration if the professional association name is the same as or deceptively similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the Secretary of State. Amendment would also be required for a similar name if consent could not be obtained. The administrative rules adopted for determining entity name availability (Texas Administrative Code, Title 1, Part 4, Chapter 79, subchapter C) may be viewed at: <http://www.sos.state.tx.us/tac/index.shtml> A preliminary determination on "name availability" may be obtained by calling (512) 463-5555 or e-mail to: corpinfo@sos.state.tx.us

At the time of filing the reinstatement, if the professional association name is no longer available, or if written consent is required but cannot be obtained for the use of the name, simultaneously submit (A) a certificate of amendment to the certificate of formation to change the name of the domestic entity as a condition of reinstatement; or (B) an amended registration to state the assumed name under which the foreign entity shall transact business. The amendment (Form 424 or 406, as appropriate) and applicable filing fee (**\$150**) must be submitted at the same time as the certificate of reinstatement and annual statement(s). Forms 424 and 406 are available at: http://www.sos.state.tx.us/corp/forms_boc.shtml


Upon completing the reinstatement process of submitting all required forms, paying all applicable filing fees, and meeting all filing requirements, the status of the professional association will be changed to in existence.

- **Execution:** The reinstatement must be signed by an officer of the professional association. The reinstatement need not be notarized; however, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the Secretary of State for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Filing Fees:** The filing fee for the reinstatement (Form 814) is **(\$75)** and for each delinquent annual statement (Form 803) that must be submitted with the reinstatement is **(\$35)**. The filing fee for an amendment (Form 424 or 406) if required as a condition of reinstatement is **(\$150)**.
- **Payment Instructions:** Accepted methods of payment are: (1) a check or money order payable to the **Secretary of State**; (2) a valid American Express, Discover, MasterCard, or Visa credit card; (3) a funded LegalEase account; or (4) a prefunded Secretary of State client account. Checks and money orders must be payable through a U.S. bank or financial institution; credit card transactions are subject to a statutorily authorized convenience fee of 2.7% of the total fees incurred, if applicable. Use Form 815 at: http://www.sos.state.tx.us/corp/forms_reports.shtml to pay by credit card, LegalEase, or client account.
- **Delivery Instructions:** Submit the completed form(s) in duplicate, along with payment of the applicable filing fees, to the Secretary of State. Mail to: Secretary of State, Reports Unit, P.O. Box 12028, Austin, Texas 78711-2028; deliver to: James Earl Rudder Office Building, Reports Unit, 1019 Brazos, Suite 505, Austin, Texas 78701; or fax to: (512) 463-1423. On filing the document, the Secretary of State will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 06/11

Form 814 (Revised 06/11)	 Certificate of Reinstatement of a Professional Association After Failure to File Annual Statement	This space reserved for office use.
Submit in duplicate to: Secretary of State Reports Unit P.O. Box 12028 Austin, TX 78711-2028 Phone: (512) 475-2705 Fax: (512) 463-1423 Dial: 7-1-1 for Relay Services Filing Fee: \$75		

1. The name of the professional association is: _____

The association was required to register in Texas under the following assumed name: (if applicable)

The file number issued to the association by the secretary of state is: _____

2. The jurisdiction of organization of the association is: _____
(state or country)

The association was organized or obtained its registration on: _____
mm/dd/yyyy

3. The effective date of the association's involuntary termination or revocation is: _____
mm/dd/yyyy

4. The association certifies that the circumstances giving rise to its involuntary termination or revocation have been corrected by the submission of each annual statement due, and, further, that the association has satisfied its obligations under the Tax Code and all conditions for reinstatement have been met.

5. A. The registered agent is an organization (cannot be the entity seeking reinstatement) by the name of:

OR

B. The registered agent is an individual resident of the state whose name is:

First Name M.I. Last Name Suffix

6. The registered office address, which is identical to the business address of the registered agent in Texas, is:
(use street or building address; see Instructions)

Street Address City State Zip Code TX

Additional Documentation and Filings

- Comptroller of Public Accounts Tax Clearance Letter (Required)
- Annual Statement(s) (Include each annual statement (Form 803) and applicable filing fee(s) due at time of reinstatement.)
- Amendment to Certificate of Formation or Registration (Required only if entity name is no longer available and include applicable fee.)

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____
Signature of authorized officer

Printed or typed name of officer and title

Form 4-6

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Correction
(SOS Form 403)**

Form 4-6

Form 403—General Information
(Certificate of Correction)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

Subchapter C of chapter 4 of the Texas Business Organizations Code (BOC) governs a certificate of correction. A filing instrument that is an inaccurate record of the event or transaction evidenced by the instrument, that contains an inaccurate or erroneous statement, or that was defectively or erroneously signed, sealed, acknowledged or verified may be corrected by filing a certificate of correction (BOC §4.101). A filing instrument may be corrected to contain only those statements that the governing law authorizes or requires to be included in the original filing instrument. A certificate of correction may not alter, add, or delete a statement that by its alteration, addition or deletion would have caused the secretary of state to determine that the filing instrument did not conform to the requirements of applicable law at the time of filing (BOC § 4.102).

After the secretary of state files the certificate of correction, the filing instrument is considered to have been corrected on the date the filing instrument was originally filed with one exception. As to a person who is adversely affected by the correction, the filing instrument is considered to have been corrected on the date the certificate of correction is filed.

Instructions for Form

- **Item 1—Entity Information:** The certificate of correction must contain the legal name of the entity. *If the certificate of correction corrects the name of the entity, the name as it currently appears on the records of the secretary of state should be stated.* It is recommended that the file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Item 2—Filing Instrument to be Corrected:** Identify the filing instrument to be corrected by description and date of filing with the secretary of state. Example: “Certificate of formation filed on January 2, 2009.” If the filing instrument to be corrected is a merger, conversion or exchange, additional instructions are found on page 2 of this form.

Identification of Errors and Corrections: Corrections may be made to the entity name, registered agent name, registered office address, stated purpose, or stated duration by checking the applicable box in this section and stating, in corrected form, the portion of the instrument to be corrected. If the necessary corrections are other than those provided for by the check boxes, please use the section entitled “Identification of Other Errors and Corrections.”

Correction to Entity Name: The correction to an entity name will require the secretary of state to determine the availability of the entity name as corrected. If the entity name, as corrected, is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity (other than the entity filing the correction), or any name reservation or registration filed with the secretary of state, the correction cannot be filed (BOC § 5.053).

Correction to Registered Agent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although the consent of the person designated as registered agent is required, a copy of the written or electronic consent need not be submitted with a certificate of correction that corrects the name of the registered agent.

Please note that the designation or appointment of a person as the registered agent by an organizer or a managerial official is an affirmation that the person named as registered agent in the corrected instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010) The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent. (BOC § 5.207)

Correction to Registered Office: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Identification of Other Errors and Corrections:** This section of the form contains four text boxes that may be used to identify corrections to errors or inaccuracies in the filing instrument other than the provisions specifically described next to the check boxes in the section under "Identification of Errors and Corrections." Use the areas provided to identify by reference or description those provisions to be added, altered or deleted by the correction. If the filing instrument to be corrected was defectively or erroneously signed, sealed, acknowledged or verified, a correctly executed instrument should be attached to the form as an exhibit.
- **Statement of Correction:** This section states that the purpose of the certificate of correction is to correct inaccuracies, errors or defects consistent with section 4.103 of the BOC.
- **Correction of Merger, Conversion or Exchange:** If the filing instrument to be corrected is a merger, conversion or other instrument involving multiple entities, please include the names and file numbers for all entities which were parties to the transaction so that the secretary of state may index the certificate of correction to the record for each entity. If the space provided on page 5 of this form is not sufficient, include the information as an attachment to this form.
- **Effectiveness of Filing:** This section states the effectiveness of filing as provided in section 4.105 of the BOC.
- **Execution:** Pursuant to section 4.101(b) of the BOC, the certificate of correction must be signed by a person authorized by the BOC to sign the filing instrument to be corrected. Generally, a governing person or managerial official of the entity signs a filing instrument, including a certificate of correction.

If the correction relates to a certificate of formation, the certificate of correction would be signed by a person authorized to sign the certificate of formation. If the correction relates to a merger, conversion or exchange transaction, the certificate of correction need not be signed on behalf of each entity named in the filing instrument being corrected. In the case of a merger, the certificate of correction must be signed by a person authorized to act in regard to a surviving entity in the merger.

In the case of a conversion, the certificate of correction must be signed on behalf of the converted entity. In the case of an exchange, the certificate of correction must be signed by an acquiring entity.

The certificate of correction need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of correction is **\$15**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Form 403
(Revised 05/11)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: \$15



This space reserved for office use.

Certificate of Correction

Entity Information

1. The name of the filing entity is:

State the name of the entity as currently shown in the records of the secretary of state. If the certificate of correction corrects the name of the entity, state the present name and not the name as it will be corrected.

The file number issued to the filing entity by the secretary of state is: _____

Filing Instrument to be Corrected

2. The filing instrument to be corrected is : _____

The date the filing instrument was filed with the secretary of state: _____
mm/dd/yyyy

Identification of Errors and Corrections

(Indicate the errors that have been made by checking the appropriate box or boxes; then provide the corrected text.)

The entity name is inaccurate or erroneously stated. The corrected entity name is:

The registered agent name is inaccurate or erroneously stated. The corrected registered agent name is:

Corrected Registered Agent
(Complete either A or B, but not both.)

A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The registered agent is an individual resident of the state whose name is:

First Middle Last Name Suffix

The person executing this certificate of correction affirms that the registered agent, whose name is being corrected by this certificate, consented to serve as registered agent at the time the filing instrument being corrected took effect.

The registered office address is inaccurate or erroneously stated. The corrected registered office address is:

Corrected Registered Office Address

Street Address (No P.O. Box) City State Zip Code TX

The purpose of the entity is inaccurate or erroneously stated. The purpose is corrected to read as follows:

[Empty box for purpose correction]

The period of duration of the entity is inaccurate or erroneously stated. The period of duration is corrected to read as follows:

Identification of Other Errors and Corrections

(Indicate the other errors and corrections that have been made by checking and completing the appropriate box or boxes.)

Other errors and corrections. The following inaccuracies and errors in the filing instrument are corrected as follows:

Add Each of the following provisions was omitted and should be added to the filing instrument. The identification or reference of each added provision and the full text of the provision is set forth below.

Alter The following identified provisions of the filing instrument contain inaccuracies or errors to be corrected. The full text of each corrected provision is set forth below:

Delete Each of the provisions identified below was included in error and should be deleted.

<input type="checkbox"/> Defective Execution The filing instrument was defectively or erroneously signed, sealed, acknowledged or verified. Attached is a correctly signed, sealed, acknowledged or verified instrument.

Statement Regarding Correction

The filing instrument identified in this certificate was an inaccurate record of the event or transaction evidenced in the instrument, contained an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged or verified. This certificate of correction is submitted for the purpose of correcting the filing instrument.

Correction to Merger, Conversion or Exchange

The filing instrument identified in this certificate of correction is a merger, conversion or other instrument involving multiple entities. The name and file number of each entity that was a party to the transaction is set forth below. (If the space provided is not sufficient, include information as an attachment to this form.)

<i>Entity name</i>	<i>SOS file number</i>
<i>Entity name</i>	<i>SOS file number</i>

Effectiveness of Filing

After the secretary of state files the certificate of correction, the filing instrument is considered to have been corrected on the date the filing instrument was originally filed except as to persons adversely affected. As to persons adversely affected by the correction, the filing instrument is considered to have been corrected on the date the certificate of correction is filed by the secretary of state.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____

Signature of authorized person

Printed or typed name of authorized person (see instructions)

Form 4-7

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Statement of Event or Fact
(SOS Form 805)**

Form 4-7

Form 805—General Information
(Statement of Event or Fact)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

When a filing instrument takes effect on the occurrence of a future event or fact, other than the passage of time, the statement provided by section 4.055 of the Texas Business Organizations Code (BOC) must be filed with the secretary of state not later than the 90th day after the date the filing instrument is filed. The statement must confirm that each event or fact on which the effect of the instrument is conditioned has been satisfied or waived and state the date and time on which the condition was satisfied or waived.

If the statement required by section 4.055 of the BOC is not filed before the expiration of the prescribed time, the filing instrument does not take effect. A new filing instrument must be filed in order to effectuate the transaction (BOC § 4.056).

If the specified event or fact does not occur and is not waived, the parties to the filing instrument must sign and file a certificate of abandonment (Form 427) as provided by section 4.057 of the BOC.

Instructions for Form

- **Entity Information:** The statement of event or fact must contain the legal name of each entity that was a party to the filing instrument. It is recommended that the file number assigned by the secretary of state to the named entity or entities be provided to facilitate processing of the document.
- **Identification of Filing Instrument:** The statement must identify the filing instrument to take effect on the occurrence of a future event or fact and the date of filing of the instrument with the secretary of state.
- **Confirmation:** The statement must confirm that each event or fact on which the effect of the instrument is conditioned has been satisfied or waived. The date and time on which the condition was satisfied or waived must be set forth.
- **Execution:** A statement of event or fact must be signed on behalf of each entity that is a party to the action or transaction by a person authorized to act on behalf of the entity. Generally, a governing person or managerial official of the entity signs a filing instrument.


The statement of event or fact need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a statement of event or fact is **\$15**, unless the filing entity is a nonprofit corporation or a cooperative association. The filing fee for a nonprofit corporation or a cooperative association is **\$5**. Fees may be paid by personal checks, money orders,

LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 06/11

<p>Form 805 (Revised 06/11)</p> <p>Return in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX: 512/463-5709 Filing Fee: See instructions</p>	<p style="font-size: small;">This space reserved for office use.</p>  <p>Statement of Event or Fact</p>
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Entity Information

The following entity or entities are filing this statement of event or fact. *(All entities that were required to execute the filing instrument to which this statement relates must be listed.)*

The name of the entity and the file number, if any, issued by the secretary of state is:

_____ State the name of the entity as currently shown in the records of the secretary of state. _____ File number, if any

The name of the entity and the file number, if any, issued by the secretary of state is:

_____ State the name of the entity as currently shown in the records of the secretary of state. _____ File number, if any

The name of the entity and the file number, if any, issued by the secretary of state is:

_____ State the name of the entity as currently shown in the records of the secretary of state. _____ File number, if any

Identification of Filing Instrument

The following filing instrument was filed with the secretary of state to take effect on the occurrence of a future event or fact, other than the passage of time.

The filing instrument is identified as: _____

The instrument was filed with the secretary of state on: _____
mm/dd/yyyy

Confirmation

This statement is filed to confirm that each event or fact on which the effect of the instrument is conditioned has been satisfied or waived. The date and time on which the condition was satisfied or waived was:

_____ Time _____ mm/dd/yyyy

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: _____

Signature and title of authorized person(s) (see instructions)

Form 4-8

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Amendment
(SOS Form 424)**

Form 4-8

Form 424—General Information
(Certificate of Amendment)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

Sections 3.051 to 3.056 of the Texas Business Organizations Code (BOC) govern amendments to the certificate of formation of a Texas filing entity. A filing entity may amend its certificate of formation at any time and in as many respects as may be desired, *as long as the certificate as amended contains only such provisions as could have been included in the original certificate of formation*. Amendments may be adopted to change the language of an existing provision, to add a new provision, or to delete an existing provision. If extensive amendments are proposed, the entity should consider filing a restated certificate of formation pursuant to section 3.059 of the BOC (Form 414).

Procedural Information by Entity Type

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. Do not include confidential information, such as social security numbers. If amending information relating to directors or governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

For-profit or Professional Corporation

Sections 21.052 to 21.055 of the BOC set forth the procedures for amending the certificate of formation for a for-profit corporation or professional corporation. The board of directors adopts a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the shareholders. Written or printed notice setting forth the proposed amendment is given to each shareholder of record entitled to vote not later than the 10th day and not earlier than the 60th day before the date of the meeting, either personally, by electronic transmission, or by mail (BOC § 21.353). (Please refer to chapters 6 and 21 of the BOC for further information.)

Pursuant to section 21.364 of the BOC, the proposed amendment is adopted on receiving the affirmative vote of two-thirds of the outstanding shares entitled to vote. If any class or series of shares is entitled to vote as a class, the amendment must also receive the affirmative vote of two-thirds of the shares within each class or series that is entitled to vote as a class. Any number of amendments may be submitted to the shareholders and voted on at one meeting. Alternatively, amendments may be adopted by unanimous written consent of the shareholders.

If no shares have been issued, the amendment is adopted by a resolution of the board of directors and the provisions for adoption by shareholders do not apply.

An officer must sign the certificate of amendment. If no shares have been issued and the amendment was adopted by the board of directors, a majority of the directors may sign the certificate of amendment.

Professional Association

The provisions of chapters 20 and 21 of the BOC apply to a professional association, unless there is a conflict with a specific provision in title 7. A professional association may amend its certificate of formation by following the procedures set forth in its certificate of formation. If the certificate of

formation does not provide a procedure for amending the certificate, the certificate of formation is amended by a two-thirds vote of its members.

An officer must sign the certificate of amendment.

Nonprofit Corporation

Sections 22.105 to 22.108 of the BOC set forth the procedures for amending the certificate of formation for a nonprofit corporation. If the corporation has members with voting rights, the board of directors adopts a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members, which may be either an annual or special meeting. The proposed amendment is adopted on receiving two-thirds of the votes that members present, in person or by proxy, were entitled to cast (BOC § 22.164). Any number of amendments may be submitted to the members and voted on at one meeting. Alternatively, the amendment may be adopted without a meeting if a written consent, setting forth the action to be taken, is signed by all the members entitled to vote. (Please refer to chapters 6 and 22 of the BOC for further information.)

If the corporation has no members or no members with voting rights, the amendment is adopted by a majority vote of the board of directors.

An officer of the nonprofit corporation must sign the certificate of amendment.

A nonprofit corporation formed for a special purpose under a statute or code other than the BOC may be required to meet other requirements for a certificate of amendment than those imposed by the BOC. This form may not comply with the requirements imposed under the special statute or code governing the special purpose corporation. Please refer to the statute or code governing the special purpose corporation for specific filing requirements for a certificate of amendment.

Cooperative Association

Section 251.052 of the BOC sets forth the procedure for amending the certificate of formation of a cooperative association. The board of directors may propose an amendment to the certificate of formation by a two-thirds vote of the board members. Notice of the meeting to consider the proposed amendment must be provided to the members no later than the 31st day before the date of the meeting. To be approved, the amendment must be adopted by the affirmative vote of two-thirds of the members voting on the amendment. The cooperative association must file the certificate of amendment with the secretary of state within thirty (30) days after its adoption by the members.

An officer of the cooperative association must sign the certificate of amendment.

Limited Liability Company or Professional Limited Liability Company

Chapter 101 of the BOC governs limited liability companies. Pursuant to section 101.356(d), an amendment to the certificate of formation must be approved by the affirmative vote of all of the company's members. If the company has managers, but has yet to admit its initial member, the amendment would be approved by the affirmative vote of the majority of all the company's managers as permitted by section 101.356(e).

If the limited liability company has managers, an authorized manager must sign the certificate of amendment. If the company does not have managers and is managed by its members, an authorized managing-member must sign the certificate of amendment.

Limited Partnership

Chapter 153 of the BOC governs limited partnerships. A certificate of limited partnership may be amended at any time for any proper purpose determined by the general partners. However, section 153.051 requires a certificate of amendment when there is:

- (1) a change of name of the partnership;
- (2) an admission of a new general partner; or
- (3) a withdrawal of a general partner.

Section 153.051 of the BOC also requires that a limited partnership amend its certificate of formation when there is a change of address for the registered office or a change of name or address of the registered agent of the partnership. However, rather than filing an amendment, the partnership may file a statement of change pursuant to section 5.202 of the BOC to effect a change to its registered agent or registered office.

Pursuant to section 153.553, at least one general partner must sign the certificate of amendment. In addition, each general partner designated as a new general partner also must sign the certificate of amendment. A withdrawing general partner need not sign the certificate of amendment. The execution of a certificate by a general partner is an oath or affirmation, under a penalty of perjury, that to the best of the executing party's knowledge and belief, the facts contained in the certificate are true and correct (BOC §153.553(c)).

Instructions for Form

- **Entity Information:** The certificate of amendment must contain the legal name of the entity and identify the type of filing entity. *If the amendment changes the name of the entity, the name as it currently appears on the records of the secretary of state should be stated.* It is recommended that the date of formation and file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Amendments: 1. Amended Name.** This form is designed to provide a standardized amendment form to effect a change of name for the filing entity. If the legal name of the entity is to be changed, state the new name of the entity in section 1. Please note that the legal name of the entity must include an appropriate organizational designation for the entity type.

The new entity name will be checked for availability on submission of the certificate of amendment. Under section 5.053 of the BOC, if the new name of the entity is the same as, deceptively similar to, or similar to the name of an existing domestic or foreign filing entity, or any name reservation or name registration filed with the secretary of state, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate under a name does not authorize the use of a name in violation of another person's rights to the name.

- **Amendments: 2. Changes to Registered Agent and/or Registered Office.** It is not necessary to file a certificate of amendment if the entity seeks only to change its registered agent or its

registered office. A filing entity may file a statement of change of registered agent/registered office pursuant to section 5.202 of the BOC.

However, if the entity is changing its name or making other changes to its certificate of formation, any changes to the registered agent or registered office may be included in a certificate of amendment. Section 2 can be completed to effect a change to the registered agent or registered office address. The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The filing entity cannot act as its own registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although the consent of the person designated as registered agent is required, a copy of the written or electronic consent need not be submitted with a certificate of correction that corrects the name of the registered agent. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Amendment to Registered Office: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Amendments: 3. Other Provisions to be Added, Altered, or Deleted.** Section 3 of this form contains three text areas that may be used to make alterations or changes to other provisions in the certificate of formation or to identify those provisions to be deleted. If the space provided in a text area is insufficient, include the provisions as an attachment to this form.
 - **Add:** If the amendment is an addition to the certificate of formation, check the "Add" statement and provide an identification or reference for the added provision and the full text of each provision added in the text area.
 - **Alter:** If the amendment alters or changes an existing article or provision in the certificate of formation, check the "Alter" statement and provide an identification of the article number or description of the altered provision and the text of the article or provision as it is amended to read in the text area.
 - **Delete:** If the amendment deletes an existing article or provision in its entirety, check the "Delete" statement and provide a reference to the article number or provision being deleted in the text area.
- **Statement of Approval:** As required by section 3.053 of the BOC, the form includes a statement regarding the approval of the amendment. In general, amendments are adopted and approved in the manner set forth in the title of the BOC governing the entity. General procedural information relevant to each filing entity that may use this form precedes the instructions for completing the form.
- **Effectiveness of Filing:** A certificate of amendment becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a

future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of amendment must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Please refer to the procedural information relating to the specific entity type for further information on execution requirements. Generally, a governing person or managerial official of the entity signs a filing instrument.

The certificate of amendment need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for a certificate of amendment is **\$150**, unless the filing entity is a nonprofit corporation or a cooperative association. The filing fee for a certificate of amendment for a nonprofit corporation or a cooperative association is **\$25**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Form 424
(Revised 05/11)
 Submit in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512/463-5709
Filing Fee: See instructions



This space reserved for office use.

Certificate of Amendment

Entity Information

The name of the filing entity is:

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a: (Select the appropriate entity type below.)

- | | |
|--|---|
| <input type="checkbox"/> For-profit Corporation | <input type="checkbox"/> Professional Corporation |
| <input type="checkbox"/> Nonprofit Corporation | <input type="checkbox"/> Professional Limited Liability Company |
| <input type="checkbox"/> Cooperative Association | <input type="checkbox"/> Professional Association |
| <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Limited Partnership |

The file number issued to the filing entity by the secretary of state is: _____

The date of formation of the entity is: _____

Amendments

1. Amended Name

(If the purpose of the certificate of amendment is to change the name of the entity, use the following statement)

The amendment changes the certificate of formation to change the article or provision that names the filing entity. The article or provision is amended to read as follows:

The name of the filing entity is: (state the new name of the entity below)

The name of the entity must contain an organizational designation or accepted abbreviation of such term, as applicable:

2. Amended Registered Agent/Registered Office

The amendment changes the certificate of formation to change the article or provision stating the name of the registered agent and the registered office address of the filing entity. The article or provision is amended to read as follows:

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____

Signature of authorized person

Printed or typed name of authorized person (see instructions)

Form 4-9

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Abandonment of Assumed Name Certificate
(SOS Form 504)**

Form 4-9
Form 504—General Information
(Abandonment of Assumed Name Certificate)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

An entity that has filed an assumed business or professional name certificate under chapter 71 of the Texas Business & Commerce Code (TBCC) which ceases to transact business or render services under the assumed name certificate may file in the office of the secretary of state and county clerk a statement of abandonment of that assumed name (TBCC § 71.153).

This form has been drafted for filing with the secretary of state. An abandonment of an assumed name certificate filed with the county clerk must be notarized and contain original signatures. *Consequently, this form does not satisfy county filing requirements.* An abandonment of an assumed name certificate filed with the county clerk must be sent directly to the appropriate county clerk and not to the secretary of state.

Instructions for Form

- **Items 1 and 2—Assumed Name and Date of Assumed Name Certificate:** The abandonment of the assumed name certificate must state the assumed name which is being abandoned and the date the certificate of assumed name was filed in the office of the secretary of state.
- **Item 3—Entity Name:** The abandonment of assumed name certificate must contain the legal name of the entity as contained in its certificate of formation or comparable document filed with the secretary of state. An incorporated entity, such as a bank or trust company, whose organizational documents are not filed with the secretary of state, would set forth the legal name of the entity as contained in its organizational documents.
- **Item 4—File Number:** It is recommended that the file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Item 5—Office Address in Jurisdiction of Formation:** Provide the street address of the registered office or principal office of the entity in the state or country or other jurisdiction of formation. If the entity does not maintain an office address in its jurisdiction of formation, provide the street address of its registered office address in that jurisdiction. If the entity is not required by law to maintain a registered office in its jurisdiction of formation, provide its principal office address in its jurisdiction of formation.
- **Item 6—Registered Agent/Office Address in Texas:** Complete item 6 only if the entity is:
 - a Texas corporation, limited liability company, limited partnership, cooperative association, professional association, or
 - a foreign corporation, limited liability company, limited partnership, cooperative association, professional association, or limited liability partnership registered with the secretary of state to transact business.

6a and 6b: Provide the street address of the entity's registered office address in item 6a and the name of the registered agent at such address in item 6b.

6c: Provide the entity's principal office address in Texas in item 6c if the address is different from the address provided for the entity's registered office (item 6a).

• **Item 7—Address Information For Entities Not Required to Maintain a Registered Office:** Complete item 7 if the entity is:

- an entity organized under Texas law that is required to file an assumed name certificate under Texas law, but is not required to maintain a registered agent and registered office address, such as a Texas limited liability partnership or state bank; or
- a foreign corporation, limited liability company, limited partnership, cooperative association, professional association, or limited liability partnership that is not required to register with the secretary of state to transact business, but is required to file an assumed name certificate.

Complete item 7b only if the address of the entity's principal place of business in Texas is not the same as the address of its principal office in Texas (item 7a). Provide the entity's address outside of Texas (item 7c) only if entity is not organized under the laws of Texas.

• **Item 8—County or Counties in which the Assumed Name Used:** The abandonment of assumed name certificate is required to state the date on which an original assumed name certificate was filed in each of county where the original assumed name certificate was filed. County filings for corporations, limited partnerships, limited liability companies, and limited liability partnerships are required only in the county or counties where the entity maintains its registered office and its principal office.

- **Execution:** An abandonment of assumed name certificate should be executed in the same manner as an original assumed name certificate. An original assumed name certificate is executed by an officer, general partner, member, manager, representative, or attorney in fact for the corporation, limited partnership, limited liability partnership, or limited liability company. An abandonment executed by an attorney in fact shall include a statement that the attorney in fact has been duly authorized in writing by his principal to execute the certificate. Please review the form carefully. *Pursuant to section 71.203, a person commits an offense under section 37.10, Penal Code, if the person intentionally or knowingly signs or directs the filing of an abandonment that the person knows contains a materially false statement.*

- **Payment and Delivery Instructions:** The filing fee for an abandonment of assumed name certificate filed with the secretary of state is **\$10**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

**Form 504
(Revised 05/11)**

Return in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512 463-5709
Filing Fee: \$10



This space reserved for office use.

**Abandonment of Assumed
Name Certificate**

Assumed Name

- 1. The assumed name to be abandoned is: _____
- 2. The assumed name certificate was filed with the secretary of state on: _____
mm/dd/yyyy

Entity Information

- 3. The legal name of the entity abandoning the assumed name is:

State the name of the entity as currently shown in the records of the secretary of state or on its organizational documents, if not filed with the secretary of state.

- 4. The file number, if any, issued to the entity by the secretary of state is: _____
- 5. The office address of the entity in its jurisdiction of formation is:

(Complete item 6 *only* when the entity is required by law to maintain a registered agent/registered office in Texas. An entity required to complete item 6 does not complete item 7. See instructions.)

- 6a. The entity is required to maintain a registered office and agent in Texas. The address of its registered office in Texas is:

- 6b. The name of the registered agent at such address is:

- 6c. The address of the principal office of the entity (if not the same as 6a) is:

(Complete item 7 *only* if the entity is not required by law to maintain a registered agent/registered office in Texas. Complete item 7c *only* if the entity is not organized under the laws of Texas. See instructions.)

- 7a. The entity is not required by law to maintain a registered agent/registered office in Texas. Its principal office address in Texas is:

7b. The address of the entity's principal place of business in Texas (if not the same as 7a) is:

7c. The entity is not organized under the laws of Texas. Its office address outside the state is:

County or Counties in which Assumed Name Filed

8. The assumed name being abandoned was filed on the following dates in the following counties:

Name of County *Date of Filing*

Name of County *Date of Filing*

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and also certifies that the person is authorized to sign on behalf of the identified entity. If the undersigned is acting in the capacity of an attorney in fact for the entity, the undersigned certifies that the entity has duly authorized the undersigned in writing to execute this document.

Date: _____

Signature of a person authorized by law to sign on behalf of the identified entity (see instructions)

Form 4-10

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Restated Certificate of Formation with New Amendments
(SOS Form 414)**

Form 4-10

**Form 414—General Information
(Restated Certificate of Formation with New Amendments)**

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

Sections 3.057 to 3.063 of the Texas Business Organizations Code (BOC) govern a restated certificate of formation of a Texas filing entity. A filing entity may restate its certificate of formation to:

- (1) state the text of the certificate of formation (as amended, corrected, or restated) to include all previous amendments carried forward; or
- (2) state the text of the certificate of formation to include all previous amendments and each new amendment to the certificate being restated.

An amendment effected by a restated certificate of formation must comply with the provisions and procedures governing certificates of amendment in title 1, chapter 3 of the BOC and in the title governing the specific entity.

This form is designed to accompany the restated certificate of formation described in statement 2 shown above. *If the restated certificate of formation does not effect any new amendments to the certificate of formation, use Form 415 rather than this form.*

The text of the restated certificate of formation, which is to be attached as an exhibit, may omit the name and address of each organizer. In the case of a limited partnership the restated certificate must include *the name and address of each general partner*. The restated certificate of formation may also omit any other information that may be omitted under the provisions of the BOC applicable to the filing entity.

Procedural Information by Entity Type

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. Do not include confidential information, such as social security numbers. If updating information for directors or governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

For-profit or Professional Corporation

Sections 21.052 to 21.055 of the BOC set forth the procedures for amending the certificate of formation for a for-profit corporation or professional corporation. The board of directors adopts a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the shareholders. Written or printed notice setting forth the proposed amendment is given to each shareholder of record entitled to vote not later than the 10th day and not earlier than the 60th day before the date of the meeting, either personally, by electronic transmission, or by mail. (Please refer to chapters 6 and 21 of the BOC for further information.)

Pursuant to section 21.364, the proposed amendment is adopted on receiving the affirmative vote of two-thirds of the outstanding shares entitled to vote. If any class or series of shares is entitled to vote as a class, the amendment must also receive the affirmative vote of two-thirds of the shares within each class or series that is entitled to vote as a class. Any number of amendments may be submitted to the

shareholders and voted on at one meeting. Alternatively, amendments may be adopted by unanimous written consent of the shareholders.

If no shares have been issued, the amendment is adopted by a resolution of the board of directors and the provisions for adoption by shareholders do not apply.

In addition to the provisions authorized or required by section 3.059 of the BOC, a restated certificate of formation may update the current number of directors and the names and addresses of the persons serving as directors.

An officer must sign the restated certificate of formation. If no shares have been issued and the amendment was adopted by the board of directors, a majority of the directors may sign the restated certificate of formation.

Professional Association

The provisions of chapters 20 and 21 of the BOC apply to a professional association, unless there is a conflict with a specific provision in title 7. A professional association may amend its certificate of formation by following the procedures set forth in its certificate of formation. If the certificate of formation does not provide a procedure for amending the certificate, the certificate of formation is amended by a two-thirds vote of its members.

In addition to the provisions authorized or required by section 3.059 of the BOC, a restated certificate of formation may update the current number of directors or executive committee members and the names and addresses of each person serving on the board or committee.

An officer must sign the restated certificate of formation.

Nonprofit Corporation

Sections 22.105 to 22.108 of the BOC set forth the procedures for amending the certificate of formation for a nonprofit corporation. If the corporation has members with voting rights, the board of directors adopts a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members, which may be either an annual or special meeting. The proposed amendment is adopted on receiving two-thirds of the votes that members present, in person or by proxy, were entitled to cast (BOC § 22.164). Any number of amendments may be submitted to the members and voted on at one meeting. Alternatively, the amendment may be adopted without a meeting if a written consent, setting forth the action to be taken, is signed by all the members entitled to vote. (Please refer to chapters 6 and 22 of the BOC for further information.)

In addition to the provisions authorized or required by section 3.059, a restated certificate of formation may update the current number of directors and the names and addresses of the persons serving as directors. A nonprofit corporation that is a church in which management is vested in its members under section 22.202 of the BOC must contain a statement to that effect in any restated certificate of formation if the original certificate of formation was not required to contain such statement.

If the corporation has no members or no members with voting rights, an amendment is adopted by a majority vote of the board of directors (BOC § 22.107).

An officer of the nonprofit corporation must sign the restated certificate of formation.

Cooperative Association

Section 251.052 of the BOC sets forth the procedure for amending the certificate of formation of a cooperative association. The board of directors may propose an amendment to the certificate of formation by a two-thirds vote of the board members. Notice of the meeting to consider the proposed amendment must be provided to the members no later than the 31st day before the date of the meeting. To be approved, an amendment must be adopted by the affirmative vote of two-thirds of the members voting on the amendment. The cooperative association must file a certificate of amendment with the secretary of state within thirty (30) days after its adoption by the members.

An officer of the cooperative association must sign the restated certificate of formation.

Limited Liability Company or Professional Limited Liability Company

Chapter 101 of the BOC governs limited liability companies. Pursuant to section 101.356(d), an amendment to the certificate of formation must be approved by the affirmative vote of all of the company's members. If the company has managers, but has yet to admit its initial member, the amendment would be approved by the affirmative vote of the majority of all the company's managers as permitted by section 101.356(e).

If the limited liability company has managers, an authorized manager must sign the restated certificate of formation. If the company does not have managers and is managed by its members, an authorized managing-member must sign the restated certificate of formation.

Limited Partnership

Chapter 153 of the BOC governs limited partnerships. A certificate of limited partnership may be amended at any time for any proper purpose determined by the general partners. However, section 153.051 requires a certificate of amendment when there is:

- (1) a change of name of the partnership;
- (2) an admission of a new general partner; or
- (3) the withdrawal of a general partner.

A restated certificate of formation would be approved in the same manner as an amendment to the certificate of formation. The name and address of each general partner must be included in the restated certificate of formation.

Pursuant to section 153.553, at least one general partner must sign the restated certificate of formation. In addition, each general partner designated as a new general partner also must sign the restated certificate of formation. A withdrawing general partner need not sign. The execution of a certificate by a general partner is an oath or affirmation, under a penalty of perjury, that to the best of the executing party's knowledge and belief, the facts contained in the certificate are true and correct (BOC § 153.553(c)).

Instructions for Form

- **Entity Information:** The restated certificate of formation must contain the legal name of the entity. *If the restated certificate of formation effects further amendments that change the name of the entity, the name as it currently appears on the records of the secretary of state should be stated.* It is recommended that the entity type, date of formation and file number assigned by the secretary of state be provided to facilitate processing of the document.

- **Amendments to Certificate of Formation:** A filing entity may amend its certificate of formation in as many respects as may be desired, *as long as the certificate as amended contains only such provisions as could have been included in the original certificate of formation.* The full text of the provisions as added or altered need not be stated on Form 414. The full text of the amended and altered provisions will be contained in the Restated Certificate of Formation attached to this form as an exhibit.

Amendment to Entity Name: If the restated certificate of formation changes the name of the entity, the new entity name will be checked for availability upon submission. If the new name of the entity is the same as, deceptively similar to, or similar to the name of an existing domestic or foreign filing entity, or any name reservation or name registration filed with the secretary of state, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.texas.gov. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate under a name does not authorize the use of a name in violation of another person's rights to the name.

Amendment to Registered Agent: A person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although the consent of the person designated as registered agent is required, a copy of the written or electronic consent need not be submitted with a restated certificate of formation that changes the name of the registered agent. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Amendment to Registered Office: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Statement of Approval:** As required by section 3.059 of the BOC, the form includes a statement regarding the approval of the amendments made to the certificate of formation. In general, amendments are adopted and approved in the manner set forth in the title of the BOC governing the entity. General procedural information relevant to each filing entity that may use this form precedes the instructions for completing the form.
- **Required Statements:** This form is designed to provide the statements that are to accompany a restated certificate of formation that makes new amendments to the certificate of formation (BOC § 3.059(d)). The text of the restated certificate of formation, which should be attached as an exhibit to this form, should be identified as "Restated Certificate of Formation of [Name of Entity]."
- **Effectiveness of Filing:** A restated certificate of formation becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the

date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact.

- **Execution:** Pursuant to section 4.001 of the BOC, the restated certificate of formation must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument. Please refer to the procedural information relating to the specific entity type for further information on execution requirements.

The name of the entity that is restating its certificate of formation should appear on the “name of entity” line unless the governing person or managerial official signing the document is organized as an entity. In this case, the name of the legal entity that is the authorized person should appear on the “name of entity” line.

The restated certificate of formation need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person’s intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for a restated certificate of formation is **\$300**, unless the filing entity is a nonprofit corporation or a cooperative association. The filing fee for a restated certificate of formation for a nonprofit corporation or a cooperative association is **\$50**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 09/13

Form 414
(Revised 09/13)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: See instructions



This space reserved for office use.

**Restated Certificate of
Formation
With New Amendments**

Entity Information

The name of the filing entity is:

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a: (Select the appropriate entity type below.)

- For-profit Corporation
- Nonprofit Corporation
- Cooperative Association
- Limited Liability Company
- Professional Corporation
- Professional Limited Liability Company
- Professional Association
- Limited Partnership

The file number issued to the filing entity by the secretary of state is: _____

The date of formation of the filing entity is: _____

Statement of Approval

Each new amendment has been made in accordance with the provisions of the Texas Business Organizations Code. The amendments to the certificate of formation and the restated certificate of formation have been approved in the manner required by the Code and by the governing documents of the entity.

Required Statements

The restated certificate of formation, which is attached to this form, accurately states the text of the certificate of formation being restated and each amendment to the certificate of formation being restated that is in effect, and as further amended by the restated certificate of formation. The attached restated certificate of formation does not contain any other change in the certificate of formation being restated except for the information permitted to be omitted by the provisions of the Texas Business Organizations Code applicable to the filing entity.

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent in the restated certificate of formation has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Name of entity (see Execution instructions)

Signature of authorized individual (see instructions)

Printed or typed name of authorized individual

Attach the text of the amended and restated certificate of formation to the completed statement form. Identify the attachment as "Restated Certificate of Formation of [Name of Entity]."

Form 4-11

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Restated Certificate of Formation without Further Amendments
(SOS Form 415)**

Form 4-11

**Form 415—General Information
(Restated Certificate of Formation without Further Amendments)**

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

Sections 3.057 to 3.063 of the Texas Business Organizations Code (BOC) govern a restated certificate of formation of a Texas filing entity. A filing entity may restate its certificate of formation to:

- (1) state the text of the certificate of formation (as amended, corrected, or restated) to include all previous amendments carried forward; or
- (2) state the text of the certificate of formation to include all previous amendments and each new amendment to the certificate being restated.

This form is designed to accompany the restated certificate of formation described in statement 1 shown above. *If the restated certificate of formation effects further amendments to the certificate of formation, use Form 414 rather than this form.*

The text of the restated certificate of formation, which is to be attached as an exhibit, may omit the name and address of each organizer. In the case of a limited partnership, the restated certification of formation must include *the name and address of each general partner*. The restated certificate of formation may also omit any other information that may be omitted under the provisions of the BOC applicable to the filing entity.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the restated certificate of formation. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Procedural Information by Entity Type

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. Do not include confidential information, such as social security numbers. If updating information for directors or governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

For-profit or Professional Corporation

Section 21.056 of the BOC governs the adoption of a restated certificate of formation for a for-profit corporation or professional corporation. A restated certificate of formation is adopted by following the same procedures for amending the certificate of formation set forth in sections 21.052 to 21.055 of the BOC. However, if the restated certificate of formation makes no new amendments to the certificate being restated, the restated certificate is adopted by a resolution of the board of directors and the provisions for adoption by shareholders do not apply (BOC § 21.056).

In addition to the provisions authorized or required by section 3.059 of the BOC, a restated certificate of formation may update the current number of directors and the names and addresses of the persons serving as directors.

An officer must sign the restated certificate of formation. A majority of the directors also may sign the restated certificate of formation if no shares have been issued and the board of directors adopts the restated certificate.

Professional Association

The provisions of chapters 20 and 21 of the BOC apply to a professional association, unless there is a conflict with a specific provision in title 7. A professional association may adopt a restated certificate of formation by following the same procedure for amending its certificate of formation. A professional association amends its certificate of formation by following the procedures set forth in its certificate of formation or if the certificate of formation does not provide a procedure for amending the certificate, the certificate of formation is amended by a two-thirds vote of its members. However, if the restated certificate of formation makes no new amendments to the certificate being restated, the restated certificate is adopted by a resolution of the board of directors or executive committee and the provisions for adoption by members do not apply.

In addition to the provisions authorized or required by section 3.059 of the BOC, a restated certificate of formation may update the current number of directors or executive committee members and the names and addresses of each person serving on the board or committee.

An officer must sign the restated certificate of formation.

Nonprofit Corporation

A restated certificate of formation is adopted by following the same procedures for amending the certificate of formation set forth in sections 22.105 to 22.108 and section 22.164 of the BOC. However, if the restated certificate of formation makes no new amendments to the certificate, the provisions for adoption by the members of the corporation would not apply. The restated certificate of formation that makes no further amendments would require the affirmative vote of a majority of the directors in office.

In addition to the provisions authorized or required by section 3.059, a restated certificate of formation may update the current number of directors and the names and addresses of the persons serving as directors. A nonprofit corporation that is a church in which management is vested in its members under section 22.202 of the BOC, must contain a statement to that effect in any restated certificate of formation if the original certificate of formation was not required to contain such statement.

An officer of the nonprofit corporation must sign the restated certificate of formation.

Cooperative Association

A restated certificate of formation is adopted by following the same procedures for amending the certificate of formation. Section 251.052 of the BOC sets forth the procedure for amending the certificate of formation of a cooperative association. However, if the restated certificate of formation makes no new amendments to the certificate, the provisions for adoption by the members of the cooperative association would not apply. The restated certificate of formation that makes no further amendments would require the affirmative vote of two-thirds of the directors in office.

An officer of the cooperative association must sign the restated certificate of formation.

Limited Liability Company or Professional Limited Liability Company

A restated certificate of formation is adopted by following the same procedures for amending the certificate of formation. Pursuant to section 101.356 of the BOC, an amendment to the certificate of formation must be approved by the affirmative vote of all of the company's members. However, when the restated certificate of formation makes no further amendments, the restated certificate of formation would be approved by the affirmative vote of the majority of all the managers of the company; or if the company is governed by its members, a majority of its managing-members.

If the limited liability company has managers, an authorized manager must sign the restated certificate of formation. If the company does not have managers and is managed by its members, an authorized managing-member must sign the restated certificate of formation.

Limited Partnership

A restated certificate of formation would be approved in the same manner as an amendment to the certificate of formation. The name and address of each general partner must be included in the restated certificate of formation.

Pursuant to section 153.553 of the BOC, at least one general partner must sign the restated certificate of formation. The execution of a certificate by a general partner is an oath or affirmation, under a penalty of perjury, that to the best of the executing party's knowledge and belief, the facts contained in the certificate are true and correct (BOC § 153.553(c)).

Instructions for Form

- **Entity Information:** The restated certificate of formation must contain the legal name of the entity and identify the type of filing entity. It is recommended that the date of formation and file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Required Statements:** This form is designed to provide the statements that are to accompany a restated certificate of formation that does not make new amendments to the certificate of formation (BOC § 3.059(c)). The text of the restated certificate of formation, which should be attached as an exhibit to this form, should be identified as "Restated Certificate of Formation of [Name of Entity]."
- **Effectiveness of Filing:** The restated certificate of formation becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact.

- **Execution:** Pursuant to section 4.001 of the BOC, the restated certificate of formation must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Please refer to the procedural information relating to the specific entity type for further information on execution requirements. Generally, a governing person or managerial official of the entity signs a filing instrument.

The restated certificate of formation need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for a restated certificate of formation is **\$300**, unless the filing entity is a nonprofit corporation or a cooperative association. The filing fee for a restated certificate of formation for a nonprofit corporation or a cooperative association is **\$50**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Form 415
(Revised 05/11)
 Submit in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512/463-5709
Filing Fee: See instructions



This space reserved for
 office use.

**Restated Certificate of Formation
 Without Further Amendments**

Entity Information

The name of the filing entity is:

State the name of the entity as currently shown in the records of the secretary of state.

The filing entity is a: (Select the appropriate entity type below.)

- | | |
|--|---|
| <input type="checkbox"/> For-profit Corporation | <input type="checkbox"/> Professional Corporation |
| <input type="checkbox"/> Nonprofit Corporation | <input type="checkbox"/> Professional Limited Liability Company |
| <input type="checkbox"/> Cooperative Association | <input type="checkbox"/> Professional Association |
| <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Limited Partnership |

The file number issued to the filing entity by the secretary of state is: _____

The date of formation of the filing entity is: _____

Required Statements

This restated certificate of formation does not make any new amendments to the certificate of formation being restated. The restated certificate of formation, which is attached to this form, accurately states the text of the certificate of formation being restated, as amended, restated, and corrected, except for the information permitted to be omitted by the provisions of the Texas Business Organizations Code applicable to the filing entity. The restated certificate of formation has been approved in the manner required by the Code and by the governing documents of the entity

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is _____

C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent in the restated certificate of formation has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____

Signature of authorized person

Printed or typed name of authorized person (see instructions)

Attach the text of the restated certificate of formation to the completed statement form. Identify the attachment as "Restated Certificate of Formation of [Name of Entity]."

Form 5-1

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Formation—Limited Liability Company
(SOS Form 205)**

Form 5-1
Form 205—General Information
(Certificate of Formation—Limited Liability Company)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

The limited liability company (hereinafter LLC) is neither a corporation nor a partnership; rather, it is a distinct type of entity. An LLC is governed by title 3, chapter 101 of the Texas Business Organizations Code (BOC). Title 1, chapter 3, subchapter A of the BOC governs the formation of an LLC and sets forth the provisions required or permitted to be contained in the certificate of formation.

The owners of an LLC are called “members.” An LLC may have one or more members. Members may be individuals, partnerships, corporations, and any other type of legal entity.

Taxes: LLCs are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications, and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- **Article 1—Entity Name and Type:** Provide a company name and organizational designation. Under section 5.053 of the BOC, if the name chosen is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate of formation under a name does not authorize the use of a name in violation of another person’s rights to the name.
- **Article 2—Registered Agent and Registered Office:** The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The limited liability company cannot act as its own registered agent; do not enter the limited liability company name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person’s written or electronic consent need not be submitted with the certificate of formation. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person’s consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Article 3—Governing Authority:** The certificate of formation must state whether the LLC will or will not have managers. If the LLC will have managers, select option A and provide the name and address of each initial manager in the space provided. If the LLC will not have managers, select option B and provide the name and address of each initial member of the LLC in the space provided. A minimum of one person is required.

If the governing person is an individual, set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.). If the governing person is an organization, set forth the legal name of the organization. For each governing person, only one name should be entered. Do not include both the name of an individual and the name of an organization. An address is always required for each governing person.

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for a manager or member, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Article 4—Purpose:** An LLC may be formed for any lawful purpose or purposes not expressly prohibited under chapter 2 of title 1 or title 3 of the BOC. This form provides for the creation of an LLC with a general purpose. Please note that while the BOC allows a general purpose, other laws, including the Internal Revenue Code, may require that the certificate of formation include more specific purposes or language as a basis for granting a license or tax-exempt or tax-deductible status. The additional space provided in the "Supplemental Provisions/Information" section may be used to set forth a more specific purpose or purposes.

This form cannot be used to engage in a licensed activity when such license cannot be issued to the LLC. To form a professional limited liability to provide a professional service use Form 206.

- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an article within this form or to provide for additional articles to contain optional provisions.

Duration: Pursuant to section 3.003 of the BOC, a Texas LLC exists perpetually unless provided otherwise in the certificate of formation. If formation of an LLC with a stated period of duration is desired, use the "Supplemental Provisions/Information" section of this form to provide for a limited duration.

- **Organizer:** Only one organizer is required for the formation of an LLC. An organizer may be any person having the capacity to contract for the person or for another; that is, a natural person 18 years of age or older, or a corporation or other legal entity. There are no residency requirements for an organizer.
- **Effectiveness of Filing:** A certificate of formation becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is

signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity will be shown as “in existence” on the records of the secretary of state.

- **Execution:** The organizer must sign the certificate of formation, but it does not need to be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by an organizer is an affirmation that the person named in the certificate of formation has consented to serve in that capacity. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for a certificate of formation for an LLC is **\$300**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** An LLC is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the certificate of formation. Failure to maintain a registered agent and registered office may result in the involuntary termination of the LLC.

Revised 05/11

GOVERNING PERSON 2				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country Zip Code</i>

GOVERNING PERSON 3				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country Zip Code</i>

Article 4 – Purpose

The purpose for which the company is formed is for the transaction of any and all lawful purposes for which a limited liability company may be organized under the Texas Business Organizations Code.

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Organizer

The name and address of the organizer:

Name

Street or Mailing Address

City

State Zip Code

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: _____

Signature of organizer

Printed or typed name of organizer

Form 5-2

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Application for Registration of a Foreign Limited
Liability Company
(SOS Form 304)**

Form 5-2

Form 304—General Information (Application for Registration of a Foreign Limited Liability Company)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

To transact business in Texas, a foreign entity must register with the secretary of state under chapter 9 of the Texas Business Organizations Code (BOC). The registration requirement applies to a foreign corporation, foreign limited partnership, foreign limited liability company, foreign business trust, foreign real estate investment trust, foreign cooperative, foreign public or private limited company, or another foreign entity, the formation of which, if formed in Texas, would require the filing of a certificate of formation with the secretary of state. Also, a foreign entity that affords limited liability for any owner or member under the laws of its jurisdiction of formation is required to register.

Failure to Register: A foreign entity may engage in certain limited activities in the state without being required to register (BOC § 9.251). However, a foreign entity that fails to register when required to do so 1) may be enjoined from transacting business in Texas on application by the attorney general, 2) may not maintain an action, suit, or proceeding in a court of this state until registered, and 3) is subject to a civil penalty in an amount equal to all fees and taxes that would have been imposed if the entity had registered when first required.

Penalty for Late Filing: A foreign entity that has transacted business in the state for more than ninety (90) days is also subject to a late filing fee. The secretary of state may condition the filing of the registration on the payment of a late filing fee that is equal to the registration fee for each year, or part of a year, that the entity transacted business in the state without being registered.

Taxes: Corporations are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

This form is not designed for the registration of a foreign limited liability company that is governed by a company agreement that establishes or provides for the establishment of a designated series of members, managers, membership interests, or assets. If the entity is a series limited liability company, use **Form 313**. Alternatively, refer to section 9.005(b) of the BOC for the additional required statements and include the information in the Supplemental Provisions/Information section of this form.

Instructions for Form

- **Item 1—Entity Name and Type:** Provide the full legal name of the foreign entity as stated in the entity's formation document. The name of the foreign entity must comply with chapter 5 of the BOC. Chapter 5 requires that:

- (1) the entity name contain a recognized term of organization for the entity type as listed in section 5.056 of the BOC;
- (2) the entity name not contain any word or phrase that indicates or implies that the entity is engaged in a business that the entity is not authorized to pursue (BOC § 5.052); and
- (3) the entity name not be the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state (BOC §5.053).

If the entity name does not comply with chapter 5, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate under a name does not authorize the use of a name in violation of another person's rights to the name.

- **Item 2A—Assumed Name:** If the entity name fails to contain an appropriate organizational designation for the entity type, a recognized organizational designation should be added to the legal name and set forth in item 2A. Accepted organizational designations for a foreign limited liability company are: “limited liability company,” “limited company,” or an abbreviation of those terms.
- **Item 2B—Assumed Name:** If it has been determined that the entity’s legal name is not available for its use in Texas due to a conflict with a previously existing name, the foreign entity must obtain its registration to transact business under an assumed name that complies with chapter 5 of the BOC. State the assumed name that the foreign entity elects to adopt for use in Texas in item 2B of the certificate. In addition, the foreign entity is required to file an assumed name certificate in compliance with chapter 71 of the Texas Business & Commerce Code. The promulgated form for filing the assumed name with the secretary of state is **Form 503**. This form is not acceptable for filing with the county clerk.
- **Item 3—Federal Employer Identification Number:** Enter the entity’s federal employer identification number (FEIN) in the space provided. The FEIN is a 9-digit number (e.g., 12-3456789) that is issued by the Internal Revenue Service (IRS). If the entity has not received its FEIN at the time of submission, this should be noted in item 3 on the application form. Provision of the FEIN number at the time of submission will assist in the establishment of the entity’s tax account with the Comptroller of Public Accounts.
- **Item 4—Jurisdictional Information:** The application must state the foreign entity’s jurisdiction of formation and the date of its formation in the format shown in the application.
- **Item 5—Certification of Existence:** The application must contain a statement that the entity exists as a valid foreign filing entity of the stated type under the laws of the entity’s jurisdiction of formation.
- **Item 6—Statement of Purpose:** The application must state each business or activity that the entity proposes to pursue in Texas, which may be stated to be “any lawful business or activity under the law of this state.” In addition, as required by chapter 9, the application must contain a statement that

the entity is authorized to pursue the same business or activity under the laws of the entity's jurisdiction of formation.

- **Item 7—Beginning Date of Business:** Provide the date the foreign entity began or will begin to transact business in the state. If the foreign entity has had prior activities within the state, the entity may wish to consult with a private attorney regarding the beginning date of business. The beginning date of business is the date the entity's activities were considered the transaction of business for purposes of registration under chapter 9 of the BOC. *If the entity has transacted business in Texas for more than 90 days before submission, a late filing fee will be assessed.*
- **Item 8—Principal Office Address:** Provide the street or mailing address of the principal office of the foreign entity.
- **Item 9—Initial Registered Agent and Registered Office:** The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The foreign limited liability company cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the application for registration. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Item 10—Appointment of Secretary of State:** By signing the application for registration, the foreign entity consents to the appointment of the secretary of state as an agent of the foreign filing entity for service of process under the circumstances described by section 5.251 of the BOC.
- **Item 11—Governing Persons:** Provide the name and address of each person serving as part of the governing authority of the foreign limited liability company. Generally, this would be the group of persons who are entitled to manage and direct the affairs of the foreign limited liability company. A minimum of one governing person is required. If the governing person is an individual, set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.). If the governing person is an organization, set forth the legal name of the organization. For each governing person, only one name should be entered. Do not include both the name of an individual and the name of an organization. An address is always required for each governing person.

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an item within this form.
- **Effectiveness of Filing:** The application for registration becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity's registration will be shown as "in existence" on the records of the secretary of state.

- **Execution:** Pursuant to section 4.001 of the BOC, the application for registration must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

The application for registration need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for an application for registration for a limited liability company is **\$750**. In addition, the foreign entity will be assessed a late filing fee for each year of delinquency if the entity has transacted business in Texas for more than 90 days prior to filing the application for registration. For purposes of computing the late filing fee, a partial calendar year is counted as a full year. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card

information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A registered foreign limited liability company is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the application for registration. Failure to maintain a registered agent and registered office may result in the revocation of the foreign filing entity's registration.

Revised 05/11

Form 304
(Revised 05/11)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: \$750



This space reserved for office use.

**Application for
Registration
of a Foreign Limited
Liability Company**

1. The entity is a foreign limited liability company. The name of the entity is:

Provide the full legal name of the entity as stated in the entity's formation document in its jurisdiction of formation.

2A. The name of the entity in its jurisdiction of formation does not contain the word "limited liability company" or "limited company" (or an abbreviation thereof). The name of the entity with the word or abbreviation that it elects to add for use in Texas is:

2B. The entity name is not available in Texas. The assumed name under which the entity will qualify and transact business in Texas is:

The assumed name must include an acceptable organizational identifier or an accepted abbreviation of one of these terms.

3. Its federal employer identification number is: _____

Federal employer identification number information is not available at this time.

4. It is organized under the laws of: (set forth state or foreign country) _____
and the date of its formation in that jurisdiction is: _____
mm/dd/yyyy

5. As of the date of filing, the undersigned certifies that the foreign limited liability company currently exists as a valid limited liability company under the laws of the jurisdiction of its formation.

6. The purpose or purposes of the limited liability company that it proposes to pursue in the transaction of business in Texas are set forth below.

The entity also certifies that it is authorized to pursue such stated purpose or purposes in the state or country under which it is organized.

7. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas is: _____
mm/dd/yyyy Late fees may apply (see instructions).

8. The principal office address of the limited liability company is:

Address City State Country Zip/Postal Code

Complete item 9A or 9B, but not both. Complete item 9C.

9A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

9B. The registered agent is an individual resident of the state whose name is:

First Name M.I. Last Name Suffix

9C. The business address of the registered agent and the registered office address is:

Street Address City State TX Zip Code

10. The entity hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

11. The name and address of each governing person is:

NAME AND ADDRESS OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
_____ <i>First Name M.I. Last Name Suffix</i>				
OR	IF ORGANIZATION			
_____ <i>Organization Name</i>				
_____ <i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country Zip Code</i>

NAME AND ADDRESS OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
_____ <i>First Name M.I. Last Name Suffix</i>				
OR	IF ORGANIZATION			
_____ <i>Organization Name</i>				
_____ <i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country Zip Code</i>

NAME AND ADDRESS OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
_____ <i>First Name M.I. Last Name Suffix</i>				
OR	IF ORGANIZATION			
_____ <i>Organization Name</i>				
_____ <i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country Zip Code</i>

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person.

Form 5-3

The following is a checklist for use when meeting with a client wishing to form an LLC. It covers the basic information needed to complete the certificate of formation and is a starting point for drafting the company agreement. However, additional information may be needed based on the particular LLC being formed.

Limited Liability Company Checklist

1. Name of the LLC:

Note: Before June 1, 2018, the name a business entity seeks to use must not be the same as, deceptively similar to, or similar to the name an existing domestic or foreign filing entity uses or has registered or reserved. After that date, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state.” See Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018.

The name of the LLC must contain the phrase “limited liability company” or “limited company” or its abbreviation (“LLC” or “LC”). See Tex. Bus. Orgs. Code § 5.056(a). The name of the LLC may not contain any word or phrase that indicates or implies that the entity is engaged in a business that the entity is not authorized by law to pursue. See Tex. Bus. Orgs. Code § 5.052. Specifically, the name shall not contain the word “lotto” or “lottery” (see Tex. Bus. Orgs. Code § 5.061) or a name that reasonably implies that the entity is created by or for the benefit of war veterans, without approval (see Tex. Bus. Orgs. Code § 5.062).

2. Will the LLC use an assumed name (d/b/a) (refer to Tex. Bus. Orgs. Code § 5.051):

3. Principal place of business of the LLC:

4. Duration of the LLC (if other than perpetual) (if the duration of the LLC is limited, such duration can be included in the “Supplemental Provisions/Information” section of the Certificate of Formation) (refer to Tex. Bus. Orgs. Code § 3.003):

5. Organizer (refer to Tex. Bus. Orgs. Code § 3.004):

6. Organizer address:

7. Members of the LLC and their addresses:

8. Membership interests to be owned by each member:
9. Managers and their addresses:
10. Registered agent and address (refer to Tex. Bus. Orgs. Code §§ 5.201, 5.2011, 5.206):
11. Effective date of filing the certificate of formation (if other than the filing date by the Texas secretary of state) (refer to Tex. Bus. Orgs. Code §§ 4.052–.055):
12. Purpose or purposes of the LLC:
13. Officers of the LLC:
14. Capital contributions of the members (can be cash, property, services, etc.):
15. Classes of members and their relative rights and duties:
16. Will allocations of profit and loss and distributions be made pursuant to membership interests or otherwise:
17. Preferred return for unreturned capital contributions, if applicable:
18. Specific management provisions (decisions requiring majority, supermajority, or unanimous member consent):
19. Manager compensation:
20. Restrictions on transfer of the membership interests:
21. Membership interest certificates needed:
22. Foreign qualification required:
23. Will the LLC have series (as set forth in Tex. Bus. Orgs. Code §§ 101.601–.622):

Form 5-4

The practitioner may use this letter to alert the client who has recently formed an LLC of the many requirements of operating the new company.

Client Letter Regarding Postformation LLC Issues

[Date]

[Name and address of client]

Re: [Name of LLC]

[Salutation]

Select one of the following.

Now that the above-named Limited Liability Company has been formed with the Texas Secretary of State and the Company Agreement has been executed, I am writing to provide you with helpful guidance about how to operate your new LLC.

Or

Enclosed please find your draft Limited Liability Company Agreement. Please closely review the agreement and schedule a time to execute the document at your earliest convenience. In the meantime, here is some helpful information about how to operate your new LLC.

Continue with the following.

1. *Employer Identification Number.* The LLC needs an Employer Identification Number (EIN) in order to file tax returns, open bank accounts, and so forth. You can obtain an EIN online at <https://www.irs.gov>. The IRS will issue a letter that contains the EIN, which I recommend you print and keep in the LLC's records.

2. *Registered agent.* The Texas Business Organizations Code requires that the LLC maintain a registered agent and registered office at all times. The Certificate of Formation contains the initial registered agent and office. The registered office must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. If there is a change to the registered agent, the registered agent's address, or the registered office, the appropriate forms must be filed with the secretary of state (see SOS Form 401 to change registered agent or registered office and SOS Form 408 to update registered agent address).

3. *Documents to keep.* The LLC should maintain the following documents in its records:

- a. Certificate of Formation (along with any Certificates of Amendment);
- b. Consent of Registered Agent to Appointment;
- c. Company Agreement (along with any amendments or restatements thereto);
- d. EIN letter (see paragraph 1);
- e. any minutes or consents of the Members and/or Managers (see paragraph 5);
- f. the name and mailing address of each Member of the LLC and the Membership Interest percentage owned by each; and
- g. the books and records of the LLC (see paragraph 4).

4. *Books and records.* The LLC must also keep the books and records of accounts, along with the tax information and tax returns for at least the preceding six years. The members of the LLC have the right to inspect these records (as well as many of the items listed in paragraph 3), subject to the request to do so being reasonable and for a proper purpose.

5. *Minutes/consents.* The Company Agreement specifies whether the LLC is required to have annual meetings. If not, the LLC may have meetings if so desired or warranted by a particular situation. The minutes of any meetings (or a consent in lieu of a meeting) should be kept in a designated minute book or file for the LLC.

6. *Separation of LLC and personal assets.* The managers and members of the LLC should be careful not to intermingle the money and other assets of the LLC with the personal money and assets of any member. For example, the LLC should have a separate checking account in its own name. The LLC must conduct business in its own name and not in the individual name of a member or manager. When signing any document on behalf of the LLC, be sure to sign in your capacity as member, manager, or officer of the LLC and not in your individual capacity. Here is an example of a signature block to use when conducting business on behalf of the LLC:

[Name of LLC]

By: _____

Name: [Name of member or manager]

Title: [Manager/Member/Officer]

7. *Federal tax return.* An LLC can elect to be taxed as a corporation or a partnership. Because of the more favorable tax treatment, most owners will elect to have the LLC taxed as a partnership. If the LLC is classified as a partnership for federal income tax purposes, the LLC itself doesn't pay taxes on the income but instead "passes through" any income, profits, gains, losses, deductions, and credits to the members of the LLC. In that event, the LLC is required to file a federal tax return (IRS Form 1065) each year. If the taxable year is the calendar year, the return is due on March 15. If other than a calendar year is used, the return is due by the fifteenth day of the third month following the date its tax year ends.

8. *Sales and use tax.* If the LLC is engaged in the business of retail sales, leases, rentals, or certain taxable services, the LLC must apply for a sales tax permit. More information on what kinds of businesses must have a sales tax permit, as well as applicable forms, can be found on the Texas Comptroller of Public Accounts website at <https://comptroller.texas.gov>.

9. *Franchise tax.* The LLC will be subject to the Texas franchise tax and must file a franchise tax report each year with the Texas Comptroller of Public Accounts. However, many Texas companies will not have to pay any franchise tax. For 2018 and 2019, the No Tax Due Threshold is \$1,130,000. The annual franchise tax report is due on May 15. A public information report must be filed each year with the franchise tax report. The applicable forms can be found on the Texas Comptroller of Public Accounts website at <https://comptroller.texas.gov>.

10. *Personal property taxes.* A personal property tax is imposed on income-producing tangible personal property. The local county appraisal district uses the Texas personal property tax to fund county services. All income-producing tangible personal property is taxable for county appraisal district purposes. Taxable personal property includes equipment and inventory. Nontangibles such as goodwill, accounts receivable, and proprietary processes are not taxable. A rendition of the tangible personal property must be filed with the county appraisal district where the personal property is located by April 15 of each year.

11. *Assumed name (“doing business as” or DBA).* If the LLC elects to do business under a name other than the one specified in the Certificate of Formation, it must file an assumed name certificate in the county where the principal business is located as well as with the secretary of state.

12. *Employees.* If the LLC hires employees, there are several important issues that must be addressed, including the filing of required state and federal forms. The Texas Workforce Commission has a valuable resource called “Especially for Texas Employers Publica-

tion,” which addresses a variety of workplace issues, including hiring, pay and benefits, independent contractor versus employee designations, work separation, unemployment compensation taxes, and workers’ compensation. This publication is located at <http://twc.state.tx.us/news/eft/e/especially-for-texas-employers.html>. Employers must withhold income tax and Social Security tax from taxable wages paid to their employees and file an Employer’s Quarterly Federal Tax Return (IRS Form 941). In addition, the Unemployment Tax Return (IRS Form 940) must be filed each year. Furthermore, it is good practice to have employees sign a confidentiality agreement that prohibits them from disclosing trade secrets and other sensitive information of the LLC. It might also be appropriate to have employees sign a noncompete agreement to protect the LLC upon an employee’s separation from employment.

13. *Doing business in states other than Texas.* If the LLC does business in a state other than Texas, the LLC must be qualified to do business in that state. Exactly what constitutes “doing business” varies among the states. Examples could include having an office or employees in another state. In order to qualify to conduct business in another state, the appropriate forms would need to be filed with the secretary of state (or similar agency) of that state.

14. *Trademarks.* The LLC’s trademarks, service marks, and trade names should be protected by filing for registration with the U.S. Patent and Trademark Office. The first step in doing so is to conduct appropriate trademark searches. Although this can be handled by you, this is a complex area of law, and I recommend that you have an attorney with specialized knowledge of trademarks assist you.

15. *Amendments to Certificate of Formation or Company Agreement.* Any future changes to the Certificate of Formation will require that the LLC file a Certificate of Amendment with the secretary of state. If changes are made to aspects of the LLC addressed by the Company Agreement, such as ownership, management practices, and so forth, you should also revise the Company Agreement.

I encourage you to discuss any questions you might have regarding tax issues or the tax filings mentioned above with your tax adviser.

We appreciated the opportunity to assist with your LLC. If you have any questions regarding the foregoing, please do not hesitate to contact me

Sincerely yours,

[Name of attorney]

Form 6-1

This form may be used to transfer all or part of a member's interest in the LLC to another person or entity. Such a transfer could be for a variety of reasons, such as a sale or gift or for estate planning purposes (transferring the interest to a living trust, for example). The practitioner should consult the Texas Business Organizations Code and the provisions of the applicable company agreement regarding the requirements and effects of a transfer. *See* Tex. Bus. Orgs. Code §§ 101.103(c), 101.108–.111. Transfers of membership interests to trusts can affect trust taxation; in such cases, a tax adviser should be consulted.

Membership Interest Transfer Authorization and Consent

FOR VALUE RECEIVED, [name of transferor] hereby assigns and transfers to [name of transferee] [all/[percent] percent ([percent]%) of [his/her] membership and ownership interest [include if certificated: represented by certificate number [number]] (“Membership Interest”) in [name of LLC] LLC, a Texas limited liability company (the “Company”), and appoints the incumbent [Manager[s]/Member[s]/officer[s]] of the Company to transfer the Membership Interest on the books of the Company with full power of substitution. [Name of transferee] is hereby granted the right to become a Member of the Company.

Dated: [date]

[Name of transferor]

ACCEPTANCE:

[Name of transferee] hereby accepts the Membership Interest, consents to becoming a Member of the Company, and accepts the provisions of the Company Agreement of the Company dated [date].

[Name of transferee]

Include the following if the company agreement requires member consent to the transfer.

CONSENTED TO BY:

[Name of member]

Repeat signature lines for all members.

Form 6-2

This notice must be modified to comply with the LLC’s company agreement. The notice is not required to specify the business to be transacted or the purpose of the meeting unless required by the company agreement or as required by Tex. Bus. Orgs. Code § 101.352, which also addresses general notice requirements.

If applicable, note the use of conference telephone or other communications equipment, including videoconferencing, the Internet, or any combination. The telephone or other equipment or system must allow each person participating to adequately communicate with all other persons participating in the meeting, unless otherwise specified in the company agreement. Tex. Bus. Orgs. Code §§ 6.002, 101.052.

[Name of LLC]

Notice of Meeting of Members to Be Held [date]

To: The Members of [name of LLC]

Notice is hereby given that a meeting of the Members of [name of LLC] (“the Company”) will be held at [location] on [meeting date] at [time], for the following purposes:

1. To approve [describe item to be considered].

Repeat for each item under consideration.

2. To review reports of [include as applicable: Members/committees of the Members/committees of the Manager[s]/the Manager[s]/officers].
3. To elect officers of the Company to serve until successors are elected.
4. To transact such other business as may properly come before the Members.

Very truly yours,

[Name of person calling the meeting]
[include if applicable: , [title]]

Form 6-3

This notice must be modified to comply with the LLC's company agreement. The notice is not required to specify the business to be transacted or the purpose of the meeting unless required by the company agreement or as required by Tex. Bus. Orgs. Code § 101.352, which also addresses general notice requirements.

If applicable, note the use of conference telephone or other communications equipment, including videoconferencing, the Internet, or any combination. The telephone or other equipment or system must allow each person participating to adequately communicate with all other persons participating in the meeting, unless otherwise specified in the company agreement. Tex. Bus. Orgs. Code §§ 6.002, 101.052.

[Name of LLC]

Notice of Meeting of Managers to Be Held [date]

To: The Managers of [name of LLC]

Notice is hereby given that a meeting of the Managers of [name of LLC] ("the Company") will be held at [location] on [meeting date] at [time], for the following purposes:

1. To approve [describe item to be considered].

Repeat for each item under consideration.

2. To review reports of [include as applicable: Members/committees of the Members/committees of the Manager[s]/the Manager[s]/officers].

3. To transact such other business as may properly come before the Managers.

Very truly yours,

[Name of person calling the meeting]
[include if applicable: , [title]]

Form 6-4

**Unanimous Consent of Members in Lieu of Meeting of Members of
[name of LLC]**

The undersigned, being all of the Members of [name of LLC] (the “Company”), do hereby consent to the waiver of all notices required for a meeting of the Members and, pursuant to the provisions of section [applicable section number] of the Company Agreement of the Company and section 101.359 of the Texas Business Organizations Code, take the following actions and adopt the following resolutions in lieu of a meeting of the Members:

Include the following if applicable.

Election of Officers

RESOLVED, that the following persons are elected to the offices set forth beside each person’s name to serve for the ensuing year or until their successors have been duly elected and qualified:

<u>Name</u>	<u>Office</u>
[Name]	[Office]

Repeat as necessary for all officers.

Continue with the following.

Ratification of Past Acts

RESOLVED, that the acts and transactions that have been validly taken or made by the officers of the Company and the Members (other than any actions that may have been illegal, tortious, or ultra vires) since the date of the last meeting of the Members, or a consent in lieu of a meeting, and before the date of this consent, are hereby ratified in all respects.

Actions Taken

Insert any special actions of the company here, if applicable.

Further Instructions to Officers

RESOLVED, that the secretary of the Company is directed to file this consent in the minute book of the Company, and, further, that the officers and Members of the Company are hereby authorized and directed to execute and deliver all documents, to waive all conditions, and to do all things necessary or helpful to carry out the purposes of the foregoing resolutions. All acts of the officers and Members of the Company that are consistent with the intent of the above resolutions are hereby ratified and adopted in all respects as the acts of the Company.

IN WITNESS WHEREOF, the undersigned have executed this consent of Members effective as of the ____ day of _____, 20____.

MEMBERS:

[Name of member]

Repeat signature lines for all members.

Form 6-5

Unanimous Consent of Managers in Lieu of Meeting of Managers of [name of LLC]

The undersigned, being all of the Managers of [name of LLC] (the “Company”), do hereby consent to the waiver of all notices required for a meeting of the Managers and, pursuant to the provisions of section [applicable section number] of the Company Agreement of the Company and section 101.359 of the Texas Business Organizations Code, take the following actions and adopt the following resolutions in lieu of a meeting of the Managers:

Ratification of Past Acts

RESOLVED, that the acts and transactions that have been validly taken or made by the officers of the Company, the Managers, and the Members (other than any actions that may have been illegal, tortious, or ultra vires) since the date of the last meeting of the Managers, or a consent in lieu of a meeting, and before the date of this consent, are hereby ratified in all respects.

Actions Taken

Insert any special actions of the company here, if applicable.

Further Instructions to Officers

RESOLVED, that the secretary of the Company is directed to file this consent in the minute book of the Company, and, further, that the officers, Managers, and Members of the Company are hereby authorized and directed to execute and deliver all documents, to waive all conditions, and to do all things necessary or helpful to carry out the purposes of the foregoing resolutions. All acts of the officers, Managers, and Members of the Company that are con-

sistent with the intent of the above resolutions are hereby ratified and adopted in all respects as the acts of the Company.

IN WITNESS WHEREOF, the undersigned have executed this consent of Managers effective as of the ____ day of _____, 20 ____.

MANAGERS:

[Name of manager]

Repeat signature lines for all managers.

Form 6-6

When a member contributes personal property to the LLC, usually as part of an initial capital contribution, the following bill of sale may be used to document the transfer.

Bill of Sale

STATE OF TEXAS

COUNTY OF [county]

KNOW ALL PERSONS BY THESE PRESENTS:

THAT I, [name of seller] (“Seller”), of [address of seller], in consideration of a membership interest in the Buyer and other good and valuable consideration, receipt of payment being hereby acknowledged, do hereby sell and transfer to [name of LLC], a Texas limited liability company (“Buyer”), of [address of LLC], and its successors and assigns, the personal property described on Exhibit A attached hereto and incorporated herein (“Personal Property”).

Seller warrants that Seller is the lawful owner in every respect of all the Personal Property. Seller binds Seller and Seller’s successors and assigns to warrant and forever defend Buyer’s and Buyer’s successors’ and assigns’ title to the Personal Property against every person claiming the described Personal Property or any part of it.

THE PERSONAL PROPERTY IS SOLD “AS IS,” WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION OF SUCH PERSONAL PROPERTY.

This Bill of Sale shall be effective as to the transfer of all the Personal Property as of [effective date] (“Effective Date”).

Seller:

[Name of seller]

Buyer:

[Name of LLC]

By: _____
[Name of managing member or
manager], [title]

Attach exhibit A.

Form 6-7

The client who forms an LLC may also wish to lease a vehicle to the LLC for business use. This form provides for such an arrangement. The agreement may be altered to address additional issues, for example, which party is responsible for providing liability insurance. Consult a tax adviser regarding the tax implications of a vehicle lease arrangement.

Lease Agreement

This agreement (“Agreement”) by and between [**name of lessor**] (“Lessor”) and [**name of lessee LLC**], a Texas limited liability company (“Lessee”), provides for the Lessee’s use of the vehicles listed in Exhibit A attached hereto.

1. *Vehicles.* Lessor is the owner of the vehicles described in Exhibit A (“Vehicles”).
2. *Lease.* In consideration of the Lease Fee (defined below), Lessor grants to Lessee the nonexclusive use of the Vehicles for operating Lessee’s business. Lessor warrants and represents that Lessor owns the Vehicles and has the right to enter into this Agreement.
3. *Term.* The term of this Agreement shall extend for a period of one year commencing on its effective date (defined below) and shall automatically renew for successive one-year terms unless and until terminated by Lessor or Lessee with sixty days’ written notice to the other party (“Term”). Upon the termination of this Agreement, all rights to the Vehicles granted herein shall automatically revert to Lessor.
4. *Nonassignability.* Neither this Agreement nor any of the rights granted to Lessee under this Agreement may be assigned, delegated, or transferred by Lessee to any

person, firm, or corporation, by operation of law or otherwise, without the prior written consent and approval of Lessor.

5. *Payment of Lease Fee.* The Lease Fee for each year of the Term due to Lessor by Lessee is \$[amount] [include additional terms, e.g., an option to pay in monthly installments]. The Lease Fee may be adjusted by Lessor at the beginning of each year of the Term by giving Lessee ninety days' written notice.
6. *Governing Law.* This Lease shall be governed by the laws of the state of Texas.
7. *Encumbrances.* Lessee agrees to keep the Vehicles free of any and all encumbrances.
8. *Amendment.* This Agreement may be amended or modified only by a written instrument executed by Lessor and Lessee, unless otherwise provided for in this Agreement.

This Agreement is entered into by Lessor and Lessee effective as of [effective date] (“Effective Date”).

Lessor:

[Name of lessor]

Lessee:

[Name of LLC]

By: _____

[Name of managing member or manager], [title]

Exhibit A

Year: _____

Make: _____

Model: _____

VIN: _____

Repeat for each additional vehicle.

Form 8-1

The Texas Business Organizations Code (TBOC) authorizes the creation of an LLC that has only one member. *See* Tex. Bus. Orgs. Code § 101.101(a). The TBOC further provides that a company agreement is enforceable despite having only one person (the single member) as a party to the agreement. *See* Tex. Bus. Orgs. Code § 101.001(1).

This single-member company agreement is based on chapter 101 of the TBOC. *See* Tex. Bus. Orgs. Code §§ 101.001–.621. The chapter provides general guidelines and, as such, the member has significant freedom in structuring the company agreement according to his or her particular situation. This form, therefore, can be significantly modified and adapted to address the member’s requirements.

Company Agreement of [name of single-member LLC]

This Company Agreement (“Agreement”) of [name of limited liability company], a Texas limited liability company (“Company”), is entered into effective [date] (“Effective Date”), by and between [name of member] (the “Member”) and the Company.

Article 1**Formation**

1.1 *Formation.* Subject to the provisions of this Agreement, the Member has organized the Company pursuant to the provisions of the Texas Business Organizations Code (“Code”) by filing a certificate of formation (“Certificate”) with the Texas secretary of state on the Effective Date.

1.2 *Purpose.* The purpose and business of the Company shall be to [list company’s purpose] and all related activities and the transaction of any other business or activity allowed under the Code as determined by the Member. The Company shall have the authority to do all

things necessary or convenient to accomplish its purpose and operate its business as described in this section 1.2.

1.3 *Term.* The Company shall continue in existence perpetually or until the termination of the Company in accordance with the provisions of section 6.1 of this Agreement or the Code.

1.4 *Registered Agent and Office.* The registered agent for the service of process is [name], and the address is [address]. The principal office of the Company shall be located at [address]. The Company may have other offices and places of business at such locations, both within and without the state of Texas, as the Member may from time to time determine or as the business and affairs of the Company may require.

1.5 *Membership Interest.* The Member has a one hundred percent (100%) membership interest (“Membership Interest”) in the Company. The Membership Interest includes all of the rights of the Member, such as the right to share in profits, losses, and distributions, and the right to participate in the management in the Company.

Article 2

Capital Contributions

2.1 *Capital Contributions.* The Member has contributed to the Company the property listed on Schedule 1. Additional capital contributions may be made by the Member. The Member shall not be obligated to make any additional contributions.

2.2 *Ownership of Assets.* All assets and property of the Company shall be owned by the Company, subject to the terms and provisions of this Agreement, and Member, individually, shall not have any ownership of such assets or property. Legal title to all assets and property of the Company shall be held and conveyed in the name of the Company.

Article 3

Financial Matters

3.1 *Distributions.* The Company shall make distributions as determined by the Member from time to time in accordance with this Agreement and the Code.

3.2 *Taxes.* The Member may make any tax elections for the Company allowed under the Internal Revenue Code of 1986, as amended from time to time, or the tax laws of any state or other jurisdiction having taxing authority over the Company that he may deem appropriate and in the best interests of the Company and the Member.

Article 4

Management

4.1 *Management Authority.* Management of the Company shall be completely vested in the Member, including, without limitation, the right to borrow money; make leases, deeds, notes, or mortgages; or otherwise take action in respect to the property of the Company. The Member is expressly authorized on behalf of the Company to make all decisions with respect to the Company's business and to take all actions necessary to carry out such decisions. The Member, acting alone, may by his signature, on behalf of the Company, bind the Company on any deed, mortgage, lease, contract, checking account, note, or other instrument, agreement, or document to which the Company is a party, and any person may rely thereon without the necessity of inquiring into the authority of the signatory.

4.2 *Appointment of Agents.* The Company shall have the authority to appoint an agent or agents to perform any and all acts of management on behalf of the Company, including, but not limited to, the authority to open bank accounts; withdraw funds therefrom; borrow money; make leases, deeds, notes, or mortgages; or do any other designated acts of management for the Company.

4.3 *Liability of Member.* The Member shall not be liable as a Member for the liabilities of the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Code shall not be grounds for imposing personal liability on the Member for liabilities of the Company.

Article 5

Transfers

5.1 *Additional Members.* Additional members shall not be admitted to the Company without the prior written consent of the Member.

5.2 *Dispositions.* The Member may dispose of all or a portion of the Member's Membership Interest. Upon the transfer of the Member's Membership Interest, the transferee shall be admitted as a Member of the Company at the time the transfer is complete.

Tex. Bus. Orgs. Code § 11.056 provides that if there are no longer any members of the LLC, the LLC must be wound up unless the legal representative of the member agrees to continue the company. Since this is an optional election by the legal representative, the inclusion of the following section 5.3 will ensure that the company is not inadvertently wound up.

5.3 *Death of Member.* Notwithstanding the foregoing, upon the death of the Member, the transferee or transferees of the Member shall automatically be admitted as a Member or the Members, as the case may be, of the Company effective as of the date of death of the Member.

Article 6

Dissolution and Winding Up

6.1 *Dissolution.* The Company shall be dissolved upon (a) an election to dissolve the Company by the Member or (b) any other event that would cause its dissolution under the Code.

6.2 *Liquidation.* Upon the dissolution of the Company, a liquidator shall be selected by the Member. The liquidator shall liquidate the assets of the Company and apply and distribute the proceeds of such liquidation in the following order or priority: (a) to the payment of the expenses of the terminating transactions including, without limitation, brokerage commission, legal fees, accounting fees, and closing costs; (b) to the payment of creditors of the Company, including the Member, in order of priority provided by law; (c) to the Member. The distribution to the Member shall be in cash or in-kind assets of the Company or both, as determined by the Member.

6.3 *Articles of Dissolution.* Upon the completion of the distribution of the Company property provided in this Article 6, the Company shall be terminated and the liquidator shall cause the cancellation of the Certificate and any other filings made by the Company and shall take such other actions as may be necessary to terminate the Company.

Article 7

General Provisions

7.1 *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.

7.2 *Governing Law.* This Agreement is governed by and shall be construed in accordance with the laws of the state of Texas.

7.3 *Enforceability against Company.* This Agreement is enforceable by or against the Company regardless of whether the Company has signed or otherwise expressly adopted this Agreement.

Refer to Tex. Bus. Orgs. Code § 101.052(f).

IN WITNESS WHEREOF, the parties hereto have executed this Company Agreement of **[name of limited liability company]** as of the Effective Date.

[Name of company]

By: _____
[Name of member]

Schedule 1

Member of [name of limited liability company]

Member's Name and Address	Class	Initial Capital Contribution	Membership Interest and Percentage Interest

Form 8-2

This member-managed company agreement is best used for LLCs with fairly straightforward business operations and few members (and no classes of members), such as a husband and wife or parties that have known or done business with each other in the past. The aim is the creation of a concise agreement that covers the most important provisions without being burdensome to understand or implement by your client. For more complex business arrangements, see the long-form member-managed company agreement at form 8-4 in this manual.

The agreement is based on chapter 101 of the Texas Business Organizations Code (TBOC). *See* Tex. Bus. Orgs. Code §§ 101.001–.621. Chapter 101 provides general guidelines and, as such, parties have significant freedom in structuring the company agreement according to their particular situation. This form, therefore, can be significantly modified and adapted to address each party’s requirements.

This form can be modified to include any provision related to the regulation and management of the company as long as the provision is not inconsistent with law or the certificate of formation of the company. *See* Tex. Bus. Orgs. Code § 101.052(d). To the extent the company agreement does not otherwise provide, the TBOC will govern the internal affairs and management of the business of the company. *See* Tex. Bus. Orgs. Code §§ 101.052(b), 101.252. Conversely, the agreement may waive or modify the TBOC provisions. In the case of those items listed in section 101.054, a waiver or modification requires that the company agreement contain a provision that the item is intended to be waived or modified and who must approve the waiver or modification.

References to the TBOC are included following certain sections of this form to allow the practitioner to consider alternative language that might be appropriate for inclusion and to provide additional guidance on areas that should be addressed in the agreement.

Company Agreement of [name of member-managed LLC] [Short Form]

This Company Agreement (“Agreement”) of [name of limited liability company], a Texas limited liability company (“Company”), is entered into effective [date] (“Effective Date”), by and between [names of members] (collectively referred to herein as the “Members” and individually as a “Member”).

Article 1

Formation

1.1 *Formation.* Subject to the provisions of this Agreement, the Members have organized the Company pursuant to the provisions of the Texas Business Organizations Code

(“Code”) by filing a certificate of formation (“Certificate”) with the Texas secretary of state on the Effective Date.

Provisions that would normally be included in a company agreement may be contained in the certificate of formation. See Tex. Bus. Orgs. Code §§ 3.005(b), 101.051. Therefore, when issues arise regarding the governance or operation of the LLC, review the certificate of formation as well as the company agreement.

Note: The governing authority of an LLC must be set forth in the certificate of formation as either managers or members. See Tex. Bus. Orgs. Code § 101.251.

1.2 *Purpose.* The purpose and business of the Company shall be to [list company’s purpose] and all related activities and the transaction of any other business or activity allowed under the Code as unanimously determined by the Members. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described in this section 1.2.

Refer to Tex. Bus. Orgs. Code §§ 2.003, 2.005.

1.3 *Term.* The Company shall continue in existence perpetually or until the termination of the Company in accordance with the provisions of section 6.1 of this Agreement or the Code.

1.4 *Registered Agent and Office.* The registered agent for the service of process is [name], and the address is [address]. The principal office of the Company shall be located at [address]. The Company may have other offices and places of business at locations, both within and without the state of Texas, as the Members may from time to time determine or as the business and affairs of the Company may require.

1.5 *Members.* As of the Effective Date, the Members of the Company have the following membership interests (“Membership Interests”) in the Company:

[name of member]

[percent]%

[name of member]

[percent]%

Repeat as necessary.

 100%

The Member's Membership Interest is that Member's right (a) to an allocable share of the profits, losses, deductions, distributions, and credits of the Company; (b) to a distributive share of the assets of the Company; and (c) to vote on those matters described in this Agreement and the Code and to participate in the management and operation of the Company as set forth in this Agreement.

The membership interest as used herein contains all economic, noneconomic, and management rights. Often, a membership interest would include only the rights set forth in 1.5(a) and 1.5(b) above, which are the economic rights. If it is anticipated that a membership interest should not include management and voting rights, the practitioner should refer to and incorporate the provisions of the long-form member-managed company agreement at form 8-4 in this manual.

1.6 *No State-Law Partnership.* The Members intend that the Company not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than applicable tax laws, and this Agreement may not be construed to suggest otherwise.

Article 2

Capital Contributions

2.1 *Initial Capital Contributions.* The Members have contributed to the Company the property listed on Schedule 1.

Note: A member may promise to make a contribution in the future if the promise is in writing and signed by that member. The writing and signature requirements cannot be waived by the company agreement unless the agreement provides specifically for a waiver. See Tex. Bus. Orgs. Code §§ 101.054, 101.151. However, as a practical matter, if future contributions are contemplated, whether as an initial contribution or an additional contribution, specific provisions regarding such should be included in the agreement as set forth below.

Include the following if a member will make a contribution in the future.

[Name of member] promises and agrees to make a contribution of [specify property or amount of cash] to the Company on or before [date of deadline]. The Member is obligated to make the contribution without regard to the death, disability, or other change in circumstances of the Member.

Refer to Tex. Bus. Orgs. Code § 101.152.

Repeat as necessary.

Continue with the following.

Additional capital contributions may be made only if unanimously agreed to by all Members.

2.2 Capital Accounts. The Company shall maintain for each Member a separate capital account in accordance with this section 2.2, which shall control the division of assets upon liquidation of the Company as provided in this Agreement. The capital account shall be increased by the cash amount or fair market value of all capital contributions made by that Member to the Company pursuant to this Agreement and by that Member's allocable share of profits. The capital account shall be decreased by the cash amount or fair market value of any

property distributed to that Member pursuant to this Agreement and by that Member's allocable share of losses.

2.3 *Ownership of Assets.* All assets and property of the Company shall be owned by the Company, subject to the terms and provisions of this Agreement, and no Member, individually, shall have any ownership of those assets or property. Legal title to all assets and property of the Company shall be held and conveyed in the name of the Company.

Refer to Tex. Bus. Orgs. Code § 101.106(b).

2.4 *Return of Capital Contributions.* Capital contributions shall be expended in furtherance of the business of the Company. All costs and expenses of the Company shall be paid from the Company's resources, and the Members shall not be liable for any obligations of the Company, directly or indirectly. No interest shall be paid by the Company on capital contributions.

Article 3

Financial Matters

3.1 *Net Cash Flow.* Net cash flow shall be distributed to the Members in amounts that the Members may unanimously determine. Such distributions shall be made among all the Members in accordance with their Membership Interests. Net cash flow shall mean the amount by which the receipts from operations of the Company and distributions to the Company exceed (a) applicable expenses (excluding deductions for amortization and depreciation) and (b) any cash reserve that the Members unanimously determine necessary for the operations of the Company. Distributions shall be made to each Member in the form of cash, regardless of the form of the Member's contribution to the Company.

Refer to Tex. Bus. Orgs. Code §§ 101.202–.204.

3.2 *Prohibited Distributions.* Distributions may not be made to Members if, immediately after making the distribution, the Company's total liabilities exceed the fair value of the Company's total assets as set forth in Code section 101.206 ("Prohibited Distribution"). A Member who receives a Prohibited Distribution is not required to return the Prohibited Distribution unless the Member had knowledge of the violation of this section 3.2 or the Code. A Prohibited Distribution does not include an amount constituting reasonable compensation for present or past services or a reasonable payment made in the ordinary course of business under a bona fide retirement plan or another benefits program.

Note: The provisions of section 3.2 cannot be waived or modified in the company agreement unless a specific provision authorizes it. See Tex. Bus. Orgs. Code § 101.054. For example, "The Members of the Company hereby agree to waive the application of the provisions of Code section 101.206 to allow the Company to make distributions to Members that would result in the Company's total liabilities exceeding the fair value of the Company's total assets." Alternatively, the Prohibited Distribution language could be included and the requirement for returning the distribution could be waived as follows: "The Members of the Company hereby waive the application of the provisions of Code section 101.206(d), and thus a Member who receives a Prohibited Distribution is required to return the distribution to the Company."

The liabilities of the company do not include those certain liabilities listed in Tex. Bus. Orgs. Code § 101.206(b). Such provisions should be reviewed to ascertain if they are likely to affect the practitioner's particular LLC and therefore should be addressed in the company agreement.

3.3 *General Allocations of Profits and Losses.* Profits, losses, deductions, and credits for any fiscal year shall be allocated to the Members in proportion to their respective Membership Interests.

Refer to Tex. Bus. Orgs. Code § 101.201.

3.4 *Taxes.* The Members may make any tax elections for the Company allowed under the Internal Revenue Code of 1986, as amended from time to time, or the tax laws of any state or other jurisdiction having taxing authority over the Company that they may deem appropriate and in the best interests of the Company and the Members.

3.5 *Books and Records.* The Company shall keep at its principal office the books and records of the Company required by Code sections 3.151 and 101.501. Members shall have reasonable access to the books and records of the Company.

Note: Tex. Bus. Orgs. Code § 101.502 describes the right of a member to examine the records of an LLC. Tex. Bus. Orgs. Code § 101.503, effective September 1, 2017, provides for a penalty if the LLC refuses to allow a member to examine the applicable LLC records. See Acts 2019, 86th Leg., R.S., ch. 658, § 10 (S.B. 1859), eff. Sept. 1, 2019. See also Tex. Bus. Orgs. Code § 3.153.

Article 4

Management

4.1 *Management Authority.* Management of the Company shall be completely vested in the Members. The Members are expressly authorized on behalf of the Company to make all decisions with respect to the Company's business and to take all actions necessary to carry out such decisions. In managing the business and affairs of the Company, the Members shall make decisions (a) collectively as set forth in the remaining provisions of this Article 4 or (b) through a Member or Members to whom specific authority and duties have been delegated by the unanimous vote of all Members. The selling or encumbering of all or substantially all the assets of the Company other than in the ordinary course of business shall require the unanimous vote of all Members.

As noted above, this company agreement is best used for companies with only a few members. Therefore, it is anticipated that most decisions in such companies will be made unanimously. Additional provisions addressing situations that might be appropriate for requiring unanimous consent of the members are included in the long-form member-managed company agreement at form 8-4 in this manual.

4.2 *Quorum.* A majority of the outstanding Membership Interests, represented in person or by proxy, shall be necessary to constitute a quorum at meetings of the Members. Each Member hereby consents and agrees that one or more Members may participate in a meeting of the Members by means of conference telephone or similar communication equipment by

which all persons participating in the meeting can hear each other at the same time, and that participation shall constitute presence in person at the meeting. If a quorum is present, the affirmative vote of the majority of the Membership Interests represented at the meeting and entitled to vote on the subject matter shall be the act of the Members, unless a greater number is required by this Agreement or the Code. In the absence of a quorum, those present may adjourn the meeting for a period, but in no event shall the period exceed sixty (60) days. Jointly held membership interests shall be voted pursuant to Code section 6.157.

Note: Tex. Bus. Orgs. Code § 6.157 was added effective September 1, 2017, and provides that jointly held ownership interests may be voted by any one of the record owners (or any one of the persons having the right to vote the interest if that interest is held by an estate or trust). See Acts 2017, 85th Leg., R.S., ch. 75, § 3 (S.B. 1518), eff. Sept. 1, 2017.

Refer to Tex. Bus. Orgs. Code §§ 6.001 (location of meetings), 6.002 (alternative forms of meetings), 6.003 (participation in a meeting constitutes presence), 101.352 (general notice requirements), 101.353 (quorum requirements), 101.357 (proxy voting by members).

4.3 *Informal Action.* Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if the action is evidenced by a written consent describing the action taken and signed by each Member entitled to vote. Action taken under this section 4.3 is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date, which may be before or after the date the consent is signed.

Section 4.3 requires that consents must be signed by all members. See Tex. Bus. Orgs. Code § 6.201. Tex. Bus. Orgs. Code §§ 6.202, 101.358, however, provide that the consent of a majority of the members will suffice (or whatever vote is required to make that particular decision if decided at a meeting of the members). Determine which alternative is right for the particular LLC being formed. In addition, this section overrides Tex. Bus. Orgs. Code § 101.359(2)(A), (C) by requiring the consent of the members to be evidenced by a writing.

4.4 *Meetings.* Meetings of the Members for any purpose or purposes may be called by any Member. The place of meeting shall be the principal office of the Company or any other

place designated by the Member calling the meeting. Written notice stating the place, day, and hour and purpose or purposes of the meeting shall be delivered either personally or by mail to each Member of record entitled to vote at the meeting. Waiver of notice and actions taken at a meeting shall be effective as provided in the Code. Following each meeting, copies of the minutes of the meeting shall be sent to each Member, and the original of all minutes and consents of the Members shall be maintained in the minute book of the Company.

4.5 *Liability of Members.* A Member shall not be liable as a Member for the debts, obligations, or liabilities of the Company, including a debt, obligation, or liability under a judgment, decree, or order of a court. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Code shall not be grounds for imposing personal liability on a Member for liabilities of the Company.

Refer to Tex. Bus. Orgs. Code § 101.114.

4.6 *Representations and Warranties.* Each Member hereby represents and warrants to the Company and each other Member that (a) the Member is familiar with the existing or proposed business, financial condition, properties, operations, and prospects of the Company; (b) the Member has asked the questions and conducted the due diligence concerning the acquisition of his Membership Interest in the Company that he has desired to ask and conduct, and all those questions have been answered to the Member's full satisfaction; (c) the Member has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of an investment in the Company; (d) the Member understands that owning the Membership Interest in the Company involves various risks, including the restrictions on transfers as set forth in Article 5 of this Agreement, the lack of any public market for the Membership Interests, the risk of owning the Membership Interest for an indefinite time, and the risk of losing his entire investment in the Company; (e) the Member is able to bear the economic risk of the investment; (f) the Member is acquiring the Membership Interest in the

Company for investment, solely for his own beneficial account and not with a view to, or any present intention of, directly or indirectly selling, transferring, offering to sell or transfer, participating in any distribution, or otherwise disposing of the Membership Interest; and (g) the Member acknowledges that the Membership Interests have not been registered under the Securities Act, or any other applicable federal or state securities laws, and that the Company has no intention, and shall not have any obligation, to register or to obtain an exemption from registration for the Membership Interests or to take action so as to permit sales pursuant to the Securities Act.

4.7 *Conflicts of Interest.* A Member shall be entitled to enter into transactions that may be considered competitive with, or business opportunities that may be beneficial to, the Company, it being expressly understood that the Member may enter into transactions that are similar to the transactions into which the Company may enter. A Member does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company. The rights and obligations of a Member who lends money to or transacts business with the Company are the same as those of a person who is not a Member, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member has a direct or indirect interest in the transaction if the transaction is fair to the Company.

Determine if section 4.7 is appropriate depending on the particular situation involved. Refer to Tex. Bus. Orgs. Code §§ 101.255, 101.401.
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Article 5

Restrictions on Transfers

5.1 *Additional Members.* Additional members shall not be admitted to the Company without the prior written consent of all the Members.

Include the following if applicable.

5.2 *Dispositions and Encumbrances of Membership Interests.* A Member shall not encumber or make a sale, assignment, transfer, conveyance, gift, exchange, or other disposition (voluntarily, involuntarily, or by operation of law) of all or any portion of his Membership Interest in the Company, including a disposition resulting from the death or divorce of a Member, without the prior written consent of all the remaining Members. Any attempted disposition or encumbrance, other than in strict compliance with this section 5.2, shall be, and is hereby declared, null and void ab initio.

5.3 *Withdrawal.* A Member does not have the right or power to withdraw, resign, or retire from the Company as a member. The Company, or the remaining Members, may not expel a Member from the Company.

Note: Section 5.3 does not allow a member to withdraw from the company. See Tex. Bus. Orgs. Code § 101.107. If, however, a right of withdrawal is desired for the company agreement, consider substituting the following language: "A Member of the Company who validly exercises that Member's right to withdraw from the Company as a Member is entitled to receive, within a reasonable time after the date of the withdrawal, the fair market value of that Member's Membership Interest as determined as of the date of withdrawal." See Tex. Bus. Orgs. Code § 101.205.

5.4 *Death of Member; Buyout Option.* In the event that a Member dies and the remaining Member or Members agree to continue the Company's existence, the remaining Member or Members shall have the option to acquire the Membership Interest of the deceased Member. This option must be exercised within ninety (90) days of the date of death of the deceased Member. If any remaining Member does not respond during the ninety-day period, that Mem-

ber shall be deemed to have waived his right. If the remaining Member or Members exercise their right, the Member or collective Members must purchase the entirety of the deceased Member's Membership Interest. (Multiple remaining Members may purchase equal or unequal shares of the deceased Member's Membership Interest, as agreed upon by the exercising Members.) In the event the remaining Member or Members do not agree to purchase all of the Membership Interest of the deceased Member, the Company shall be dissolved according to section 6.1 of this Agreement. If the deceased Member's representative and the remaining Member or Members, as applicable, are unable to agree upon the purchase price of the Membership Interest of the deceased Member, the purchase price shall be determined by a qualified appraiser mutually agreed upon by them.

Note: Section 5.4 contains one of the many ways that the succession of the company could be handled upon the death of a member. This alternative recognizes that the type of small business that would be using this form needs the talents and resources of each member to remain profitable. See the long-form member-managed company agreement at form 8-4 in this manual for alternative ways of addressing this issue.

Continue with the following.

Article 6

Dissolution and Winding Up

6.1 *Dissolution.* The Company shall be dissolved upon (a) an election to dissolve the Company by the unanimous vote of the Members or (b) any other event that would cause its dissolution under the Code.

Refer to Tex. Bus. Orgs. Code §§ 11.314, 101.551, 101.552.

6.2 *Liquidation.* Upon the dissolution of the Company, a liquidator shall be selected by the Members. The liquidator shall liquidate the assets of the Company and apply and distribute the proceeds of the liquidation in the following order or priority: (a) to the payment of the

expenses of the terminating transactions including, without limitation, brokerage commission, legal fees, accounting fees, and closing costs; (b) to the payment of creditors of the Company, including Members, in order of priority provided by law; (c) to the Members in accordance with their capital account balances at the time of distribution until full repayment of those capital accounts has occurred; and (d) any remaining assets to the Members in accordance with their Membership Interests.

6.3 *Distribution in Kind.* The liquidator may, in his discretion, distribute assets of the Company in kind to a Member. The liquidator shall determine the fair market value of the property distributed in kind using such reasonable method of valuation as he may adopt.

6.4 *Certificate of Termination.* On completion of the distribution of Company property as provided in this Article 6, the Company is terminated, and the liquidator shall cause the cancellation of the Certificate and any other filings made by the Company and shall take any other actions that may be necessary to terminate the Company.

6.5 *Deficit Capital Accounts.* No Member shall be required to pay to the Company, to any other Member, or to any third party any deficit balance that may exist from time to time in that Member's capital or similar account.

Article 7

General Provisions

7.1 *Amendments to This Agreement or to Certificate.* Any amendment to this Agreement, the Certificate, or any restated certificate of formation shall be adopted only with the written consent of all Members.

Note: The company agreement may be amended only if each member consents. See Tex. Bus. Orgs. Code § 101.053. Likewise, an amendment of the certificate of formation or a restated certificate of formation requires unanimous consent of the members. See Tex. Bus. Orgs. Code § 101.356(d).

7.2 *Pronouns and Plurals.* Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine, and neuter forms, and the singular form of nouns, pronouns, and verbs shall include the plural and vice versa.

7.3 *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.

7.4 *Invalidity of Provisions.* If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, the parties shall be relieved of all obligations arising under that provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying that provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

7.5 *Governing Law.* This Agreement is governed by and shall be construed in accordance with the laws of the state of Texas.

7.6 *Counterparts.* This Agreement may be executed in any number of counterparts, all of which shall constitute the same instrument.

7.7 *Enforceability against Company.* This Agreement is enforceable by or against the Company regardless of whether the company has signed or otherwise expressly adopted this Agreement.

Refer to Tex. Bus. Orgs. Code § 101.052(f).

7.8 *Entire Agreement.* This Agreement embodies the entire understanding and agreement between the parties concerning the Company and supersedes all prior negotiations, understandings, or agreements in regard thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Company Agreement of [name of limited liability company] as of the Effective Date.

[Name of company]

By: _____
[Name of member]

Repeat signature lines for all members.

Note: A signature includes a digital signature, an electronic signature, and a facsimile of a signature. See Tex. Bus. Orgs. Code §§ 1.002(82), 1.007.

Schedule 1

Members of [name of limited liability company]

Members' Names and Addresses	Class	Initial Capital Contribution	Membership Interest and Percentage Interest

Form 8-3

This manager-managed company agreement is best used for LLCs with fairly straightforward business operations and few members (and no classes of members), such as a husband and wife or parties that have known or done business with each other in the past. The aim is the creation of a concise agreement that covers the most important provisions without being burdensome to understand or implement by your client. For more complex business arrangements, see the long-form manager-managed company agreement at form 8-5 in this manual.

The agreement is based on chapter 101 of the Texas Business Organizations Code (TBOC). *See* Tex. Bus. Orgs. Code §§ 101.001–.621. Chapter 101 provides general guidelines and, as such, parties have significant freedom in structuring the company agreement according to their particular situation. This form, therefore, can be significantly modified and adapted to address each party’s requirements.

This form can be modified to include any provision related to the regulation and management of the company as long as the provision is not inconsistent with law or the certificate of formation of the company. *See* Tex. Bus. Orgs. Code § 101.052(d). To the extent the company agreement does not otherwise provide, the TBOC will govern the internal affairs and management of the business of the company. *See* Tex. Bus. Orgs. Code §§ 101.052(b), 101.252. Conversely, the agreement may waive or modify the TBOC provisions. In the case of those items listed in section 101.054, a waiver or modification requires that the company agreement contain a provision that the item is intended to be waived or modified and who must approve the waiver or modification.

References to the TBOC are included following certain sections of this form to allow the practitioner to consider alternative language that might be appropriate for inclusion and to provide additional guidance on areas that should be addressed in the agreement.

Company Agreement of [name of manager-managed LLC]
[Short Form]

This Company Agreement (“Agreement”) of [name of limited liability company], a Texas limited liability company (“Company”), is entered into effective [date] (“Effective Date”), by and between [names of members] (collectively referred to herein as the “Members” and individually as a “Member”) and [name of manager] (“Manager”).

Article 1

Formation

1.1 *Formation.* The Company was organized pursuant to the provisions of the Texas Business Organizations Code (“Code”) by filing a certificate of formation (“Certificate”) with the Texas secretary of state on the Effective Date.

Provisions that would normally be included in a company agreement may be contained in the certificate of formation. See Tex. Bus. Orgs. Code §§ 3.005(b), 101.051. Therefore, when issues arise regarding the governance or operation of the LLC, review the certificate of formation as well as the company agreement.

Note: The governing authority of an LLC must be set forth in the certificate of formation as either managers or members. See Tex. Bus. Orgs. Code § 101.251.

1.2 *Purpose.* The purpose and business of the Company shall be to [list company's purpose] and all related activities incidental thereto and the transaction of any other business or activity allowed under the Code that is approved by the unanimous consent of the Members. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described in this section 1.2.

Refer to Tex. Bus. Orgs. Code §§ 2.003, 2.005. The scope of the authority of the manager of the company can be defined by the purpose. Consider, therefore, limiting the purpose by requiring the members to approve additional purposes (as done above) or narrowly describing the purpose and deleting the language “and the transaction of any other business or activity allowed under the Code that is approved by the unanimous consent of the Members.”

1.3 *Term.* The Company shall continue in existence perpetually or until the termination of the Company in accordance with the provisions of section 7.1 of this Agreement or the Code.

1.4 *Registered Agent and Office.* The registered agent for the service of process is [name], and the address is [address]. The principal office of the Company shall be located at [address]. The Company may have other offices and places of business at locations, both

within and without the state of Texas, as the Manager may from time to time determine or as the business and affairs of the Company may require.

1.5 *Members.* As of the Effective Date, the Members of the Company have the following membership interests (“Membership Interests”) in the Company:

[name of member] [percent]%

[name of member] [percent]%

Repeat as necessary.

100%

The Member’s Membership Interest is that Member’s right (a) to an allocable share of the profits, losses, deductions, distributions, and credits of the Company; (b) to a distributive share of the assets of the Company; and (c) to vote on those matters described in this Agreement and the Code and to participate in the management and operation of the Company as set forth in this Agreement.

The membership interest as used herein contains all economic, noneconomic, and management rights. Often, a membership interest would include only the rights set forth in 1.5(a) and 1.5(b) above, which are the economic rights. If it is anticipated that a membership interest should not include management and voting rights, the practitioner should refer to and incorporate the provisions of the long-form manager-managed company agreement at form 8-5 in this manual.

1.6 *No State-Law Partnership.* The Members intend that the Company not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than applicable tax laws, and this Agreement may not be construed to suggest otherwise.

Article 2

Capital Contributions

2.1 *Initial Capital Contributions.* The Members have contributed to the Company the property listed on Schedule 1.

Note: A member may promise to make a contribution in the future if the promise is in writing and signed by that member. The writing and signature requirements cannot be waived by the company agreement unless the agreement provides specifically for a waiver. See Tex. Bus. Orgs. Code §§ 101.054, 101.151. However, as a practical matter, if future contributions are contemplated, whether as an initial contribution or an additional contribution, specific provisions regarding such should be included in the agreement as set forth below.

Include the following if a member will make a contribution in the future.

[Name of member] promises and agrees to make a contribution of [specify property or amount of cash] to the Company on or before [date of deadline]. The Member is obligated to make the contribution without regard to the death, disability, or other change in circumstances of the Member.

Refer to Tex. Bus. Orgs. Code § 101.152.

Repeat as necessary.

Continue with the following.

Additional capital contributions may be made only if unanimously agreed to by all Members.

2.2 *Capital Accounts.* The Company shall maintain for each Member a separate capital account in accordance with this section 2.2, which shall control the division of assets upon liquidation of the Company as provided in this Agreement. The capital account shall be increased by the cash amount or fair market value of all capital contributions made by that Member to the Company pursuant to this Agreement and by that Member's allocable share of

profits. The capital account shall be decreased by the cash amount or fair market value of any property distributed to that Member pursuant to this Agreement and by that Member's allocable share of losses.

2.3 *Ownership of Assets.* All assets and property of the Company shall be owned by the Company, subject to the terms and provisions of this Agreement, and no Member, individually, shall have any ownership of those assets or property. Legal title to all assets and property of the Company shall be held and conveyed in the name of the Company.

Refer to Tex. Bus. Orgs. Code § 101.106(b).

2.4 *Return of Capital Contributions.* Capital contributions shall be expended in furtherance of the business of the Company. All costs and expenses of the Company shall be paid from the Company's resources, and the Members shall not be liable for any obligations of the Company, directly or indirectly. No interest shall be paid by the Company on capital contributions.

Article 3

Financial Matters

3.1 *Net Cash Flow.* There shall be distributed annually to the Members from net cash flow an amount that the Manager may determine. Such distributions shall be made among all the Members in accordance with their Membership Interests. Net cash flow shall mean the amount by which the receipts from operations of the Company and distributions to the Company exceed (a) applicable expenses (excluding deductions for amortization and depreciation) and (b) any cash reserve that the Manager determines necessary for the operations of the Company. Distributions shall be made to each Member in the form of cash, regardless of the form of the Member's contribution to the Company.

Refer to Tex. Bus. Orgs. Code §§ 101.202–.204.

3.2 *Prohibited Distributions.* Distributions may not be made to Members if, immediately after making the distribution, the Company's total liabilities exceed the fair value of the Company's total assets as set forth in Code section 101.206 ("Prohibited Distribution"). A Member who receives a Prohibited Distribution is not required to return the Prohibited Distribution unless the Member had knowledge of the violation of this section 3.2 or the Code. A Prohibited Distribution does not include an amount constituting reasonable compensation for present or past services or a reasonable payment made in the ordinary course of business under a bona fide retirement plan or another benefits program.

Note: The provisions of section 3.2 cannot be waived or modified in the company agreement unless a specific provision authorizes it. See Tex. Bus. Orgs. Code § 101.054. For example, "The Members of the Company hereby agree to waive the application of the provisions of Code section 101.206 to allow the Company to make distributions to Members that would result in the Company's total liabilities exceeding the fair value of the Company's total assets." Alternatively, the Prohibited Distribution language could be included and the requirement for returning the distribution could be waived as follows: "The Members of the Company hereby waive the application of the provisions of Code section 101.206(d), and thus a Member who receives a Prohibited Distribution is required to return the distribution to the Company."

The liabilities of the company do not include those certain liabilities listed in Tex. Bus. Orgs. Code § 101.206(b). Such provisions should be reviewed to ascertain if they are likely to affect the practitioner's particular LLC and therefore should be addressed in the company agreement.

3.3 *General Allocations of Profits and Losses.* Profits, losses, deductions, and credits for any fiscal year shall be allocated to the Members in proportion to their respective Membership Interests.

Refer to Tex. Bus. Orgs. Code § 101.201.

3.4 *Taxes.* The Manager may make any tax elections for the Company allowed under the Internal Revenue Code of 1986, as amended from time to time, or the tax laws of any state

or other jurisdiction having taxing authority over the Company that he may deem appropriate and in the best interests of the Company and the Members.

3.5 *Books and Records.* The Company shall keep at its principal office the books and records of the Company required by Code sections 3.151 and 101.501. Members shall have reasonable access to the books and records of the Company.

Note: Tex. Bus. Orgs. Code § 101.502 describes the right of a member to examine the records of an LLC. Tex. Bus. Orgs. Code § 101.503, effective September 1, 2017, provides for a penalty if the LLC refuses to allow a member to examine the applicable LLC records. See Acts 2019, 86th Leg., R.S., ch. 658, § 10 (S.B. 1859), eff. Sept. 1, 2019. See also Tex. Bus. Orgs. Code § 3.153.

Article 4

Management

4.1 *Management Authority.* Subject to the provisions of Article 5, management of the Company shall be vested in the Manager. The Manager shall have the exclusive power and authority to conduct the business of the Company. In conducting the business of the Company, the Manager shall have all rights, duties, and powers conferred by the Code. Subject to Article 5, the Manager shall have the authority to buy and sell assets for the Company or make commitments in the name of the Company in the ordinary course of the Company's business and is hereby expressly authorized on behalf of the Company to make all decisions with respect to the Company's business and to take all actions necessary to carry out those decisions, including, but not limited to, borrowing money for the Company and encumbering any of the Company's assets.

Note: The broad grant of authority to the manager in this section should be carefully reviewed. This type of provision can be useful when the manager is also a trusted member of the company, and all members want the manager to make most of the decisions regarding the company. However, the manager is not required to be a member of the company. Tex. Bus. Orgs. Code § 101.302(d). In that event, consider drafting this section along with section 5.2 to give the members a vote on key decisions of the company. A list of key decisions to review are in the long-form manager-managed company agreement at form 8-5 in this manual.

Refer to Tex. Bus. Orgs. Code §§ 10.251, 10.252 regarding conveyances of company property.

4.2 *Duties.* The Manager shall carry out his duties in good faith, in a manner that is in the best interest of the Company, and with the care that an ordinarily prudent manager in a like position would use under similar circumstances. As long as the Manager complies with the provisions of this section 4.2, he shall not have any liability by reason of being or having been a manager of the Company.

4.3 *Time Devoted to Business.* The Manager shall devote the time to the business of the Company that he, in his discretion, deems necessary for the efficient carrying on of the Company's business. The Manager shall at all times be free to engage for his own account in any business whether or not that business competes with any business of the Company.

Note: Determine if the last sentence of this section 4.3 is appropriate for the particular situation involved, or whether it should be deleted or modified to allow only enumerated competition.

4.4 *Number of Managers.* The number of managers may be increased or decreased by vote of the Members with aggregate Membership Interests of more than fifty percent (50%). Initially, there shall be one Manager: **[name of manager]**.

Note: The initial manager of the company is as listed in the certificate of formation. See Tex. Bus. Orgs. Code § 101.302(b). With only one manager, a decrease in managers would obviously result in there being no manager, with the company then being managed by the members. In that event, the certificate of formation would need to be amended to provide for member management.

4.5 *Tenure and Removal.* The Manager shall hold office until his successor has been duly elected and qualified as provided in this section 4.5. A Manager may be elected or

removed by the vote of the Members with aggregate Membership Interests of more than fifty percent (50%). No person shall be eligible to serve as a manager of the Company until that person has accepted the provisions of this Agreement in writing.

Note: Section 4.5 changes the default rule set forth in Tex. Bus. Orgs. Code § 101.302(c), which states that a manager's term is not shortened upon a decrease in the number of managers. Refer also to Tex. Bus. Orgs. Code §§ 101.303–.305.

4.6 *Reliance by Third Parties.* No third party dealing with the Company shall be required to ascertain whether the Manager is acting in accordance with the provisions of this Agreement. All third parties may rely on a document executed by the Manager as binding the Company. If the Manager acts outside the authority set forth in this Agreement or as provided in the Certificate or the Code, he shall be liable to the Members for any damages arising out of his unauthorized actions.

4.7 *Reimbursement.* The Manager shall be entitled to a management fee for managing the assets of the Company, which shall be set by a vote of the Members with aggregate Membership Interests of more than fifty percent (50%). The Manager shall be reimbursed by the Company for any reasonable out-of-pocket costs incurred on behalf of the Company.

Note: If the manager is also a member, the manager is seldom paid a fee, especially if the company has few day-to-day operations that require the manager's action.

4.8 *Insurance.* The Company may maintain for the protection of the Company, the Members, and the Manager such insurance as the Manager, in his sole discretion, deems necessary for the operations being conducted.

4.9 *Exculpation.* The Manager shall not be liable to the Company or to the Members for any act or failure to act or for any errors of judgment, but for only willful misconduct or gross negligence. The Company shall indemnify and hold harmless the Manager and his agents against and from any personal loss, liability, or damage incurred as a result of any act

or omission, or any error of judgment, unless the loss, liability, or damage results from the Manager's willful misconduct or gross negligence. Any such indemnification shall be paid only from the assets of the Company, and no Member, Manager, or third party shall have recourse against the personal assets of any Member for such indemnification.

Note: The liability of the manager can be limited pursuant to Tex. Bus. Orgs. Code §§ 7.001, 101.401. Consider a more stringent standard if representing a member who is not a manager.

4.10 *Conflicts of Interest.* A Manager shall be entitled to enter into transactions that may be considered competitive with, or business opportunities that may be beneficial to, the Company, it being expressly understood that the Manager may enter into transactions that are similar to the transactions into which the Company may enter. A Manager does not violate a duty or obligation to the Company merely because the Manager's conduct furthers the Manager's own interest. No transaction with the Company shall be voidable solely because a Manager has a direct or indirect interest in the transaction if the transaction is fair to the Company.

Note: Determine if section 4.10 is appropriate depending on the particular situation involved. Refer to Tex. Bus. Orgs. Code §§ 101.255, 101.401.

Article 5

Members

5.1 *Participation.* The Members, in their capacity as Members, shall take no part in the control, management, direction, or operation of the affairs of the Company and shall have no power to bind the Company, except as specifically provided herein.

5.2 *Unanimous Vote of Members.* The following actions by the Company shall require the unanimous vote of all Members: (a) voluntary dissolution of the Company, (b) admission of an additional Member, (c) amendment of this Agreement or the Certificate, (d) selling all or

substantially all of the assets of the Company other than in the ordinary course of business, or
(e) approving additional capital contributions.

See section 4.1 above.

5.3 *Quorum.* A majority of the outstanding Membership Interests, represented in person or by proxy, shall be necessary to constitute a quorum at meetings of the Members. Each Member hereby consents and agrees that one or more Members may participate in a meeting of the Members by means of conference telephone or similar communication equipment by which all persons participating in the meeting can hear each other at the same time, and that participation shall constitute presence in person at the meeting. If a quorum is present, the affirmative vote of the majority of the Membership Interests represented at the meeting and entitled to vote on the subject matter shall be the act of the Members, unless a greater number is required by this Agreement or the Code. In the absence of a quorum, those present may adjourn the meeting for a period, but in no event shall the period exceed sixty (60) days. Jointly held membership interests shall be voted pursuant to Code section 6.157.

Note: Tex. Bus. Orgs. Code § 6.157 was added effective September 1, 2017, and provides that jointly held ownership interests may be voted by any one of the record owners (or any one of the persons having the right to vote the interest if that interest is held by an estate or trust). See Acts 2017, 85th Leg., R.S., ch. 75, § 3 (S.B. 1518), eff. Sept. 1, 2017.

Refer to Tex. Bus. Orgs. Code §§ 6.001 (location of meetings), 6.002 (alternative forms of meetings), 6.003 (participation in a meeting constitutes presence), 101.352 (general notice requirements), 101.353 (quorum requirements), 101.357 (proxy voting by members).

5.4 *Informal Action.* Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if the action is evidenced by a written consent describing the action taken and signed by each Member entitled to vote. Action taken under this section 5.4 is effective when all Members entitled to vote have signed the consent, unless

the consent specifies a different effective date, which may be before or after the date the consent is signed.

Section 5.4 requires that consents must be signed by all members. See Tex. Bus. Orgs. Code § 6.201. Tex. Bus. Orgs. Code §§ 6.202, 101.358, however, provide that the consent of a majority of the members will suffice (or whatever vote is required to make that particular decision if decided at a meeting of the members). Determine which alternative is right for the particular LLC being formed. In addition, this section overrides Tex. Bus. Orgs. Code § 101.359(2)(A), (C) by requiring the consent of the members to be evidenced by a writing.

5.5 *Meetings.* Meetings of the Members for any purpose or purposes may be called by the Manager or any Member. The place of meeting shall be the principal office of the Company or any other reasonable place designated by the Manager or Member calling the meeting. Written notice stating the place, day, and hour and purpose or purposes of the meeting shall be delivered either personally or by mail to each Member of record entitled to vote at the meeting. Waiver of notice and actions taken at a meeting shall be effective as provided in the Code. Following each meeting, copies of the minutes of the meeting shall be sent to each Member, and the original of all minutes and consents of the Members shall be maintained in the minute book of the Company.

5.6 *Liability of Members.* A Member shall not be liable as a Member for the debts, obligations, or liabilities of the Company, including a debt, obligation, or liability under a judgment, decree, or order of a court. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Code shall not be grounds for imposing personal liability on a Member for liabilities of the Company.

Refer to Tex. Bus. Orgs. Code § 101.114.

5.7 *Representations and Warranties.* Each Member hereby represents and warrants to the Company and each other Member that (a) the Member is familiar with the existing or pro-

posed business, financial condition, properties, operations, and prospects of the Company; (b) the Member has asked the questions and conducted the due diligence concerning the acquisition of his Membership Interest in the Company that he has desired to ask and conduct, and all those questions have been answered to the Member's full satisfaction; (c) the Member has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of an investment in the Company; (d) the Member understands that owning the Membership Interest in the Company involves various risks, including the restrictions on transfers as set forth in Article 6 of this Agreement, the lack of any public market for the Membership Interests, the risk of owning the Membership Interest for an indefinite time, and the risk of losing his entire investment in the Company; (e) the Member is able to bear the economic risk of the investment; (f) the Member is acquiring the Membership Interest in the Company for investment, solely for his own beneficial account and not with a view to, or any present intention of, directly or indirectly selling, transferring, offering to sell or transfer, participating in any distribution, or otherwise disposing of the Membership Interest; and (g) the Member acknowledges that the Membership Interests have not been registered under the Securities Act, or any other applicable federal or state securities laws, and that the Company has no intention, and shall not have any obligation, to register or to obtain an exemption from registration for the Membership Interests or to take action so as to permit sales pursuant to the Securities Act.

5.8 *Conflicts of Interest.* A Member shall be entitled to enter into transactions that may be considered competitive with, or business opportunities that may be beneficial to, the Company, it being expressly understood that the Member may enter into transactions that are similar to the transactions into which the Company may enter. A Member does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company. The rights and obligations of a Member who lends money to or transacts business with the Company are the same as those of a person who is not a Member, subject to other applicable

law. No transaction with the Company shall be voidable solely because a Member has a direct or indirect interest in the transaction if the transaction is fair to the Company.

Determine if section 5.8 is appropriate depending on the particular situation involved. Refer to Tex. Bus. Orgs. Code §§ 101.255, 101.401.

Article 6

Restrictions on Transfers

6.1 *Additional Members.* Additional members shall not be admitted to the Company without the prior written consent of all the Members.

Include the following if applicable.

6.2 *Dispositions and Encumbrances of Membership Interests.* A Member shall not encumber or make a sale, assignment, transfer, conveyance, gift, exchange, or other disposition (voluntarily, involuntarily, or by operation of law) of all or any portion of his Membership Interest in the Company, including a disposition resulting from the death or divorce of a Member, without the prior written consent of all the remaining Members. Any attempted disposition or encumbrance, other than in strict compliance with this section 6.2, shall be, and is hereby declared, null and void ab initio.

6.3 *Withdrawal.* A Member does not have the right or power to withdraw, resign, or retire from the Company as a member. The Company, or the remaining Members, may not expel a Member from the Company.

Note: Section 6.3 does not allow a member to withdraw from the company. See Tex. Bus. Orgs. Code § 101.107. If, however, a right of withdrawal is desired for the company agreement, consider substituting the following language: "A Member of the Company who validly exercises that Member's right to withdraw from the Company as a Member is entitled to receive, within a reasonable time after the date of the withdrawal, the fair market value of that Member's Membership Interest as determined as of the date of withdrawal." See Tex. Bus. Orgs. Code § 101.205.

6.4 *Death of Member; Buyout Option.* In the event that a Member dies and the remaining Member or Members agree to continue the Company's existence, the remaining Member or Members shall have the option to acquire the Membership Interest of the deceased Member. This option must be exercised within ninety (90) days of the date of death of the deceased Member. If any remaining Member does not respond during the ninety-day period, that Member shall be deemed to have waived his right. If the remaining Member or Members exercise their right, the Member or collective Members must purchase the entirety of the deceased Member's Membership Interest. (Multiple remaining Members may purchase equal or unequal shares of the deceased Member's Membership Interest, as agreed upon by the exercising Members.) In the event the remaining Member or Members do not agree to purchase all of the Membership Interest of the deceased Member, the Company shall be dissolved according to section 7.1 of this Agreement. If the deceased Member's representative and the remaining Member or Members, as applicable, are unable to agree upon the purchase price of the Membership Interest of the deceased Member, the purchase price shall be determined by a qualified appraiser mutually agreed upon by them.

Note: Section 6.4 contains one of the many ways that the succession of the company could be handled upon the death of a member. This alternative recognizes that the type of small business that would be using this form needs the talents and resources of each member to remain profitable. See the long-form manager-managed company agreement at form 8-5 in this manual for alternative ways of addressing this issue.

Continue with the following.

Article 7

Dissolution and Winding Up

7.1 *Dissolution.* The Company shall be dissolved upon (a) an election to dissolve the Company by the unanimous vote of the Members or (b) any other event that would cause its dissolution under the Code.

Refer to Tex. Bus. Orgs. Code §§ 11.314, 101.551, 101.552.
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7.2 *Liquidation.* Upon the dissolution of the Company, a liquidator shall be selected by the Members. The liquidator shall liquidate the assets of the Company and apply and distribute the proceeds of the liquidation in the following order or priority: (a) to the payment of the expenses of the terminating transactions including, without limitation, brokerage commission, legal fees, accounting fees, and closing costs; (b) to the payment of creditors of the Company, including Members, in order of priority provided by law; (c) to the Members in accordance with their capital account balances at the time of distribution until full repayment of those capital accounts has occurred; and (d) any remaining assets to the Members in accordance with their Membership Interests.

7.3 *Distribution in Kind.* The liquidator may, in his discretion, distribute assets of the Company in kind to a Member. The liquidator shall determine the fair market value of the property distributed in kind using such reasonable method of valuation as he may adopt.

7.4 *Certificate of Termination.* On completion of the distribution of Company property as provided in this Article 7, the Company is terminated, and the liquidator shall cause the cancellation of the Certificate and any other filings made by the Company and shall take any other actions that may be necessary to terminate the Company.

7.5 *Deficit Capital Accounts.* No Member shall be required to pay to the Company, to any other Member, or to any third party any deficit balance that may exist from time to time in that Member's capital or similar account.

Article 8

General Provisions

8.1 *Amendments to This Agreement or to Certificate.* Any amendment to this Agreement, the Certificate, or any restated certificate of formation shall be adopted only with the written consent of all Members.

Note: The company agreement may be amended only if each member consents. See Tex. Bus. Orgs. Code § 101.053. Likewise, an amendment of the certificate of formation or a restated certificate of formation requires unanimous consent of the members. See Tex. Bus. Orgs. Code § 101.356(d).

8.2 *Pronouns and Plurals.* Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine, and neuter forms, and the singular form of nouns, pronouns, and verbs shall include the plural and vice versa.

8.3 *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.

8.4 *Invalidity of Provisions.* If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, the parties shall be relieved of all obligations arising under that provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying that provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

8.5 *Governing Law.* This Agreement is governed by and shall be construed in accordance with the laws of the state of Texas.

8.6 *Counterparts.* This Agreement may be executed in any number of counterparts, all of which shall constitute the same instrument.

8.7 *Enforceability against Company.* This Agreement is enforceable by or against the Company regardless of whether the Company has signed or otherwise expressly adopted this Agreement.

Refer to Tex. Bus. Orgs. Code § 101.052(f).

8.8 *Entire Agreement.* This Agreement embodies the entire understanding and agreement between the parties concerning the Company and supersedes all prior negotiations, understandings, or agreements in regard thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Company Agreement of [name of limited liability company] as of the Effective Date.

[Name of company]

By: _____
[Name of member]

Repeat signature lines for all members.

[Name of manager], the Manager designated in the foregoing Company Agreement, hereby accepts that designation and agrees to abide by the provisions of the Agreement.

[Name of manager]

Note: A signature includes a digital signature, an electronic signature, and a facsimile of a signature. See Tex. Bus. Orgs. Code §§ 1.002(82), 1.007.

Schedule 1

Members of [name of limited liability company]

Members' Names and Addresses	Class	Initial Capital Contribution	Membership Interest and Percentage Interest

Form 8-4

This long-form member-managed company agreement is best used for larger businesses, where there are many members, or in situations where the members are unrelated parties without prior, trusted business dealings. In addition, this company agreement includes provisions for more than one class of members.

This form can be modified to include any provision related to the regulation and management of the company as long as the provision is not inconsistent with law or the certificate of formation of the company. *See* Tex. Bus. Orgs. Code § 101.052(d). To the extent the company agreement does not otherwise provide, the Texas Business Organizations Code (TBOC) will govern the internal affairs and management of the business of the company. *See* Tex. Bus. Orgs. Code §§ 101.052(b), 101.252. Conversely, the agreement may waive or modify the TBOC provisions. In the case of those items listed in section 101.054, a waiver or modification requires that the company agreement contain a provision that the item is intended to be waived or modified and who must approve the waiver or modification.

References to the TBOC are included following certain sections of this form to allow the practitioner to consider alternative language that might be appropriate for inclusion and to provide additional guidance on areas that should be addressed in the agreement.

Company Agreement of [name of member-managed LLC]

[Long Form]

This Company Agreement (“Agreement”) of [name of limited liability company], a Texas limited liability company (“Company”), is entered into effective [date] (“Effective Date”), by and between [names of members] (collectively referred to herein as the “Members” and individually as a “Member”).

Article 1

Definitions

1.1 *Definitions.* As used in this Agreement, the following terms have the following meanings:

“Affiliate” means, with reference to any person, any other person controlling, controlled by, or under direct or indirect common control with that person.

Refer to Tex. Bus. Orgs. Code § 1.002(1).

“Assignee” means a person who receives a Transfer of all or a portion of the Membership Interest of a Member but who has not been admitted to the Company as a Member.

Refer to Tex. Bus. Orgs. Code § 101.108, which permits the assignment of a membership interest without conferring management rights or the right to become a member.

“Bankrupt” or “Bankruptcy” means with respect to any Person that (a) the Person (i) makes an assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for that Person a reorganization, arrangement, composition, readjustment, liquidation, dissolution, termination, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against that Person in a proceeding of the type described in subclauses (i) through (iv) of this clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of that Person or of all or any substantial part of that Person’s properties or (b) against that Person, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and one hundred twenty (120) days have expired without dismissal thereof or with respect to which, without that Person’s consent or acquiescence, a trustee, receiver, or liquidator of that Person or of all or any substantial part of that Person’s properties has been appointed and ninety (90) days have expired without the appointment’s having been vacated or stayed, or ninety (90) days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

“Business Day” means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the state of Texas are closed.

“Capital Account” means a capital account maintained for a Member as provided by Treasury Regulations section 1.704–1(b)(2)(iv), of the regulations of the Internal Revenue Service.

“Capital Contribution” means the amount of money and the Net Value of property other than money contributed to the Company by a Member.

“Class” means a group of one or more Members or Membership Interests established in this Agreement which has certain relative rights, powers, duties, voting rights, or distribution rights, as set forth herein. Initially, there will be two Classes of Membership Interests: Class A Membership Interests and Class B Membership Interests. Except as specifically set forth in sections 5.1 and 5.2 of this Agreement, all Classes shall be identical with each other in every respect. The Company may establish additional Classes upon the unanimous vote of the Members. The rights, powers, or duties of a Class may be senior to the rights, powers, or duties of any other Class, including a previously established Class.

Note: The classes established in this agreement are used to accommodate members with a priority of return. Consider whether the classes should also have different voting rights or specified duties. The class system can be used to differentiate groups of members in a variety of ways to accomplish the economics of a deal. For example, the members that are contributing services rather than cash to the company could be a separate class. Refer to Tex. Bus. Orgs. Code § 101.104.

“Code” means the Texas Business Organizations Code, including any successor statute, as amended from time to time.

“Default Interest Rate” means a rate per year equal to the prime rate published in the *Wall Street Journal* on the day the rate is determined (or the most recent day on which the *Wall Street Journal* was published if the paper is not published on the day the rate is determined).

“Fundamental Business Transaction” has that meaning assigned to it by the definitions in the Code, as may be amended from time to time, and includes (a) a merger, (b) an interest

exchange, (c) a conversion, or (d) a sale or transfer of all or substantially all the Company's assets.

Refer to Tex. Bus. Orgs. Code § 1.002(32).

"Internal Revenue Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

"Member" means any person executing this Agreement as of the date of this Agreement as a Member or hereafter admitted to the Company as a Member as provided in this Agreement but does not include any person who has ceased to be a Member of the Company.

"Membership Interest" is a Member's right (a) to an allocable share of the Profits and Losses, income, gains, deductions, credits, and distributions of the Company and (b) to a distributive share of the assets of the Company. Membership Interests shall include, unless specifically identified otherwise, all Class A Membership Interests and all Class B Membership Interests. Membership Interest does not include the voting rights or management rights reserved to the Members under the terms of this Agreement (or the right to vote the Percentage Interests relating thereto) until the holder of the Membership Interest has been admitted to the Company as a Member as to that Membership Interest.

Refer to Tex. Bus. Orgs. Code § 1.002(54). Membership interests may be certificated or uncertificated. Membership interests for LLCs are uncertificated unless set forth otherwise in the agreement. See Tex. Bus. Orgs. Code § 3.201.

"Net Value" means, in connection with a Capital Contribution of property, the value of the asset less any indebtedness to which the asset is subject when contributed.

"Percentage Interest" means the increment of interest assigned to each Member in connection with and equal to that Member's Membership Interest for the purpose of voting under the terms of this Agreement. The sum of the Members' Percentage Interests shall be one hundred percent (100%).

“Person” means any business entity, trust, estate, executor, administrator, or individual, including, where applicable, the Company, or a Member.

“Preferred Return” means, with respect to any Member owning a Class A Membership Interest, an amount calculated as a cumulative, [noncompounded/compounded] per-year rate equal to [percent] percent ([percent]%) on the average daily balance of the unreturned Capital Contributions of such Member.

“Proceeding” means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitral, or investigative.

“Profit and Loss” means, for each fiscal year of the Company (or other period for which Profit or Loss must be computed), the Company’s taxable income or loss determined in accordance with Internal Revenue Code section 703(a), with the following adjustments:

- a. all items of income, gain, loss, and deduction required to be stated separately pursuant to Internal Revenue Code section 703(a)(1) shall be included in computing taxable income or loss;
- b. any tax-exempt income of the Company not otherwise taken into account in computing Profit or Loss shall be included in computing taxable income or loss;
- c. any expenditures of the Company described in Internal Revenue Code section 705(a)(2)(B) (or treated as such pursuant to Treasury Regulations section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profit or Loss shall be subtracted from taxable income or loss;
- d. gain or loss resulting from any disposition of Company property shall be computed by reference to the book value of the property;

- e. in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account book depreciation (as allowable for federal income tax purposes); and
- f. if the book value of an asset of the Company is adjusted in accordance with the winding up and termination of the Company, any increase or decrease in the book value of the asset as a result of the adjustment shall be treated as gain or loss, respectively, from the disposition of the asset and shall be taken into account in computing Profits or Losses.

“Simple Majority” means fifty-one percent (51%) of the Percentage Interests of all Members participating in a vote. If a decision or action is set forth in this Agreement as being made or required by the Members and that decision or action does not specify what Percentage Interest vote is required, the decision or action shall be by a Simple Majority of the Members.

“Super Majority” means seventy-five percent (75%) of the Percentage Interests of all Members participating in a vote.

“Transfer” means any sale, assignment, conveyance, transfer, encumbrance, gift, donation, assignment, pledge, hypothecation, or other form of disposition of a Membership Interest or any portion of a Membership Interest, whether voluntary or involuntary, whether attempted or completed, and whether during the transferor’s lifetime or upon or after the transferor’s death, including by operation of law, court order, judicial process, foreclosure, levy, or attachment.

1.2 *Other Definitions.* Other terms defined hereinafter are used herein as so defined.

Article 2

Organization

2.1 *Formation.* The Company has been organized as a Texas limited liability company by filing a certificate of formation (“Certificate”) with the Texas secretary of state on the Effective Date, which may be amended or restated from time to time.

Provisions that would normally be included in a company agreement may be contained in the certificate of formation. See Tex. Bus. Orgs. Code §§ 3.005(b), 101.051. Therefore, when issues arise regarding the governance or operation of the LLC, review the certificate of formation as well as the company agreement.

Note: The governing authority of an LLC must be set forth in the certificate of formation as either managers or members. See Tex. Bus. Orgs. Code § 101.251.

2.2 *Name.* The name of the Company is [name of limited liability company], and all Company business must be conducted in that name or other names that comply with applicable law that a [Simple Majority/Super Majority] of the Members may select from time to time.

2.3 *Registered Agent and Office.* The registered agent for the service of process is [name], and the address is [address]. The principal office of the Company shall be located at [address]. The Company may have other offices and places of business at locations, both within and without the state of Texas, as a Simple Majority of the Members may from time to time determine or as the business and affairs of the Company may require.

2.4 *Purposes.* The purpose and business of the Company shall be to [list company's purpose] and all related activities incidental thereto and the transaction of any other business or activity allowed under the Code that is approved by a [Simple Majority/Super Majority] of the Members. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described in this section 2.4. The Company may not, however, (a) engage in a business or activity that is expressly unlawful or prohibited by a law of the state of Texas or cannot lawfully be engaged in by the Company under

those laws; (b) operate as a bank, trust company, savings association, insurance company, cemetery organization (except as authorized under the Texas Health and Safety Code), or abstract or title company governed by title 11 of the Texas Insurance Code; or (c) [specify other prohibited purpose(s)].

Note: The scope of the authority of the members of the company can be defined by the purpose. Consider, therefore, limiting the purpose, especially if representing a member with a minority interest in the company, by requiring the members to approve additional purposes (as done above) or narrowly describing the purpose and deleting the language "and the transaction of any other business or activity allowed under the Code that is approved by a Simple/Super Majority of the Members." Refer to Tex. Bus. Orgs. Code §§ 2.003, 2.005.

2.5 *Powers.* The Company shall have all powers necessary, suitable, or convenient for the accomplishment of the purposes of the Company, including, without limitation, to (a) make and perform all contracts; (b) engage in all activities and transactions; and (c) have all powers available to a limited liability company under (i) the Code, (ii) any other laws of the state of Texas, and (iii) the laws of any other jurisdiction where the Company conducts business.

2.6 *Foreign Qualification.* Before the Company conducts business in any jurisdiction other than Texas, the Members shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Members, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. Each Member shall immediately execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify or continue the Company as a foreign limited liability company in all jurisdictions in which the Company may conduct business.

2.7 *Term.* The Company will commence as provided in the Certificate and will continue in existence [perpetually/for the period of duration set forth in the Certificate] or until

the termination of the Company in accordance with the provisions of Article 15 of this Agreement or the Code.

2.8 *No State-Law Partnership.* The Members intend that the Company not be a partnership (including a limited partnership) or a joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than applicable tax laws, and this Agreement may not be construed to suggest otherwise.

Article 3

Membership

3.1 *Initial Members, Capital Contributions, Membership Interests, and Percentage Interests.* Each person listed on Schedule 1 (a copy of which is attached hereto and incorporated herein) is hereby admitted to the Company as a Member, effective contemporaneously with the Effective Date. Set forth opposite the name of each Member listed on Schedule 1 is that Member's initial Capital Contribution, Class, and his Membership Interest and Percentage Interest. Schedule 1 may be amended from time to time to reflect changes in or additions to the membership of the Company. Any such amended Schedule 1 shall (a) supersede all prior Schedule 1s, (b) become part of this Agreement, and (c) be kept on file at the principal office of the Company.

3.2 *Additional Members.* Additional persons may be admitted to the Company as Members on terms and conditions as shall be determined by unanimous consent of the Members. The terms of admission or issuance must specify the Membership Interests, Percentage Interests, Class, and Capital Contributions applicable thereto.

3.3 *Member Rights.* Except as otherwise specifically provided in this Agreement, no Member shall have the right to (a) sell, transfer, or assign its interest in the Company; (b)

require partition of the property of the Company; (c) compel the sale of Company assets; or (d) cause the winding up of the Company.

3.4 *Representations and Warranties of Members*

a. Each Member hereby represents and warrants to the Company and each other Member that, if that Member is a business entity, (i) that Member is duly organized, validly existing, and in good standing under the law of the state of its organization; (ii) that Member is duly qualified to do business in the jurisdiction of its principal place of business; (iii) that Member has full power and authority to execute and agree to this Agreement and to perform its obligations hereunder; (iv) all necessary actions by the board of directors, shareholders, Members, or other representative of that Member necessary for the due authorization, execution, delivery, and performance of this Agreement have been duly taken; and (v) that Member's authorization, execution, delivery, and performance of this Agreement do not conflict with any other agreement or arrangement to which that Member is a party or by which it is bound.

b. Each Member further hereby represents and warrants to the Company and each other Member that (i) the Member is familiar with the existing or proposed business, financial condition, properties, operations, and prospects of the Company; (ii) the Member has asked the questions and conducted the due diligence concerning the acquisition of his Membership Interest in the Company that he has desired to ask and conduct, and all those questions have been answered to the Member's full satisfaction; (iii) the Member has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of an investment in the Company; (iv) the Member understands that owning the Membership Interest in the Company involves various risks, including the restrictions on transfers as set forth in Article 12 and Article 13 of this Agreement, the lack of any public market for the Membership Interests, the risk of owning the Membership Interest for an indefinite time, and the risk of losing his

entire investment in the Company; (v) the Member is able to bear the economic risk of the investment; (vi) the Member is acquiring the Membership Interest in the Company for investment, solely for his own beneficial account and not with a view to, or any present intention of, directly or indirectly selling, transferring, offering to sell or transfer, participating in any distribution, or otherwise disposing of the Membership Interest; and (vii) the Member acknowledges that the Membership Interests have not been registered under the Securities Act, or any other applicable federal or state securities laws, and that the Company has no intention, and shall not have any obligation, to register or to obtain an exemption from registration for the Membership Interests or to take action so as to permit sales pursuant to the Securities Act.

3.5 *No Authority.* Except as otherwise specifically provided in this Agreement, no Member has the authority or power to (a) transact business in the name of or on behalf of the Company; (b) bind or obligate the Company; or (c) incur any expenditures on behalf of the Company.

3.6 *Withdrawal.* A Member does not have the right or power to withdraw, resign, or retire from the Company as a Member. The Company, or the remaining Members, may not expel a member from the Company.

Note: Section 3.6 does not allow a member to withdraw from the company. See Tex. Bus. Orgs. Code § 101.107. If, however, a right of withdrawal is desired for the company agreement, consider substituting the following language: "A Member of the Company who validly exercises that Member's right to withdraw from the Company as a Member is entitled to receive, within a reasonable time after the date of the withdrawal, the fair market value of that Member's Membership Interest as determined as of the date of withdrawal." See Tex. Bus. Orgs. Code § 101.205.

Article 4

Capital Contributions

4.1 *Initial Capital Contributions.* Each Member has made the initial Capital Contribution to the Company set forth on Schedule 1.

Include the following if a member will make an initial contribution after the effective date.

[Name of member] promises and agrees to make a contribution of [specify property or amount of cash] to the Company on or before [date of deadline]. The Member is obligated to make the contribution without regard to the death, disability, or other change in circumstances of the Member.

Repeat as necessary.

Continue with the following.

4.2 *Additional Contributions*

Include the following if a member will make an additional contribution in the future.

[Name of member] promises and agrees to make a contribution of [specify property or amount of cash] to the Company on or before [date of deadline]. The Member is obligated to make the contribution without regard to the death, disability, or other change in circumstances of the Member.

Repeat as necessary.

Continue with the following.

No Member shall be required to make any additional Capital Contributions other than those specifically described in Schedule 1 or this section 4.2 unless unanimously agreed to by all Members or otherwise required to do so by the Code.

Note: A member may promise to make a contribution in the future if the promise is in writing and signed by that member. The writing and signature requirements cannot be waived by the company agreement unless the agreement provides specifically for a waiver. See Tex. Bus. Orgs. Code §§ 101.054, 101.151. However, as a practical matter, if future contributions are contemplated, whether as an initial contribution or an additional contribution, specific provisions regarding such should be included in the agreement as set forth above in sections 4.1 and 4.2. Tex. Bus. Orgs. Code § 101.152 provides that a promise to make a contribution is enforceable despite a change in circumstances.

Refer to Tex. Bus. Orgs. Code § 1.002(9) for a list of potential types of contributions, including services rendered.

4.3 *Return of Capital Contributions.* Capital Contributions shall be expended in furtherance of the business of the Company. No Member is entitled to the return of any part of his Capital Contributions or to be paid interest in respect of either his Capital Account or his Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of any Member. This section 4.3, however, is subject to section 5.2 of this Agreement.

4.4 *Capital Accounts.* A Capital Account shall be established on behalf of each Member. The Capital Account on behalf of each Member—

a. shall consist of (i) the amount of money contributed by that Member to the Company and (ii) the fair market value of property contributed by that Member to the Company (net of liabilities secured by the contributed property that the Company is considered to assume or take subject to under section 752 of the Internal Revenue Code);

b. shall be increased by allocations to that Member of Company income and gain (or items thereof), including income and gain exempt from tax and income and gain described in Treasury Regulations section 1.704-1(b)(2)(iv)(g) but excluding income and gain described in Treasury Regulations section 1.704-1(b)(4)(i); and

c. shall be decreased by (i) the amount of money distributed to that Member by the Company, (ii) the fair market value of property distributed to that Member by the Company (net of liabilities secured by the distributed property that the Member is consid-

ered to assume or take subject to under section 752 of the Internal Revenue Code), (iii) allocations to that Member of expenditures of the Company described in section 705(a)(2)(B) of the Internal Revenue Code, and (iv) allocations of Company loss and deduction (or items thereof), including loss and deduction described in Treasury Regulations section 1.704-1(b)(2)(iv)(g), but excluding items described in clause 4.4(c)(iii) above and loss or deduction described in Treasury Regulations section 1.704-1(b)(4)(i) or 1.704-1(b)(4)(iii).

The Capital Account of each Member also shall be maintained and adjusted as permitted by the provisions of Treasury Regulations section 1.704-1(b)(2)(iv)(f) and as required by the other provisions of Treasury Regulations sections 1.704-1(b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the Members of depreciation, depletion, amortization, and gain or loss as computed for tax purposes, as required by Treasury Regulations section 1.704-1(b)(2)(iv)(g). On the transfer of all or part of a Membership Interest, the Capital Account of the transferor that is attributable to the transferred Membership Interest or part thereof shall carry over to the transferee in accordance with the provisions of Treasury Regulations section 1.704-1(b)(2)(iv)(f).

4.5 *Ownership of Assets.* All assets and property of the Company shall be owned by the Company, subject to the terms and provisions of this Agreement, and no Member, individually, shall have any ownership of those assets or property. Legal title to all assets and property of the Company shall be held and conveyed in the name of the Company.

Refer to Tex. Bus. Orgs. Code § 101.106(b).

Article 5

Allocations and Distributions

5.1 *Allocations*

a. Until the time that each Member owning a Class A Membership Interest has received a return of one hundred percent (100%) of his initial and additional, if any, cash Capital Contributions made to the Company plus his Preferred Return, all items of income, gain, loss, deduction, and credit shall be allocated to the Members in accordance with their Membership Interests, to the exclusion of any Member owning a Class B Membership Interest. Thereafter, as may be required by section 704(c) of the Internal Revenue Code and Treasury Regulations section 1.704-1(b)(2)(iv)(f)(4), all items of income, gain, loss, deduction, and credit of the Company shall be allocated among the Members in accordance with their Membership Interests.

Section 5.1 overrides Tex. Bus. Orgs. Code § 101.201, which requires profits and losses to be allocated on the basis of contributions made by each member.

b. All items of income, gain, loss, deduction, and credit allocable to any Membership Interest that may have been transferred shall be allocated between the transferor and the transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest, without regard to the results of Company operations during any particular portion of that calendar year and without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; this allocation, however, must be made in accordance with a method permissible under section 706 of the Internal Revenue Code and the regulations thereunder.

5.2 Distributions

- a. Until the time that each Member owning a Class A Membership Interest has received the return of one hundred percent (100%) of his initial or additional, if any, cash Capital Contribution made to the Company plus his Preferred Return, all distributions shall be made to the Members in accordance with their Membership Interests, to the exclusion of any Member owning a Class B Membership Interest.
- b. From time to time (but at least once each calendar quarter) a Simple Majority of the Members shall determine in their reasonable judgment to what extent (if any) the Company's cash on hand exceeds its current and anticipated needs, including, without limitation, for operating expenses, debt service, acquisitions, and a reasonable contingency reserve. If such an excess exists, the Company shall distribute to the Members, subject to section 5.2(a) above, in accordance with their Membership Interests, an amount in cash equal to that excess.

Note: Distributions are to be made according to the agreed value of each member's contribution. Tex. Bus. Orgs. Code § 101.203. A member is entitled to receive distributions in cash, regardless of the form of the member's contribution to the company. Tex. Bus. Orgs. Code § 101.202. A member may not demand a distribution before winding up other than in accordance with the provisions of the company agreement. See Tex. Bus. Orgs. Code § 101.204.

- c. From time to time by vote of a Simple Majority of the Members, the Members may cause property of the Company other than cash to be distributed to the Members, which distribution must be made in accordance with their Membership Interests and may be made subject to existing liabilities and obligations. However, until such time as each Member owning a Class A Membership Interest has received the return of one hundred percent (100%) of his initial or additional, if any, cash Capital Contribution made to the Company plus his Preferred Return, all distributions made in accordance with this section 5.2(c) shall be made to those Members in accordance with their Membership Interests, to the exclusion of any Member owning a Class B Membership Inter-

est. Immediately before such a distribution, the Capital Accounts of the Members shall be adjusted as provided in Treasury Regulations section 1.704-1(b)(2)(iv)(f).

5.3 Prohibited Distributions. Distributions may not be made to Members if, immediately after making the distribution, the Company's total liabilities exceed the fair value of the Company's total assets as set forth in Code section 101.206 ("Prohibited Distribution"). For the purposes of calculating the Prohibited Distribution, the liabilities of the Company do not include a liability related to the Member's Membership Interest. A Member who receives a Prohibited Distribution is not required to return the Prohibited Distribution unless the Member had knowledge of the violation of this section 5.3 or the Code. A Prohibited Distribution does not include an amount constituting reasonable compensation for present or past services or a reasonable payment made in the ordinary course of business under a bona fide retirement plan or another benefits program.

Note: The provisions of section 5.3 cannot be waived or modified in the company agreement unless a specific provision authorizes it. See Tex. Bus. Orgs. Code § 101.054. For example, "The Members of the Company hereby agree to waive the application of the provisions of Code section 101.206 to allow the Company to make distributions to Members that would result in the Company's total liabilities exceeding the fair value of the Company's total assets." Alternatively, the Prohibited Distribution language could be included, and the requirement for returning the distribution could be waived as follows: "The Members of the Company hereby waive the application of the provisions of Code section 101.206(d), and thus a Member who receives a Prohibited Distribution is required to return the distribution to the Company."

The liabilities of the company do not include those certain liabilities listed in Tex. Bus. Orgs. Code § 101.206(b). Such provisions should be reviewed to ascertain if they are likely to affect the practitioner's particular LLC and therefore should be addressed in the company agreement.

Article 6

Management

6.1 Management by Members. Management of the Company shall be completely vested in the Members. The Members shall have the sole and exclusive control of the management, business, and affairs of the Company. The Company shall not have "managers" as that

term is used in the Code. In managing the business and affairs of the Company, the Members shall act (a) collectively through resolutions adopted at meetings and in written consents in accordance with section 6.8 of this Agreement, (b) through committees in accordance with section 6.10 of this Agreement, and (c) through Members to whom specific authority and duties have been delegated by a Simple Majority of the Members.

6.2 *Actions and Decisions Requiring Member Consent of Super Majority Interest or Unanimous Interest.* Notwithstanding any power or authority granted to a Simple Majority of the Members under the Code, the Certificate, or the provisions of this Agreement, a Simple Majority of the Members may not make any decision or take any action for which the consent of a Super Majority interest or unanimous interest is expressly required by the Certificate or this Agreement, without first obtaining that consent, and specifically, a Simple Majority may not make any decision or take any action listed below in sections 6.2(a) or 6.2(b) without first obtaining the consent described therein:

- a. *Super Majority Approval.* The following decisions and actions require the approval of a Super Majority of the Members:
 - i. causing or permitting the Company to dispose of any asset with a fair market value or book value in excess of \$[amount];
 - ii. causing or permitting the Company to enter into or engage in any transaction that is unrelated to the Company's purpose set forth in the Certificate and in section 2.4; and
 - iii. causing or permitting the Company to become Bankrupt.
- b. *Unanimous Approval.* The following decisions and actions require the unanimous approval of the Members:
 - i. entering into a Fundamental Business Transaction and

- ii. doing any act that would make it impossible to carry on the ordinary business of the Company (except in connection with the winding up of the Company).

Tex. Bus. Orgs. Code § 101.356 provides, in part, for different member approval than that set forth in section 6.2. The practitioner may also want to use different approval requirements, or may add other actions or decisions to the list.

Refer to Tex. Bus. Orgs. Code §§ 10.251, 10.252 regarding conveyances of company property.

6.3 *Reliance by Third Parties.* No third party dealing with the Company shall be required to ascertain whether a Member is acting in accordance with the provisions of this Agreement. All third parties may rely on a document executed by the Members as binding the Company. If a Member acts outside the authority set forth in this Agreement or as provided in the Certificate or the Code, he shall be liable to the remaining Members for any damages arising out of his unauthorized actions.

Section 6.3 assures third parties dealing with the company while providing some protections to the members for unauthorized actions. Refer to Tex. Bus. Orgs. Code § 101.254..

6.4 *Conflicts of Interest.* Subject to the other express provisions of this Agreement, **[include if applicable: except for [specify exception(s)],]** each Member and officer of the Company at any time and from time to time may engage in and possess interests in other business ventures of any and every type and description, independently or with others, including ones in competition with the Company, with no obligation to offer to the Company or any other Member or officer the right to participate therein. The Company may transact business with any Member, officer, or Affiliate thereof, provided the contract or transaction is fair to the Company as of the time it is authorized [and/or] ratified by a [Simple Majority/Super Majority] of the Members.

Refer to Tex. Bus. Orgs. Code §§ 101.255, 101.401.
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6.5 *Compensation.* For their services in the management of the Company and its operations, the Members may receive such compensation, if any, as may be designated from time to time by a Simple Majority of the Members.

6.6 *Reimbursement.* The Members are not required to advance any funds to pay costs and expenses of the Company. If a Member advances such funds, however, the Member shall be entitled to reimbursement for out-of-pocket costs and expenses incurred in the course of his service hereunder, [including/but not including] the portion of his overhead reasonably allocable to Company activities.

6.7 *Meetings of Members*

a. Unless otherwise required by law or provided in the Certificate or this Agreement, a Simple Majority of the Members shall constitute a quorum for the transaction of business of the Company, and the act of a Simple Majority of the Members present at a meeting at which a quorum is present shall be the act of the Members, unless a greater number is specified in this Agreement. Any Member who is present at a meeting of the Members at which action on any Company matter is taken shall be presumed to have assented to the action unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or delivers his dissent to the Company immediately after the adjournment of the meeting. The right to dissent shall not apply to a Member who voted in favor of the action. Jointly held membership interests shall be voted pursuant to Code section 6.157.

Note: Tex. Bus. Orgs. Code § 6.157 was added effective September 1, 2017, and provides that jointly held ownership interests may be voted by any one of the record owners (or any one of the persons having the right to vote the interest if that interest is held by an estate or trust). See Acts 2017, 85th Leg., R.S., ch. 75, § 3 (S.B. 1518), eff. Sept. 1, 2017.

Refer to Tex. Bus. Orgs. Code §§ 6.003 (participation at a meeting constitutes presence), 101.353 (quorum requirements).

b. Meetings of the Members may be held at a place or places as shall be determined from time to time by resolution of the Members. Attendance of a Member at a meeting shall constitute a waiver of notice of the meeting, except where a Member attends a meeting for the purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Refer to Tex. Bus. Orgs. Code §§ 6.001 (location of meetings), 6.052 (waiver of notice).

c. Meetings of the Members shall be held at times that shall be designated from time to time by resolution of Members owning Percentage Interests of at least ten percent (10%). The chairperson of the meeting will be a Member selected by a Simple Majority of the Members present at the meeting. The Members may take any action whether or not the action is included in the notice of meeting.

d. Written notice stating the place, day, and hour of the meeting, the purpose or purposes of the meeting, and the communication system to be used for the meeting, if any, shall be delivered either personally or by mail to each Member of record entitled to vote at the meeting not less than ten (10) days or more than sixty (60) days before the date of the meeting. The record date shall be the date notice of the meeting is given as provided herein. Notwithstanding the foregoing, written notice of a meeting is not required if the provisions of Code section 6.053 are met.

Refer to Tex. Bus. Orgs. Code §§ 6.051, 101.352 (general notice requirements), § 6.101 (record date). Tex. Bus. Orgs. Code § 6.053 applies to undeliverable notices and notice to holders of lost certificates.

e. Members may participate in and hold a meeting by using a conference telephone or similar communications equipment, another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each Member participating in the meeting to communicate with all other Members participating in the meeting. If voting is to take place at the meeting, the Company must implement reasonable measures to verify that every person voting at the meeting is sufficiently identified and shall keep a record of any vote or other action taken. Participation in the meeting shall constitute attendance and presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Refer to Tex. Bus. Orgs. Code § 6.002.

f. A Member may vote at a meeting by a written proxy executed by that Member and delivered to another Member. A proxy shall be revocable unless it is stated to be irrevocable.

Refer to Tex. Bus. Orgs. Code § 101.357(a)(2). Note also Tex. Bus. Orgs. Code §§ 6.251 (voting trusts), 6.252 (voting agreements).

6.8 *Member Action without Meeting.* Any action permitted or required by the Code, the Certificate, or this Agreement to be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by all the Members. Every written consent shall bear the date of signature of each Member who signs the consent, and the consent may be in one or more counterparts. The record date determining the Members entitled to sign the written consent shall be set forth in the written consent, or if no date is designated, the date the consent is delivered to the principal office of the Company. A telegram, telex, cablegram, facsimile, e-mail, or similar transmission by the Member, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by the Mem-

ber, shall be regarded as signed by the Member for purposes of this section 6.8. The consent shall have the same force and effect as a unanimous vote at a meeting and may be stated as such in any document or instrument filed with the Texas secretary of state, and the execution of the consent shall constitute attendance or presence in person at a meeting of the Members. The signed consent or a signed copy of the consent shall be kept on file at the principal office of the Company.

Note: Section 6.8 requires that consents must be signed by all members. See Tex. Bus. Orgs. Code § 6.201. Tex. Bus. Orgs. Code §§ 6.202, 101.358, however, provide that the consent of a majority of the members will suffice (or whatever vote is required to make that particular decision if decided at a meeting of the members). Determine which alternative is right for the particular LLC being formed. In addition, this section overrides Tex. Bus. Orgs. Code § 101.359 by requiring the consent of the members to be evidenced by a writing and disallowing consent to be presumed by a member's failure to object.

6.9 *Liability of Members.* Members shall not be liable as Members for the debts, obligations, or liabilities of the Company, including a debt, obligation, or liability under a judgment, decree, or order of a court. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Code shall not be grounds for imposing personal liability on a Member for liabilities of the Company.

Refer to Tex. Bus. Orgs. Code § 101.114.

6.10 *Committees of the Members.* A Simple Majority of the Members may designate one or more committees of the Members consisting of one or more Members. The Members may also designate a Member to serve as an alternate committee member if a committee member is absent or disqualified. A committee formed hereunder may exercise the authority of the Members as specified in the resolution by the Members in forming the committee. The designation of a committee does not relieve the remaining Members of any responsibility imposed by law or this Agreement. The Members may remove a committee member for any

reason. Committee meetings shall be set by the committee. The act of a majority of the committee members shall be the act of the committee.

Refer to Tex. Bus. Orgs. Code § 101.253.

Article 7

Confidential Information

7.1 *Confidential Information.* The Members acknowledge that, from time to time, they may receive information from or regarding the Company in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Company or persons with which it does business. Each Member shall hold in strict confidence any information he receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any person other than another Member, except for disclosures (a) compelled by law (but all Members thus compelled must notify all other Members promptly of any request for that information, before disclosing it, if practicable); (b) to advisers or representatives of the Member or persons to which that Member's Membership Interest may be transferred as permitted by this Agreement, but only if the recipients have agreed to be bound by the provisions of this section 7.1; or (c) of information that Member also has received from a source independent of the Company that the Member reasonably believes obtained that information without breach of any obligation of confidentiality.

7.2 *Specific Performance.* The Members acknowledge that breach of the provisions of section 7.1 of this Agreement may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Members agree that the provisions of section 7.1 of this Agreement may be enforced by specific performance.

Article 8

Officers

8.1 *Qualification.* A Simple Majority of the Members may, from time to time, designate one or more persons to be officers of the Company. No officer need be a resident of the state of Texas or a Member. Any officers so designated shall have the authority and perform the duties as the Members may, from time to time, delegate to them. The Members may assign titles to particular officers. Unless the Members decide otherwise, if the title is one commonly used for officers of a business corporation, the assignment of the title shall constitute the delegation to the officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to the officer by the Members in accordance with this section 8.1. Each officer shall hold office until his successor shall be duly designated and qualify for the office, until his death, or until he shall resign or shall have been removed in the manner hereinafter provided. Any vacancy occurring in any office of the Company may be filled by the Members. Any number of offices may be held by one person.

Refer to Tex. Bus. Orgs. Code § 3.103.

8.2 *Compensation.* The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by a Simple Majority of the Members. However, election or appointment of an officer or agent shall not of itself, nor shall anything in this Agreement, create contract rights.

8.3 *Resignation.* Any officer may resign as such at any time. The resignation shall be made in writing and shall take effect at the time specified therein, or if no time is specified, at the time of its receipt by the Members. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

8.4 *Removal.* Any officer may be removed as such, either with or without cause, by a Simple Majority of the Members.

Article 9

Indemnification

9.1 *Right to Indemnification.* Subject to the limitations and conditions as provided in this Article 9, each person who was or is made a party or is threatened to be made a party to or is involved in any Proceeding, or any appeal in such a Proceeding, or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Member of the Company shall be indemnified by the Company to the fullest extent permitted by the Code against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements, and reasonable expenses (including, without limitation, attorney's fees) actually incurred by the person in connection with the Proceeding, and indemnification under this Article 9 shall continue for a person who has ceased to serve in the capacity which initially entitled the person to indemnity hereunder. The rights granted under this Article 9 shall be deemed contract rights, and no amendments, modification, or repeal of this Article 9 shall have the effect of limiting or denying any such rights with respect to actions taken or Proceeding arising before any such amendment, modification, or repeal. It is expressly acknowledged that the indemnification provided in this Article 9 could involve indemnification for negligence or under theories of strict liability. A Member shall not, however, be indemnified if the actions or conduct of the Member that gave rise to the litigation, actions, or conduct are for the following:

- a. intentional or willful misconduct or a knowing violation of the law;
- b. gross negligence;
- c. a breach of the duty of loyalty to the Company or its Members;

- d. an act or omission not in good faith that constitutes a breach of duty;
- e. a transaction from which the Member received an improper benefit to the detriment of the Company, regardless of whether the benefit resulted from an action taken within the scope of the Member's duties; or
- f. an act or omission for which the liability of a governing person is expressly provided by an applicable statute.

Notwithstanding anything to the contrary in this Article 9, the Company shall indemnify the parties as set forth herein in this Article 9 if the person is wholly successful, on the merits or otherwise, in the defense of the Proceeding.

Refer to Tex. Bus. Orgs. Code §§ 7.001, 101.401 (limitation of liability).

The Texas Business Organizations Code allows the company to indemnify members, managers, and officers of the company. See Tex. Bus. Orgs. Code § 101.402. Indemnification is mandatory if the person is wholly successful in the defense of the proceeding. See Tex. Bus. Orgs. Code § 8.051. Indemnification may also be court-ordered (see Tex. Bus. Orgs. Code § 8.052) or permissive (see Tex. Bus. Orgs. Code § 8.101). The certificate of formation can, however, restrict the application of the indemnification provisions. See Tex. Bus. Orgs. Code § 8.003(a).

9.2 *Advance Payment.* The right to indemnification conferred in this Article 9 shall include the right to be paid or reimbursed by the Company the reasonable expenses incurred by a person entitled to be indemnified under section 9.1 of this Agreement who was, is, or is threatened to be made a named defendant or respondent in a Proceeding in advance of the final disposition of the Proceeding and without any determination about the person's ultimate entitlement to indemnification. The payment of the expenses incurred by any such person in advance of the final disposition of a Proceeding, however, shall be made only upon delivery to the Company of a written affirmation by that person of his good-faith belief that he has met the standard of conduct necessary for indemnification under this Article 9 and a written undertaking, by or on behalf of the person, to repay all amounts so advanced if it shall ultimately be

determined that the indemnified person is not entitled to be indemnified under this Article 9 or otherwise.

9.3 *Indemnification of Officers, Employees, and Agents.* The Company, by adoption of a resolution by a Simple Majority of the Members, may indemnify and advance expenses to an officer, employee, or agent of the Company to the same extent and subject to the same conditions under which it may indemnify and advance expenses to a Member under this Article 9.

9.4 *Exclusivity of Rights.* The right to indemnification and the advancement and payment of expenses conferred in this Article 9 shall not be exclusive of any other right which a Member or other person indemnified under this Article 9 may have or hereafter acquire under any law (common or statutory), under any provision of the Certificate, this Agreement, or another agreement, or under a vote of disinterested Members, or otherwise.

9.5 *Insurance.* The Company may purchase and maintain insurance, at its expense, to protect itself and any person who is or was a Member, officer, employee, or agent of the Company against any expense, liability, or loss, whether or not the Company would have the power to indemnify the person against the expense, liability, or loss under this Article 9.

Article 10

Taxes

Note: It may be necessary to consult a tax professional regarding this agreement, especially article 10, who may recommend additional provisions or revision of certain sections.

10.1 *Tax Returns.* The Members shall cause to be prepared and filed all necessary federal and state income tax returns for the Company, including making the elections described in section 10.2 of this Agreement. Each Member shall furnish all pertinent information in his possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

10.2 *Tax Elections.* The Company shall make the following elections on the appropriate tax returns:

- a. to adopt the calendar year as the Company's fiscal year;
- b. to adopt the cash method of accounting for keeping the Company's books and records;
- c. if a distribution of Company property as described in section 734 of the Internal Revenue Code occurs or if a transfer of a Membership Interest as described in section 743 of the Internal Revenue Code occurs, on written request of any Member, to elect, pursuant to section 754 of the Internal Revenue Code, to adjust the basis of Company properties;
- d. to elect to amortize the organizational expenses of the Company and the start-up expenditures of the Company under section 195 of the Internal Revenue Code ratably over a period of sixty (60) months as permitted by section 709(b) of the Internal Revenue Code; and
- e. any other election the Members may deem appropriate and in the best interest of the Members.

Neither the Company nor any Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1, subtitle A, of the Internal Revenue Code or any similar provisions of applicable state law, and no provision of this Agreement shall be construed to sanction or approve such an election.

10.3 *"Tax Matters Partner."* The Members shall designate one of the Members to be the "tax matters partner" of the Company. Any Member who is designated tax matters partner shall inform each other Member of all significant matters that may come to his attention in his capacity as tax matters partner by giving notice thereof on or before the fifth Business Day

after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications he may receive in that capacity. Any Member who is designated tax matters partner may not take action contemplated by the Internal Revenue Code without the consent of a Simple Majority of the Members, but this sentence does not authorize the Member to take any action left to the determination of an individual Member under the Internal Revenue Code.

For a discussion of tax audits, partnership representatives, and the various tax elections available to an LLC taxed as a partnership, see chapter 9 in this manual. For optional provisions for naming a partnership representative, see form 9-1.

Article 11

Books, Records, Reports, and Bank Accounts

11.1 *Maintenance of Books.* The Company shall keep at its principal office (a) books and records of accounts; (b) minutes of the proceedings of its Members and each committee of the Members; (c) a current record of the name, mailing address, and Membership Interest and Percentage Interest of each Member of the Company; (d) a current record of the Members in each class, if any; (e) income tax returns for each of the six (6) preceding tax years along with state and local tax information; (f) a copy of the Certificate, including any amendments or restatements; and (g) a copy of this Agreement, including any amendments or restatements. The books of account for the Company shall be maintained on a cash basis in accordance with the terms of this Agreement, except that the Capital Accounts of the Members shall be maintained in accordance with Article 4 of this Agreement. The calendar year shall be the accounting year of the Company.

Refer to Tex. Bus. Orgs. Code §§ 3.151, 101.501.

11.2 *Access to Books and Records.* A Member shall have reasonable access to the books and records set forth in section 11.1 of this Agreement for any reasonable purpose and may examine and copy them at the Member's expense. Notwithstanding the foregoing, on written request by a Member, the Company shall provide a free copy of the Certificate and any amendments thereto and restatements thereof, the Agreement and any amendments thereto and restatements thereof, and income tax returns of the Company for each of the six (6) preceding tax years.

Note: Tex. Bus. Orgs. Code § 101.502 describes the right of a member to examine the records of an LLC. Tex. Bus. Orgs. Code § 101.503, effective September 1, 2019, provides for a penalty if the LLC refuses to allow a member to examine the applicable LLC records. See Acts 2019, 86th Leg., R.S., ch. 658, § 10 (S.B. 1859), eff. Sept. 1, 2019.

Refer to Tex. Bus. Orgs. Code §§ 3.152(a) (access to books and records by managers), 3.153 (access to books and records by members), 101.502 (right to examine records by members). The agreement may not unreasonably restrict right of access to the Company book and records. See Tex. Bus. Orgs. Code § 101.054(e).

11.3 *Accounts.* The Members shall establish and maintain one or more separate bank and investment accounts and arrangements for Company funds in the Company name with financial institutions and firms that the Members determine. The Members may not commingle the Company's funds with the funds of any Member. Company funds may, however, be invested in a manner the same as or similar to a Member's investment of their own funds or investments by their Affiliates.

Article 12

Transfers

12.1 *Limited Right to Transfer.* No Member or Assignee (referred to in this Article 12 as the "Assignor") shall make any Transfer of all or any part of his Membership Interest, whether now owned or hereafter acquired, except (a) with the unanimous consent of the Members; (b) as provided by Article 13 of this Agreement; (c) as a Defaulting Member as provided by section 14.1(f) of this Agreement; or (d) upon winding up or termination, as provided by Article

15 of this Agreement. Any attempted Transfer by a person of an interest or right, or any part thereof, in or in respect of the Company other than as specifically provided by this Agreement shall be, and is hereby declared, null and void ab initio.

12.2 *Rights of an Assignee of a Membership Interest*

a. Unless the Assignee of a Membership Interest becomes a Member of the Company, the Assignee shall be entitled only (i) to receive an allocation of income, gain, loss, deduction, credit, or similar items and to receive distributions to which the assignor is entitled to the extent these items were assigned; (ii) to receive reasonable information or account of transactions of the Company; and (iii) to make reasonable inspection of the books and records of the Company for any proper purpose. The Assignee shall have no right (i) to participate in the operations or management of the Company; (ii) to become a Member of the Company; or (iii) to exercise any rights of a Member of the Company.

Refer to Tex. Bus. Orgs. Code §§ 101.108, 101.109.

b. If an Assignee becomes a Member of the Company, the Assignee is (i) entitled, to the extent assigned, to the same rights and powers granted or provided to a Member of the Company by this Agreement or the Code; (ii) subject to the same restrictions and liabilities placed or imposed on a Member of the Company by this Agreement or the Code; and (iii) liable for the Assignor's obligation to make contributions to the Company and any other liabilities of the Assignor to the Company, but only to the extent the Assignee had knowledge of such on the date of becoming a Member or such could be ascertained from the terms of this Agreement.

Refer to Tex. Bus. Orgs. Code § 101.110.

c. The Assignor continues to be a Member of the Company and is entitled to exercise any unassigned rights or powers until the Assignee becomes a Member of the Com-

pany. An Assignor is not released from the assignor's liability to the Company for liabilities not assigned to Assignee as set forth in section 12.2(b)(iii) of this Agreement.

Refer to Tex. Bus. Orgs. Code § 101.111.

12.3 *Legal Opinion.* For the right of a Member to transfer a Membership Interest or any part thereof or of the Assignee or any Person to be admitted to the Company in connection therewith to exist or be exercised, the Company must receive an opinion from legal counsel acceptable to the Members that states (a) the Transfer is exempt from registration under federal and state securities laws; (b) the Transfer will not cause the Company to be in violation of federal and state securities laws; (c) the Transfer will not adversely affect the status of the Company as a partnership under the Internal Revenue Code or Treasury regulations; and (d) the Transfer will not result in the Company's being considered to have terminated within the meaning of the Internal Revenue Code or Treasury regulations. The Members, however, may waive the requirements of this section 12.3.

12.4 *Admission as a Member.* An Assignee has the right to be admitted to the Company as a Member along with receiving the Membership Interest and Percentage Interest so transferred to the person, upon the following conditions:

- a. the Assignor making the Transfer grants the Assignee the right to be so admitted;
- b. the Transfer is consented to in accordance with section 12.1 of this Agreement;
and
- c. a written, signed, and dated instrument evidencing the Transfer has been filed with the Company in form and substance reasonably satisfactory to the Members, and the instrument contains (i) the agreement by the Assignee to be bound by all the terms and provisions of this Agreement; (ii) any necessary or advisable representations and warranties, including that the Transfer was made in accordance with all applicable laws,

regulations, and securities laws; (iii) the Membership Interests and Percentage Interests being transferred; and (iv) the name, address, and any other pertinent information of the Assignee necessary for an amended Schedule 1 and to make distributions.

12.5 *Reasonable Expenses.* The Assignor and the Assignee shall pay, or reimburse the Company for, all costs incurred by the Company in connection with the Transfer (including, without limitation, the legal fees incurred in connection with the legal opinions referred to in section 12.3 of this Agreement) on or before the tenth (10th) day after the receipt of the Company's invoice for the amount due. If payment is not made by the date due, interest shall accrue on the unpaid amount from the date due until paid at a rate per year equal to the Default Interest Rate.

Article 13

Buyout of Membership Interest

Note: The following provisions amend the default rules regarding disposition of a membership interest upon the divorce or death of a member. Refer to Tex. Bus. Orgs. Code § 101.1115.

13.1 *Termination of Marital Relationship.* If the marital relationship of a Member is terminated by death or divorce and the Member does not succeed to all the Member's spouse's community or separate interest, if any, in the Membership Interest (the spouse is referred to hereafter in this Article 13 as the "Assignee Spouse"), the Member shall have the option to purchase at Fair Value (as determined in accordance with the terms of section 13.6 of this Agreement) the Assignee Spouse's interest in the Membership Interest to which the Member does not succeed. This option must be exercised within ninety (90) days after the death of or the Member's divorce from the Assignee Spouse. Should the Member fail to exercise this option within this period, the remaining Members, in such proportions as they mutually agree or in proportion to their respective Membership Interests, shall have the option to purchase the subject Membership Interest at Fair Value for a period of ninety (90) days. If the remaining

Members do not exercise their options on all the subject Membership Interest, the Company shall be obligated to purchase all, and not less than all, of the subject Membership Interest at Fair Value.

Note: A membership interest is personal property and may be community property. However, a member's right to participate in the management and conduct of the business of the company is not community property. See Tex. Bus. Orgs. Code § 101.106(a).

13.2 *Death of Member.* Commencing upon the death of a Member, the surviving Members, in such proportions as they mutually agree or in proportion to their respective Membership Interests, shall for a period of ninety (90) days have the option to purchase all or any portion of the deceased Member's Membership Interest at Fair Value (determined as of the date of the death of the Member). If the surviving Members do not exercise their options on all the deceased Member's Membership Interest, the Company shall be obligated to purchase all, and not less than all, of the deceased Member's Membership Interest at Fair Value.

13.3 *Bankruptcy of Member.* If any Member becomes Bankrupt, the Company shall have the option, exercisable by notice from the Members to the Bankrupt Member (or his representative) at any time before the expiration of one hundred eighty (180) days after receipt of notice of the occurrence of the event causing him to become a Bankrupt Member, to purchase all or any portion of the Bankrupt Member's Membership Interest at Fair Value (determined as of the date that notice of the exercise of the option is given by the Members). The exercise of the option, however, shall require the approval of the unanimous consent of the Members. If that notice of the exercise of the option is given by the Members to the Bankrupt Member (or his representative), the Bankrupt Member shall sell his interest to the Company as provided by this Article 13.

13.4 *Insufficient Surplus.* If the Company does not have sufficient surplus to permit it lawfully to purchase the Membership Interest under section 13.1, 13.2, or 13.3 of this Agreement at the time of the closing, the other Members may take action to vote their respective

Membership Interests to reduce the capital of the Company or to take other steps that may be appropriate or necessary to enable the Company lawfully to purchase the Membership Interest.

13.5 *Exercise of Option.* Any option to purchase a Membership Interest as provided by this Agreement shall be deemed exercised at the time the purchasing party delivers to the selling party written notice of intent to exercise the option along with an initial payment in the form of a certified or cashier's check in the amount of ten percent (10%) of the estimated purchase price anticipated by the purchaser, in person or by United States registered mail, properly stamped and addressed to the last known address of the selling party.

13.6 *Determination of Fair Value.* The "Fair Value" of a Membership Interest means the amount the Member holding the interest would receive if the assets of the Company were sold for cash and the proceeds, net of liabilities, were distributed to the holders of all Membership Interests in accordance with this Agreement. If the Fair Value of a Membership Interest is to be determined under this Agreement, the Members shall select a qualified independent appraiser ("Independent Appraiser") to make the determination, and the Members shall make the books and records available to the Independent Appraiser for that purpose. The determination of Fair Value made by the Independent Appraiser shall be final, conclusive, and binding on the Company, all Members, and all Assignees of a Membership Interest. If the sale of the Member's ownership interest is due to the death or divorce of the Member or death of a Member's spouse, then in addition to the Independent Appraiser selected by the Members, the spouse, the estate of the selling Member, or the estate of the deceased spouse may select its own appraiser ("Seller's Appraiser"). Should the Seller's Appraiser determine a Fair Value of the interest in a different amount than the Independent Appraiser, the Seller's Appraiser and the Independent Appraiser shall select a third appraiser ("Third Appraiser"), who will make a determination of the Fair Value. In this circumstance, the determination of Fair Value made

by the Third Appraiser shall be final, conclusive, and binding on the Company, all Members, and all Assignees of a Membership Interest.

13.7 *Fees and Expenses of Appraiser.* In the case of a purchase and sale of Membership Interest under section 13.1 or 13.2 of this Agreement, the fees and expenses of the appraiser shall be paid by the Company. In the case of a purchase and sale of Membership Interest under section 13.3 or 14.1 of this Agreement (the Bankruptcy or default of a Member), the fees and expenses of the appraiser shall be paid by the Bankrupt Member or Defaulting Member, by deducting at closing the fees and expenses from the purchase price to be paid to the Bankrupt Member or Defaulting Member, and remitting the same to the Company. Otherwise, the fees and expenses of the appraiser shall be shared equally by the purchaser and seller.

13.8 *Right-to-Withdraw Option.* If a Member has exercised an election to purchase a Membership Interest under this Agreement and Fair Value has been determined as provided by section 13.6 of this Agreement, the Member may elect to terminate his right to purchase within fifteen (15) days following his receipt of the determination of Fair Value by delivery of written notice to the Company, the Assignee, and any other party involved in the purchase of whom the Member has been made aware. In such an event, the initial payment shall be returned to the Member withdrawing the option, and the other Members may elect to purchase the Membership Interest (or portion thereof) in such proportions as they mutually agree or in proportion to their respective Membership Interests.

13.9 *Terms of Purchase*

- a. The closing date for any sale and purchase made in accordance with this Article 13 shall be the later of (i) thirty (30) days after the notice of the exercise of option has been received by the selling party or (ii) thirty (30) days after the parties have received notice of the Fair Value of the Membership Interest.

b. Payment of the purchase price for a Membership Interest may be made by the Company or the other Members as follows: (i) a down payment equal to ten percent (10%) of the Fair Value to be made at closing and (ii) the balance of the purchase price, bearing interest at the Default Interest Rate determined on the date of closing, to be paid in thirty-six (36) equal monthly installments, with the first payment due thirty (30) days after the date of closing. Any such purchaser shall have the right to pay all or any part of the obligation at any time or times in advance of maturity without penalty. If the Company becomes a party to a Fundamental Business Transaction, the obligation (or remaining portion thereof) shall be paid in full within thirty (30) days of the date that the Company becomes a party to the transaction.

c. At the closing, the person selling the Membership Interest will transfer the Membership Interest free and clear of any liens or encumbrances, other than those which may have been created to secure any indebtedness or obligations of the Company.

d. In each event that a Membership Interest in the Company is purchased as described in this Agreement, upon the execution and delivery of the notes or payment of the cash as required herein, this Agreement shall operate as an automatic transfer to the purchaser of the Membership Interest in the Company. The payment to be made to the selling Member, Assignee, or its representative shall constitute complete release, liquidation, and satisfaction of all the rights and interest of the selling Member, Assignee, or its representative (and of all persons claiming by, through, or under the selling Member, Assignee, or its representative) in and in respect of the Company, including, without limitation, any Membership Interest, any rights in specific Company property, and any rights against the Company and (insofar as the affairs of the Company are concerned) against the Members. The parties shall perform such actions and

execute such document that may be reasonably necessary to effectuate and evidence the purchase and sale, and release as provided by this section 13.9.

13.10 *Third Party's Offer.* If a Member desires to sell all or any portion of his Membership Interest to another person (other than an existing Member and referred to hereafter in this section 13.10 as the "Third Party"), the selling Member shall first offer to sell the Membership Interest to the other existing Members. Upon the receipt of an offer from the Third Party to purchase the Membership Interest, the selling Member shall promptly deliver a copy of the Third Party's offer to all other Members. Each Member will have fifteen (15) days from the date of receipt of the Third Party's offer to notify the selling Member in writing that the other Member intends to purchase the Membership Interest upon the terms and conditions of the Third Party's offer. If more than one other Member desires to purchase the Membership Interest, each of the purchasing Members shall purchase a portion of the Membership Interest that is proportional to that Member's Percentage Interest. If none of the other Members give notification within fifteen (15) days of an intention to purchase the Membership Interest, the selling Member shall be permitted to sell the Membership Interest to the Third Party upon the terms and conditions of the Third Party's offer. Consent by the Members to the sale of the interest to the Third Party shall not be deemed consent to admission of the Third Party as a Member, and it is agreed that substitution is governed by section 12.4 of this Agreement.

Article 14

Default of Member

14.1 *Failure to Contribute.* If a Member does not contribute, by the time required, all or any portion of a Capital Contribution that Member is required to make as provided in this Agreement, the Company may exercise, on notice to that Member (the "Defaulting Member"), one or more of the following remedies:

- a. The Company may take action (including, without limitation, court proceedings) that the other Members (“Nondefaulting Members”) may deem appropriate to obtain payment by the Defaulting Member of the portion of the Defaulting Member’s Capital Contribution that is in default, together with interest thereon at the Default Interest Rate from the date that the Capital Contribution was due until the date that it is made, all at the cost and expense of the Defaulting Member.
- b. The Company may permit the Nondefaulting Members in proportion to their Membership Interests or in such other percentages as they may agree (the “Lending Member,” whether one or more) to advance the portion of the Defaulting Member’s Capital Contribution that is in default, with the following results:
 - i. the sum advanced constitutes a loan from the Lending Member to the Defaulting Member and a Capital Contribution of that sum to the Company by the Defaulting Member in accordance with the applicable provisions of this Agreement;
 - ii. the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth (10th) day after written demand therefor by the Lending Member to the Defaulting Member;
 - iii. the amount lent bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued on it, is repaid to the Lending Member;
 - iv. all distributions from the Company that otherwise would be made to the Defaulting Member (whether before or after termination of the Company) instead shall be paid to the Lending Member until the loan and all interest accrued on it have been paid in full to the Lending Member (with payments being applied first to accrued and unpaid interest and then to principal);

- v. the payment of the loan and interest accrued on it is secured by a security interest in the Defaulting Member's Membership Interest, as more fully set forth in section 14.2 of this Agreement; and
 - vi. the Lending Member has the right, in addition to the other rights and remedies granted to it under this Agreement or available to it at law or in equity, to take any action (including, without limitation, court proceedings) that the Lending Member may deem appropriate to obtain payment by the Defaulting Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Defaulting Member.
- c. The Company may exercise the rights of a secured party under the Uniform Commercial Code of the state of Texas.
 - d. The Company may reduce the Defaulting Member's Membership Interest or other interest in the Company.
 - e. The Company may subordinate the Defaulting Member's Membership Interest to the Defaulting Member.
 - f. The Company may force a sale of the Defaulting Member's Membership Interest at Fair Value and upon the terms of purchase as provided in Article 13.
 - g. The Company may forfeit the Defaulting Member's Membership Interest.
 - h. The Company may exercise any other rights and remedies available at law or in equity.

Refer to Tex. Bus. Orgs. Code § 101.153.

14.2 *Security.* Each Member grants to the Company, and to each Lending Member with respect to any loans made by the Lending Member to that Member as a Defaulting Member

under this Article 14, as security, equally and ratably, for the payment of all Capital Contributions that Member has agreed to make and the payment of all loans and interest accrued on them made by Lending Members to that Member as a Defaulting Member in accordance with section 14.1(b) of this Agreement, a security interest in, and a general lien on, its Membership Interest and the proceeds thereof, all under the Uniform Commercial Code of the state of Texas. It is expressly agreed that the security interest created thereby shall be governed by chapter 8 of the Uniform Commercial Code of the state of Texas. On any default in the payment of a Capital Contribution or in the payment of such a loan or interest accrued on it, the Company or the Lending Member, as applicable, is entitled to all the rights and remedies of a secured party under the Uniform Commercial Code of the state of Texas with respect to the security interest granted in this Article 14. Each Member shall execute and deliver to the Company and the other Members all financing statements and other instruments that the Members or the Lending Member, as applicable, may request to effectuate and carry out the preceding provisions of this Article 14. At the option of the Members or a Lending Member, this Agreement or a carbon, photographic, or other copy hereof may serve as a financing statement.

14.3 *Compromise or Release.* The obligation of a Defaulting Member or its legal representative or successor to make a contribution or otherwise pay cash or transfer property or to return cash or property paid or distributed to the Defaulting Member in violation of the Code or this Agreement may be compromised or released only with the approval of the unanimous consent of the Members. Notwithstanding the compromise or release, a creditor of the Company who extends credit or otherwise acts in reasonable reliance on that obligation may enforce the original obligation if the obligation is signed by the Defaulting Member and is not amended or canceled to reflect the compromise or release.

Refer to Tex. Bus. Orgs. Code §§ 101.154, 101.156.

Article 15

Winding Up and Termination

15.1 *Events Requiring Winding Up.* The Company shall begin to wind up its affairs upon the first of the following to occur:

- a. the expiration of any period of duration fixed for the Company in the Certificate;
- b. the execution of an instrument approving the termination of the Company by unanimous consent of the Members;
- c. the occurrence of any event that terminates the continued membership of the last remaining Member of the Company, provided, however, that the Company is not required to wind up if, no later than ninety (90) days after the termination of the membership of the last remaining Member, the legal representative or successor of the last remaining Member, or the legal representative's or successor's designee, agrees to continue the Company and to become a Member as of the date of termination;

Refer to Tex. Bus. Orgs. Code § 11.056. Also note Tex. Bus. Orgs. Code § 101.101(c), which confirms the company will continue without members during the interim between the termination of the last member and the agreement to continue the company.

- d. entry of a decree of judicial dissolution of the Company; or
- e. the act of a Simple Majority of the Members, if no capital has been paid into the Company, and the Company has not otherwise commenced business.

No other event will cause the Company to wind up.

Refer to Tex. Bus. Orgs. Code §§ 11.051, 11.314, 101.551, 101.552.

15.2 *Liquidation.* As soon as possible following an event requiring winding up of the Company, the Members shall appoint one or more Members as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Code. The Company may, however, continue its business wholly or partly, including delaying the disposition of the property of the Company, for the limited period necessary to avoid unreasonable loss of the Company's property or business. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties to the extent necessary to wind up its business with all the power and authority of the Members. The steps to be accomplished by the liquidator follow:

Refer to Tex. Bus. Orgs. Code § 11.053(d).

- a. as promptly as possible after that event and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the termination occurs or the final liquidation is completed, as applicable;
- b. the liquidator shall cause the notice described in Code section 11.052 to be delivered to each known claimant against the Company;
- c. the liquidator shall pay, satisfy, or discharge from Company funds all the debts, liabilities, and obligations of the Company (including, without limitation, all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in an amount and for a term that the liquidator may reasonably determine); and

Refer to Tex. Bus. Orgs. Code § 11.053(a), (b).

d. all remaining assets of the Company shall be distributed based on their respective Membership Interests to the Members as follows:

- i. the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the Capital Accounts of the Members;
- ii. with respect to all Company property that has not been sold, the fair market value of that property shall be determined and the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the Capital Accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and
- iii. Company property shall be distributed among the Members in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the liquidation of the Company occurs (other than those made by reason of this clause 15.2(d)(iii)), and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, ninety (90) days after the date of liquidation).

All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed before the date of termination, and those costs, expenses, and liabilities shall be allocated to the distributee in accordance with this section 15.2. Upon completion of all

distributions to the Member, the distribution shall constitute a complete return to the Member of its Capital Contributions and release all claims against the Company.

Refer to Tex. Bus. Orgs. Code § 101.551.

15.3 *Deficit Capital Accounts.* Notwithstanding anything to the contrary contained in this Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the Capital Account of any Member results from or is attributable to deductions and losses of the Company (including noncash items such as depreciation) or distributions of money in accordance with this Agreement to all Members in proportion to their respective Membership Interests, upon termination of the Company that deficit shall not be an asset of the Company and that Member shall not be obligated to contribute that amount to the Company to bring the balance of that Member's Capital Account to zero.

15.4 *Revocation.* If an event described in section 15.1(b) of this Agreement occurs or any other voluntary decision is made by the Members to wind up the Company, before the termination of the Company, a Super Majority of the Members may revoke the winding up and continue the Company's business.

Refer to Tex. Bus. Orgs. Code § 11.151. Determine the type of vote required to revoke a winding up. For example, Tex. Bus. Orgs. Code § 101.552(a)(1) provides for a majority vote of the members.

15.5 *Cancellation.* Should an event requiring winding up occur, other than as a result of the event set forth in section 15.1(a), the Members by unanimous consent may cancel the event no later than one (1) year after the event and continue the Company's business. Should the Company's period of duration expire, the Members by unanimous consent may cancel the expiration no later than three (3) years after such and extend the Company's period of duration and continue its business.

Refer to Tex. Bus. Orgs. Code §§ 11.152, 101.552.

15.6 *Certificate of Termination.* On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Members shall execute, acknowledge, and cause to be filed a certificate of termination, at which time the Company shall cease to exist as a limited liability company.

Article 16

Amendment or Modification

This Agreement, the Certificate, or any restated certificate of formation, may be amended or modified from time to time only with a written instrument executed by unanimous consent of the Members.

Note: The company agreement may be amended only if each member consents. Tex. Bus. Orgs. Code § 101.053. Likewise, an amendment of the certificate of formation or a restated certificate of formation requires unanimous consent of the members. Tex. Bus. Orgs. Code § 101.356(d).

Article 17

General Provisions

17.1 *Construction.* Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter. If there is only one Member, references to Members in the plural should be construed as singular. The singular form of other nouns, pronouns, and verbs shall include the plural and vice versa.

17.2 *Offset.* Whenever the Company is to pay any sum to any Member, any amounts that Member owes the Company may be deducted from that sum before payment.

17.3 *Notices.* Except as expressly set forth to the contrary in this Agreement, all notices, requests, or consents provided for or permitted to be given under this Agreement must be in writing and must be given either by depositing that writing in the United States mail,

addressed to the recipient, postage paid, and registered or certified with return receipt requested or by delivering that writing to the recipient in person, by courier, or by facsimile transmission; and a notice, request, or consent given under this Agreement is effective on receipt by the person. All notices, requests, and consents to be sent to a Member must be sent to or made at the addresses given for that Member on Schedule 1 or another address as that Member may specify by notice to the other Members. Any notice, request, or consent to the Company must be given at the following address:

[Address of the company]

Whenever any notice is required to be given by law, the Certificate, or this Agreement, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of notice.

17.4 *Effect of Waiver or Consent.* A waiver or consent, express or implied, to or of any breach or default by any person in the performance by that person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that person of the same or any other obligations of that person with respect to the Company. Failure on the part of a person to complain of any act of any person or to declare any person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that person of its rights with respect to that default until the applicable statute-of-limitations period has run.

17.5 *Binding Effect.* Subject to the restrictions on Transfers set forth in this Agreement, this Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns. Unless and until properly admitted as a Member, however, no Assignee will have any rights of a Member beyond those provided expressly set forth in this Agreement or granted by the Code to assignees.

17.6 *Governing Law.* This Agreement is governed by and shall be construed in accordance with the laws of the state of Texas, excluding any conflict-of-laws rule or principle that might refer the governance or the construction of this Agreement to the laws of another jurisdiction.

17.7 *Severability.* If any provision of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances is not affected thereby, and that provision shall be enforced to the greatest extent permitted by law.

17.8 *Further Assurances.* In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

17.9 *Indemnification by Members.* To the fullest extent permitted by law, each Member shall indemnify the Company and each other Member and hold them harmless from and against all losses, costs, liabilities, damages, and expenses (including, without limitation, costs of suit and attorney's fees) they may incur on account of any breach by that Member of this Agreement.

17.10 *Counterparts.* This Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same instrument.

17.11 *Invalidity of Provisions.* If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, the parties shall be relieved of all obligations arising under that provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying that provision to the extent necessary to make it legal and enforceable

while preserving its intent or, if that is not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

17.12 *Enforceability against Company.* This Agreement is enforceable by or against the Company regardless of whether the Company has signed or otherwise expressly adopted this Agreement.

Refer to Tex. Bus. Orgs. Code § 101.052(f).

17.13 *Entire Agreement; Supersedes Other Agreements.* This Agreement includes the entire agreement of the Members and the Company relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

IN WITNESS WHEREOF, the Members have adopted and executed this Company Agreement of [name of limited liability company] as of the Effective Date.

[Name of company]

By: _____

[Name of member]

Repeat signature lines for all members.

Note: Consider obtaining the signatures of the spouses of married members for the purpose of the spouses' agreeing to the provisions of article 13 and other applicable provisions.

A signature includes a digital signature, an electronic signature, and a facsimile of a signature. See Tex. Bus. Orgs. Code §§ 1.002(82), 1.007.

Schedule 1

Members of [name of limited liability company]

Members' Names and Addresses	Class	Initial Capital Contribution	Membership Interest and Percentage Interest

Form 8-5

This long-form manager-managed company agreement is best used for larger businesses, where there are many members, or in situations where the members are unrelated parties without prior, trusted business dealings. In addition, this company agreement includes provisions for more than one manager. It can, however, still be used by a company with only one initial manager. If the number of managers is increased, the agreement will accommodate the change without requiring a complete rewrite.

This form can be modified to include any provision related to the regulation and management of the company as long as the provision is not inconsistent with law or the certificate of formation of the company. *See* Tex. Bus. Orgs. Code § 101.052(d). To the extent the company agreement does not otherwise provide, the Texas Business Organizations Code (TBOC) will govern the internal affairs and management of the business of the company. *See* Tex. Bus. Orgs. Code §§ 101.052(b), 101.252. Conversely, the agreement may waive or modify the TBOC provisions. In the case of those items listed in section 101.054, a waiver or modification requires that the company agreement contain a provision that the item is intended to be waived or modified and who must approve the waiver or modification.

References to the TBOC are included following certain sections of this form to allow the practitioner to consider alternative language that might be appropriate for inclusion and to provide additional guidance on areas that should be addressed in the agreement.

**Company Agreement of [name of manager-managed LLC]
[Long Form]**

This Company Agreement (“Agreement”) of [name of limited liability company], a Texas limited liability company (“Company”), is entered into effective [date] (“Effective Date”), by and between [names of members] (collectively referred to herein as the “Members” and individually as a “Member”) and [name(s) of manager(s)] (collectively referred to herein as the “Managers” and individually as a “Manager”).

Article 1

Definitions

1.1 *Definitions.* As used in this Agreement, the following terms have the following meanings:

“Affiliate” means, with reference to any person, any other person controlling, controlled by, or under direct or indirect common control with that person.

Refer to Tex. Bus. Orgs. Code § 1.002(1).

“Assignee” means a person who receives a Transfer of all or a portion of the Membership Interest of a Member but who has not been admitted to the Company as a Member.

Refer to Tex. Bus. Orgs. Code § 101.108, which permits the assignment of a membership interest without conferring management rights or the right to become a member.

“Bankrupt” or “Bankruptcy” means with respect to any Person that (a) the Person (i) makes an assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for that Person a reorganization, arrangement, composition, readjustment, liquidation, dissolution, termination, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against that Person in a proceeding of the type described in subclauses (i) through (iv) of this clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of that Person or of all or any substantial part of that Person’s properties or (b) against that Person, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and one hundred twenty (120) days have expired without dismissal thereof or with respect to which, without that Person’s consent or acquiescence, a trustee, receiver, or liquidator of that Person or of all or any substantial part of that Person’s properties has been appointed and ninety (90) days have expired without the appointment’s having been vacated or stayed, or ninety (90) days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

“Business Day” means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the state of Texas are closed.

“Capital Account” means a capital account maintained for a Member as provided by Treasury Regulations section 1.704–1(b)(2)(iv), of the regulations of the Internal Revenue Service.

“Capital Contribution” means the amount of money and the Net Value of property other than money contributed to the Company by a Member.

“Code” means the Texas Business Organizations Code, including any successor statute, as amended from time to time.

“Default Interest Rate” means a rate per year equal to the prime rate published in the *Wall Street Journal* on the day the rate is determined (or the most recent day on which the *Wall Street Journal* was published if the paper is not published on the day the rate is determined).

“Fundamental Business Transaction” has that meaning assigned to it by the definitions in the Code, as may be amended from time to time, and includes (a) a merger, (b) an interest exchange, (c) a conversion, or (d) a sale or transfer of all or substantially all the Company’s assets.

Refer to Tex. Bus. Orgs. Code § 1.002(32).

“Internal Revenue Code” means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

“Managers” means the person or persons named in the Certificate as an initial Manager of the Company and any person hereafter elected as a Manager of the Company as provided in this Agreement but does not include any person who has ceased to be a Manager of the Company. A Manager is not required to be a resident of Texas or a Member of the Company.

Refer to Tex. Bus. Orgs. Code § 101.302.

“Member” means any person executing this Agreement as of the date of this Agreement as a Member or hereafter admitted to the Company as a Member as provided in this Agreement but does not include any person who has ceased to be a Member of the Company.

This agreement is structured for a company with one class of members. Some business arrangements, however, would require multiple classes or groups of members with separate rights, powers, and duties. See Tex. Bus. Orgs. Code § 101.104. If the company is likely to have classes of members in the future, the following provision should be inserted in the agreement: “The Company may establish classes or groups of one or more Members, each of which has certain rights, powers, and duties, including voting rights. These classes or groups may be established by the unanimous vote of the Members.” If the agreement does not provide for the manner of establishing classes or groups of members, the agreement would need to be amended subsequently to accomplish it. See Tex. Bus. Orgs. Code § 101.104(c). Otherwise, the classes or groups can be established in a separate agreement at the time of establishment. See Tex. Bus. Orgs. Code § 101.104(b).

“Membership Interest” is a Member’s right (a) to an allocable share of the Profits and Losses, income, gains, deductions, credits, and distributions of the Company and (b) to a distributive share of the assets of the Company. Membership Interest does not include the voting rights or management rights reserved to the Members under the terms of this Agreement (or the right to vote the Percentage Interests relating thereto) until the holder of the Membership Interest has been admitted to the Company as a Member as to that Membership Interest.

Refer to Tex. Bus. Orgs. Code § 1.002(54). Membership interests may be certificated or uncertificated. Membership interests for LLCs are uncertificated unless set forth otherwise in the agreement. See Tex. Bus. Orgs. Code § 3.201.

“Net Value” means, in connection with a Capital Contribution of property, the value of the asset less any indebtedness to which the asset is subject when contributed.

“Percentage Interest” means the increment of interest assigned to each Member in connection with and equal to that Member’s Membership Interest for the purpose of voting under the terms of this Agreement. The sum of the Members’ Percentage Interests shall be one hundred percent (100%).

“Person” means any business entity, trust, estate, executor, administrator, or individual, including, where applicable, the Company, a Member, or a Manager.

“Proceeding” means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitral, or investigative.

“Profit and Loss” means, for each fiscal year of the Company (or other period for which Profit or Loss must be computed), the Company’s taxable income or loss determined in accordance with Internal Revenue Code section 703(a), with the following adjustments:

- a. all items of income, gain, loss, and deduction required to be stated separately pursuant to Internal Revenue Code section 703(a)(1) shall be included in computing taxable income or loss;
- b. any tax-exempt income of the Company not otherwise taken into account in computing Profit or Loss shall be included in computing taxable income or loss;
- c. any expenditures of the Company described in Internal Revenue Code section 705(a)(2)(B) (or treated as such pursuant to Treasury Regulations section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profit or Loss shall be subtracted from taxable income or loss;
- d. gain or loss resulting from any disposition of Company property shall be computed by reference to the book value of the property;
- e. in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account book depreciation (as allowable for federal income tax purposes); and
- f. if the book value of an asset of the Company is adjusted in accordance with the winding up and termination of the Company, any increase or decrease in the book value

of the asset as a result of the adjustment shall be treated as gain or loss, respectively, from the disposition of the asset and shall be taken into account in computing Profits or Losses.

“Simple Majority” means fifty-one percent (51%) of the Percentage Interests of all Members participating in a vote. If a decision or action is set forth in this Agreement as being made or required by the Members and that decision or action does not specify what Percentage Interest vote is required, the decision or action shall be by a Simple Majority of the Members.

“Super Majority” means seventy-five percent (75%) of the Percentage Interests of all Members participating in a vote.

“Transfer” means any sale, assignment, conveyance, transfer, encumbrance, gift, donation, assignment, pledge, hypothecation, or other form of disposition of a Membership Interest or any portion of a Membership Interest, whether voluntary or involuntary, whether attempted or completed, and whether during the transferor’s lifetime or upon or after the transferor’s death, including by operation of law, court order, judicial process, foreclosure, levy, or attachment.

1.2 *Other Definitions.* Other terms defined hereinafter are used herein as so defined.

Article 2

Organization

2.1 *Formation.* The Company has been organized as a Texas limited liability company by filing a certificate of formation (“Certificate”) with the Texas secretary of state on the Effective Date, which may be amended or restated from time to time.

Provisions that would normally be included in a company agreement may be contained in the certificate of formation. See Tex. Bus. Orgs. Code §§ 3.005(b), 101.051. Therefore, when issues arise regarding the governance or operation of the LLC, review the certificate of formation as well as the company agreement.

Note: The governing authority of an LLC must be set forth in the certificate of formation as either managers or members. See Tex. Bus. Orgs. Code § 101.251.

2.2 *Name.* The name of the Company is [**name of limited liability company**], and all Company business must be conducted in that name or other names that comply with applicable law that a [Simple Majority/Super Majority] of the Members may select from time to time.

2.3 *Registered Agent and Office.* The registered agent for the service of process is [**name**], and the address is [**address**]. The principal office of the Company shall be located at [**address**]. The Company may have other offices and places of business at locations, both within and without the state of Texas, as the Managers may from time to time determine or as the business and affairs of the Company may require.

2.4 *Purposes.* The purpose and business of the Company shall be to [**list company's purpose**] and all related activities incidental thereto and the transaction of any other business or activity allowed under the Code that is approved by a [Simple Majority/Super Majority] of the Members. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described in this section 2.4. The Company may not, however, (a) engage in a business or activity that is expressly unlawful or prohibited by a law of the state of Texas or cannot lawfully be engaged in by the Company under those laws; (b) operate as a bank, trust company, savings association, insurance company, cemetery organization (except as authorized under the Texas Health and Safety Code), or abstract or title company governed by title 11 of the Texas Insurance Code; or (c) [**specify other prohibited purpose(s)**].

Note: The scope of the authority of the managers of the company can be defined by the purpose. Consider, therefore, limiting the purpose by requiring the members to approve additional purposes (as done above) or narrowly describing the purpose and deleting the language "and the transaction of any other business or activity allowed under the Code that is approved by a Simple/Super Majority of the Members." Refer to Tex. Bus. Orgs. Code §§ 2.003, 2.005.

2.5 *Powers.* The Company shall have all powers necessary, suitable, or convenient for the accomplishment of the purposes of the Company, including, without limitation, to (a) make and perform all contracts; (b) engage in all activities and transactions; and (c) have all powers available to a limited liability company under (i) the Code, (ii) any other laws of the state of Texas, and (iii) the laws of any other jurisdiction where the Company conducts business.

2.6 *Foreign Qualification.* Before the Company conducts business in any jurisdiction other than Texas, the Managers shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Managers, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Managers, each Member shall immediately execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify or continue the Company as a foreign limited liability company in all jurisdictions in which the Company may conduct business.

2.7 *Term.* The Company will commence as provided in the Certificate and will continue in existence [perpetually/for the period of duration set forth in the Certificate] or until the termination of the Company in accordance with the provisions of Article 15 of this Agreement or the Code.

2.8 *No State-Law Partnership.* The Members intend that the Company not be a partnership (including a limited partnership) or a joint venture, and that no Member be a partner or

joint venturer of any other Member, for any purposes other than applicable tax laws, and this Agreement may not be construed to suggest otherwise.

Article 3

Membership

3.1 *Initial Members, Capital Contributions, Membership Interests, and Percentage Interests.* Each person listed on Schedule 1 (a copy of which is attached hereto and incorporated herein) is hereby admitted to the Company as a Member, effective contemporaneously with the Effective Date. Set forth opposite the name of each Member listed on Schedule 1 is that Member's initial Capital Contribution and his Membership Interest and Percentage Interest. Schedule 1 may be amended from time to time to reflect changes in or additions to the membership of the Company. Any such amended Schedule 1 shall (a) supersede all prior Schedule 1s, (b) become part of this Agreement, and (c) be kept on file at the principal office of the Company.

3.2 *Additional Members.* Additional persons may be admitted to the Company as Members on terms and conditions as shall be determined by unanimous consent of the Members. The terms of admission or issuance must specify the Membership Interests, Percentage Interests, and Capital Contributions applicable thereto.

3.3 *Member Rights.* Except as otherwise specifically provided in this Agreement, no Member shall have the right to (a) sell, transfer, or assign its interest in the Company; (b) require partition of the property of the Company; (c) compel the sale of Company assets; or (d) cause the winding up of the Company.

3.4 *Representations and Warranties of Members*

- a. Each Member hereby represents and warrants to the Company and each other Member that, if that Member is a business entity, (i) that Member is duly organized,

validly existing, and in good standing under the law of the state of its organization; (ii) that Member is duly qualified to do business in the jurisdiction of its principal place of business; (iii) that Member has full power and authority to execute and agree to this Agreement and to perform its obligations hereunder; (iv) all necessary actions by the board of directors, shareholders, Members, or other representative of that Member necessary for the due authorization, execution, delivery, and performance of this Agreement have been duly taken; and (v) that Member's authorization, execution, delivery, and performance of this Agreement do not conflict with any other agreement or arrangement to which that Member is a party or by which it is bound.

b. Each Member further hereby represents and warrants to the Company and each other Member that (i) the Member is familiar with the existing or proposed business, financial condition, properties, operations, and prospects of the Company; (ii) the Member has asked the questions and conducted the due diligence concerning the acquisition of his Membership Interest in the Company that he has desired to ask and conduct, and all those questions have been answered to the Member's full satisfaction; (iii) the Member has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of an investment in the Company; (iv) the Member understands that owning the Membership Interest in the Company involves various risks, including the restrictions on transfers as set forth in Article 12 and Article 13 of this Agreement, the lack of any public market for the Membership Interests, the risk of owning the Membership Interest for an indefinite time, and the risk of losing his entire investment in the Company; (v) the Member is able to bear the economic risk of the investment; (vi) the Member is acquiring the Membership Interest in the Company for investment, solely for his own beneficial account and not with a view to, or any present intention of, directly or indirectly selling, transferring, offering to sell or transfer, participating in any distribution, or otherwise disposing of the Membership Interest; and (vii) the Member acknowledges that the Membership Interests have not been regis-

tered under the Securities Act, or any other applicable federal or state securities laws, and that the Company has no intention, and shall not have any obligation, to register or to obtain an exemption from registration for the Membership Interests or to take action so as to permit sales pursuant to the Securities Act.

3.5 *No Authority.* Except as otherwise specifically provided in this Agreement, no Member has the authority or power to (a) transact business in the name of or on behalf of the Company; (b) bind or obligate the Company; or (c) incur any expenditures on behalf of the Company.

3.6 *Withdrawal.* A Member does not have the right or power to withdraw, resign, or retire from the Company as a Member. The Company, or the remaining Members, may not expel a member from the Company.

Note: Section 3.6 does not allow a member to withdraw from the company. See Tex. Bus. Orgs. Code § 101.107. If, however, a right of withdrawal is desired for the company agreement, consider substituting the following language: "A Member of the Company who validly exercises that Member's right to withdraw from the Company as a Member is entitled to receive, within a reasonable time after the date of the withdrawal, the fair market value of that Member's Membership Interest as determined as of the date of withdrawal." See Tex. Bus. Orgs. Code § 101.205.

Article 4

Capital Contributions

4.1 *Initial Capital Contributions.* Each Member has made the initial Capital Contribution to the Company set forth on Schedule 1.

Include the following if a member will make an initial contribution after the effective date.

[Name of member] promises and agrees to make a contribution of [specify property or amount of cash] to the Company on or before [date of deadline]. The Member is obligated to

make the contribution without regard to the death, disability, or other change in circumstances of the Member.

Repeat as necessary.

Continue with the following.

4.2 *Additional Contributions*

Include the following if a member will make an additional contribution in the future.

[Name of member] promises and agrees to make a contribution of [specify property or amount of cash] to the Company on or before [date of deadline]. The Member is obligated to make the contribution without regard to the death, disability, or other change in circumstances of the Member.

Repeat as necessary.

Continue with the following.

No Member shall be required to make any additional Capital Contributions other than those specifically described in Schedule 1 or this section 4.2 unless unanimously agreed to by all Members or otherwise required to do so by the Code.

Note: A member may promise to make a contribution in the future if the promise is in writing and signed by that member. The writing and signature requirements cannot be waived by the company agreement unless the agreement provides specifically for a waiver. See Tex. Bus. Orgs. Code §§ 101.054, 101.151. However, as a practical matter, if future contributions are contemplated, whether as an initial contribution or an additional contribution, specific provisions regarding such should be included in the agreement as set forth above in sections 4.1 and 4.2. Tex. Bus. Orgs. Code § 101.152 provides that a promise to make a contribution is enforceable despite a change in circumstances.

Refer to Tex. Bus. Orgs. Code § 1.002(9) for a list of potential types of contributions, including services rendered.

4.3 *Return of Capital Contributions.* Capital Contributions shall be expended in furtherance of the business of the Company. No Member is entitled to the return of any part of

his Capital Contributions or to be paid interest in respect of either his Capital Account or his Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of any Member. This section 4.3, however, is subject to section 5.2 of this Agreement.

4.4 *Capital Accounts.* A Capital Account shall be established on behalf of each Member. The Capital Account on behalf of each Member—

- a. shall consist of (i) the amount of money contributed by that Member to the Company and (ii) the fair market value of property contributed by that Member to the Company (net of liabilities secured by the contributed property that the Company is considered to assume or take subject to under section 752 of the Internal Revenue Code);
- b. shall be increased by allocations to that Member of Company income and gain (or items thereof), including income and gain exempt from tax and income and gain described in Treasury Regulations section 1.704–1(b)(2)(iv)(g) but excluding income and gain described in Treasury Regulations section 1.704–1(b)(4)(i); and
- c. shall be decreased by (i) the amount of money distributed to that Member by the Company, (ii) the fair market value of property distributed to that Member by the Company (net of liabilities secured by the distributed property that the Member is considered to assume or take subject to under section 752 of the Internal Revenue Code), (iii) allocations to that Member of expenditures of the Company described in section 705(a)(2)(B) of the Internal Revenue Code, and (iv) allocations of Company loss and deduction (or items thereof), including loss and deduction described in Treasury Regulations section 1.704–1(b)(2)(iv)(g), but excluding items described in clause 4.4(c)(iii) above and loss or deduction described in Treasury Regulations section 1.704–1(b)(4)(i) or 1.704–1(b)(4)(iii).

The Capital Account of each Member also shall be maintained and adjusted as permitted by the provisions of Treasury Regulations section 1.704-1(b)(2)(iv)(f) and as required by the other provisions of Treasury Regulations sections 1.704-1(b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the Members of depreciation, depletion, amortization, and gain or loss as computed for tax purposes, as required by Treasury Regulations section 1.704-1(b)(2)(iv)(g). On the transfer of all or part of a Membership Interest, the Capital Account of the transferor that is attributable to the transferred Membership Interest or part thereof shall carry over to the transferee in accordance with the provisions of Treasury Regulations section 1.704-1(b)(2)(iv)(l).

4.5 *Ownership of Assets.* All assets and property of the Company shall be owned by the Company, subject to the terms and provisions of this Agreement, and no Member, individually, shall have any ownership of those assets or property. Legal title to all assets and property of the Company shall be held and conveyed in the name of the Company.

Refer to Tex. Bus. Orgs. Code § 101.106(b).

Article 5

Allocations and Distributions

5.1 *Allocations*

a. Until the time that each Member has received a return of one hundred percent (100%) of his initial and additional, if any, cash Capital Contributions made to the Company, all items of income, gain, loss, deduction, and credit shall be allocated to the Members in accordance with their Membership Interests, to the exclusion of any Member that has not made any cash Capital Contributions. Thereafter, as may be required by section 704(c) of the Internal Revenue Code and Treasury Regulations section 1.704-1(b)(2)(iv)(f)(4), all items of income, gain, loss, deduction, and credit of the

Company shall be allocated among the Members in accordance with their Membership Interests.

Section 5.1 overrides Tex. Bus. Orgs. Code § 101.201, which requires profits and losses to be allocated on the basis of contributions made by each member.

b. All items of income, gain, loss, deduction, and credit allocable to any Membership Interest that may have been transferred shall be allocated between the transferor and the transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest, without regard to the results of Company operations during any particular portion of that calendar year and without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; this allocation, however, must be made in accordance with a method permissible under section 706 of the Internal Revenue Code and the regulations thereunder.

5.2 *Distributions*

a. Until the time that each Member has received the return of one hundred percent (100%) of his initial or additional, if any, cash Capital Contribution made to the Company, all distributions shall be made to the Members in accordance with their Membership Interests, to the exclusion of any Member that has not made any cash Capital Contributions.

b. From time to time (but at least once each calendar quarter) a Simple Majority of the Members shall determine in their reasonable judgment to what extent (if any) the Company's cash on hand exceeds its current and anticipated needs, including, without limitation, for operating expenses, debt service, acquisitions, and a reasonable contingency reserve. If such an excess exists, the Manager shall cause the Company to distribute to the Members, subject to section 5.2(a) above, in accordance with their Membership Interests, an amount in cash equal to that excess.

Note: Distributions are to be made according to the agreed value of each member's contribution. Tex. Bus. Orgs. Code § 101.203. A member is entitled to receive distributions in cash, regardless of the form of the member's contribution to the company. Tex. Bus. Orgs. Code § 101.202. A member may not demand a distribution before winding up other than in accordance with the provisions of the company agreement. See Tex. Bus. Orgs. Code § 101.204.

c. From time to time by vote of a Simple Majority of the Members, the Managers may cause property of the Company other than cash to be distributed to the Members, which distribution must be made in accordance with their Membership Interests and may be made subject to existing liabilities and obligations. Immediately before such a distribution, the Capital Accounts of the Members shall be adjusted as provided in Treasury Regulations section 1.704-1(b)(2)(iv)(f).

5.3 *Prohibited Distributions.* Distributions may not be made to Members if, immediately after making the distribution, the Company's total liabilities exceed the fair value of the Company's total assets as set forth in Code section 101.206 ("Prohibited Distribution"). For the purposes of calculating the Prohibited Distribution, the liabilities of the Company do not include a liability related to the Member's Membership Interest. A Member who receives a Prohibited Distribution is not required to return the Prohibited Distribution unless the Member had knowledge of the violation of this section 5.3 or the Code. A Prohibited Distribution does not include an amount constituting reasonable compensation for present or past services or a reasonable payment made in the ordinary course of business under a bona fide retirement plan or another benefits program.

Note: The provisions of section 5.3 cannot be waived or modified in the company agreement unless a specific provision authorizes it. See Tex. Bus. Orgs. Code § 101.054. For example, “The Members of the Company hereby agree to waive the application of the provisions of Code section 101.206 to allow the Company to make distributions to Members that would result in the Company’s total liabilities exceeding the fair value of the Company’s total assets.” Alternatively, the Prohibited Distribution language could be included, and the requirement for returning the distribution could be waived as follows: “The Members of the Company hereby waive the application of the provisions of Code section 101.206(d), and thus a Member who receives a Prohibited Distribution is required to return the distribution to the Company.”

The liabilities of the company do not include those certain liabilities listed in Tex. Bus. Orgs. Code § 101.206(b). Such provisions should be reviewed to ascertain if they are likely to affect the practitioner’s particular LLC and therefore should be addressed in the company agreement.

Article 6

Management

Carefully review the provisions of article 6, especially if representing a member that is not a manager. Section 6.2 provides for several safeguards to protect the interests of such a member.

6.1 *Management by Managers.* Except for situations in which the approval of the Members is required by this Agreement or by provisions of applicable law, and subject to the provisions of section 6.2 of this Agreement, the Managers shall have the sole and exclusive control of the management, business, and affairs of the Company, and the Managers shall make all decisions and take all actions for the Company, including, without limitation, the following:

- a. entering into, making, and performing contracts, agreements, and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and making all decisions and waivers thereunder;
- b. opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- c. maintaining the assets of the Company in good order;

- d. collecting sums due the Company;
- e. to the extent that funds of the Company are available therefor, paying debts and obligations of the Company;
- f. selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;
- g. obtaining insurance for the Company, the Members, and the Managers as deemed necessary for the operations being conducted by the Company; and
- h. establishing a seal for the Company if appropriate.

6.2 *Actions and Decisions Requiring Member Consent.* Notwithstanding any power or authority granted the Managers under the Code, the Certificate, or the provisions of section 6.1 of this Agreement, the Managers may not make any decision or take any action for which the consent of a Simple Majority interest, Super Majority interest, or unanimous interest is expressly required by the Certificate or this Agreement, without first obtaining that consent, and specifically, the Managers may not make any decision or take any action listed below in sections 6.2(a), 6.2(b), or 6.2(c) without first obtaining the consent described therein:

- a. *Simple Majority Approval.* The following decisions and actions require the approval of a Simple Majority of the Members:
 - i. acquiring, disposing of, encumbering or changing the ownership status of any intellectual property belonging to the Company;
 - ii. performing any action not apparently for carrying out the ordinary course of business of the Company;
 - iii. borrowing money or otherwise committing the credit of the Company or incurring any indebtedness or voluntary prepayments or extensions of debt; and

iv. encumbering the Company's assets.

b. *Super Majority Approval.* The following decisions and actions require the approval of a Super Majority of the Members:

i. causing or permitting the Company to dispose of any asset with a fair market value or book value in excess of \$[amount];

ii. causing or permitting the Company to enter into or engage in any transaction that is unrelated to the Company's purpose set forth in the Certificate and in section 2.4; and

iii. causing or permitting the Company to become Bankrupt.

c. *Unanimous Approval.* The following decisions and actions require the unanimous approval of the Members:

i. entering into a Fundamental Business Transaction and

ii. doing any act that would make it impossible to carry on the ordinary business of the Company (except in connection with the winding up of the Company).

Tex. Bus. Orgs. Code § 101.356 provides, in part, for different member approval than that set forth in section 6.2. The practitioner may also want to use different approval requirements, or may add other actions or decisions to the list.

Refer to Tex. Bus. Orgs. Code §§ 10.251, 10.252 regarding conveyances of company property.

6.3 *Reliance by Third Parties.* No third party dealing with the Company shall be required to ascertain whether a Manager is acting in accordance with the provisions of this Agreement. All third parties may rely on a document executed by the Managers as binding the Company. If a Manager acts outside the authority set forth in this Agreement or as provided in

the Certificate or the Code, he shall be liable to the Members for any damages arising out of his unauthorized actions.

Section 6.3 assures third parties dealing with the company while providing some protections to the members for unauthorized actions. Refer to Tex. Bus. Orgs. Code § 101.254.

6.4 *Duties and Time Devoted to Business.* Each Manager shall carry out his duties in good faith, in a manner that is in the best interest of the Company, and with the care that an ordinarily prudent manager in a like position would use under similar circumstances. Each Manager shall devote the time to the business of the Company that he, in his discretion, deems necessary for the efficient carrying on of the Company's business.

6.5 *Conflicts of Interest.* Subject to the other express provisions of this Agreement, [include if applicable: except for [specify exception(s)],] each Manager, Member, and officer of the Company at any time and from time to time may engage in and possess interests in other business ventures of any and every type and description, independently or with others, including ones in competition with the Company, with no obligation to offer to the Company or any other Member, Manager, or officer the right to participate therein. The Company may transact business with any Manager, Member, officer, or Affiliate thereof, provided the contract or transaction is fair to the Company as of the time it is authorized [and/or] ratified by a [Simple Majority/Super Majority] of the Members.

Refer to Tex. Bus. Orgs. Code §§ 101.255, 101.401.

6.6 *Vacancies; Removal; Resignation.* A Manager shall hold office until his successor has been duly elected and qualified; until his position is eliminated by a decrease in the number of Managers of the Company; or until the earlier resignation, removal, or death of the Manager. Any Manager position to be filled for any reason, including as a result of an increase in the number of Managers, may be filled by election at an annual or special meeting of Members called for that purpose by a vote of a Super Majority of the Members. A Manager

elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. No person shall be eligible to serve as a Manager of the Company until that person has accepted the provisions of this Agreement in writing. At any meeting of Members at which a quorum of Members is present called expressly for that purpose, or by written consent adopted in accordance with this Agreement, any Manager may be removed, with or without cause, by a Super Majority of the Members. Any Manager may resign at any time. The resignation shall be made in writing and shall take effect at the time specified therein, or if no time is specified, at the time of its receipt by the Members. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Note: The first sentence of section 6.6 changes the default rule set forth in Tex. Bus. Orgs. Code § 101.302(c), which states that a manager's term is not shortened upon a decrease in the number of managers. Refer also to Tex. Bus. Orgs. Code §§ 101.303 (term of a manager), 101.304 (removal of a manager), 101.305 (manager vacancy). Tex. Bus. Orgs. Code § 101.305(a)(1) provides that the remaining managers select a new manager to fill a vacancy. Section 6.6, however, is drafted to require a supermajority of the members to elect managers to fill vacancies.

6.7 *Compensation.* For their services in the management of the Company and its operations, the Managers or Members may receive such compensation, if any, as may be designated from time to time by a Simple Majority of the Members.

6.8 *Reimbursement.* The Managers and Members are not required to advance any funds to pay costs and expenses of the Company. If a Manager or Member advances such funds, however, the Manager or Member shall be entitled to reimbursement for out-of-pocket costs and expenses incurred in the course of his service hereunder, [including/but not including] the portion of his overhead reasonably allocable to Company activities.

6.9 *Meetings of Managers*

- a. Meetings of the Managers shall be held at least annually or more often at the request of one or more Managers. Meetings may be called by any Manager on three (3)

days' written notice transmitted electronically to each Manager. The notice must include the date, time, and location (unless the meeting is being held in accordance with section 6.9(e) below) of the meeting. The notice need not include the business to be transacted at, nor the purpose of, the meeting.

Note: The number of days' notice required should be limited to give the managers the flexibility to respond quickly to business situations. If a longer notice period is desired, notice by mailing could be included in section 6.9(a) as set forth in Tex. Bus. Orgs. Code § 6.051(b)(1).

b. A majority of the Managers shall constitute a quorum for the transaction of business of the Company, and the act of a majority of the Managers present at a meeting at which a quorum is present shall be the act of the Managers. Any Manager who is present at a meeting of the Managers at which action on any Company matter is taken shall be presumed to have assented to the action unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to the action with the person acting as secretary of the meeting before the adjournment of the meeting or delivers his dissent to the Company immediately after the adjournment of the meeting. The right to dissent shall not apply to a Manager who voted in favor of the action.

Refer to Tex. Bus. Orgs. Code §§ 6.003 (participation at a meeting constitutes presence), 101.353 (quorum requirements).

c. Meetings of the Managers may be held at a place or places as shall be determined by a majority of the Managers. Attendance of a Manager at a meeting shall constitute a waiver of notice of the meeting, except where a Manager attends a meeting for the purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Refer to Tex. Bus. Orgs. Code §§ 6.001 (location of meetings), 6.052 (waiver of notice).

d. The Managers shall keep minutes of their meetings, which shall be placed in the records of the Company.

e. Managers may participate in and hold a meeting by using a conference telephone or similar communications equipment, another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each Manager participating in the meeting to communicate with all other Managers participating in the meeting. The notice of a meeting held in accordance with this section 6.9(e) shall set forth the form of communications system to be used and the means of accessing the system. If voting is to take place at the meeting, the Company must implement reasonable measures to verify that every person voting at the meeting is sufficiently identified and shall keep a record of any vote or other action taken. Participation in the meeting shall constitute attendance and presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Refer to Tex. Bus. Orgs. Code §§ 6.002, 6.051(a)(2)(B).

f. A Manager may vote at a meeting by a written proxy executed by that Manager and delivered to another Manager. A proxy shall be revocable unless it is stated to be irrevocable.

Refer to Tex. Bus. Orgs. Code § 101.357(b)(2).

6.10 *Manager Action without Meeting.* Any action permitted or required by the Code, the Certificate, or this Agreement to be taken at a meeting of the Managers may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by all the Managers. Every written consent shall bear the date of signature of each Manager who signs the consent, and the consent may be in one or more counterparts. A telegram, telex, cablegram, facsimile, e-mail, or similar transmission by the Manager, or a photographic, photo-static, facsimile, or similar reproduction of a writing signed by the Manager, shall be regarded as signed by the Manager for purposes of this section 6.10. The consent shall have the same

force and effect as a unanimous vote at a meeting and may be stated as such in any document or instrument filed with the secretary of state of Texas, and the execution of the consent shall constitute attendance or presence in person at a meeting of the Managers. The signed consent or a signed copy of the consent shall be kept on file at the principal office of the Company.

Note: Section 6.10 requires that consents must be signed by all members. See Tex. Bus. Orgs. Code § 6.201. Tex. Bus. Orgs. Code § 101.358, however, provides that the consent of a majority of the managers will suffice (or whatever vote is required to make that particular decision if decided at a meeting of the managers). Determine which alternative is right for the particular LLC being formed. In addition, this section overrides Tex. Bus. Orgs. Code § 101.359 by requiring the consent of the members to be evidenced by a writing and disallowing consent to be presumed by a manager's failure to object.

6.11 *Meetings of Members*

a. Unless otherwise required by law or provided in the Certificate or this Agreement, a Simple Majority of the Members shall constitute a quorum for the transaction of business of the Company, and the act of a Simple Majority of the Members present at a meeting at which a quorum is present shall be the act of the Members, unless a greater number is specified in this Agreement. Any Member who is present at a meeting of the Members at which action on any Company matter is taken shall be presumed to have assented to the action unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to the action with the person acting as secretary of the meeting before the adjournment thereof or delivers his dissent to the Company immediately after the adjournment of the meeting. The right to dissent shall not apply to a Member who voted in favor of the action. Jointly held membership interests shall be voted pursuant to Code section 6.157.

Note: Tex. Bus. Orgs. Code § 6.157 was added effective September 1, 2017, and provides that jointly held ownership interests may be voted by any one of the record owners (or any one of the persons having the right to vote the interest if that interest is held by an estate or trust). See Acts 2017, 85th Leg., R.S., ch. 75, § 3 (S.B. 1518), eff. Sept. 1, 2017.

Refer to Tex. Bus. Orgs. Code §§ 6.003 (participation at a meeting constitutes presence), 101.353 (quorum requirements).

b. Meetings of the Members may be held at a place or places as shall be determined from time to time by resolution of the Members. Attendance of a Member at a meeting shall constitute a waiver of notice of the meeting, except where a Member attends a meeting for the purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Refer to Tex. Bus. Orgs. Code §§ 6.001 (location of meetings), 6.052 (waiver of notice).

c. Meetings of the Members shall be held at times that shall be designated from time to time by resolution of Members owning Percentage Interests of at least ten percent (10%). The chairperson of the meeting will be a Member selected by a Simple Majority of the Members present at the meeting. The Members may take any action whether or not the action is included in the notice of meeting.

d. Written notice stating the place, day, and hour of the meeting, the purpose or purposes of the meeting, and the communication system to be used for the meeting, if any, shall be delivered either personally or by mail to each Member of record entitled to vote at the meeting not less than ten (10) days or more than sixty (60) days before the date of the meeting. The record date shall be the date notice of the meeting is given as provided herein. Notwithstanding the foregoing, written notice of a meeting is not required if the provisions of Code section 6.053 are met.

Refer to Tex. Bus. Orgs. Code §§ 6.051, 101.352 (general notice requirements), § 6.101 (record date). Tex. Bus. Orgs. Code § 6.053 applies to undeliverable notices and notice to holders of lost certificates.

e. Members may participate in and hold a meeting by using a conference telephone or similar communications equipment, another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each Member participating in the meeting to communicate with all other Members participating in the meeting. If voting is to take place at the meeting, the Company must implement reasonable measures to verify that every person voting at the meeting is sufficiently identified and shall keep a record of any vote or other action taken. Participation in the meeting shall constitute attendance and presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Refer to Tex. Bus. Orgs. Code § 6.002.

f. A Member may vote at a meeting by a written proxy executed by that Member and delivered to another Member. A proxy shall be revocable unless it is stated to be irrevocable.

Refer to Tex. Bus. Orgs. Code § 101.357(a)(2). Note also Tex. Bus. Orgs. Code §§ 6.251 (voting trusts), 6.252 (voting agreements).

6.12 *Member Action without Meeting.* Any action permitted or required by the Code, the Certificate, or this Agreement to be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by all the Members. Every written consent shall bear the date of signature of each Member who signs the consent, and the consent may be in one or more counterparts. The record date determining the Members entitled to sign the written consent shall be set forth in the written consent, or if no date is designated, the date the consent is delivered to the principal office of the Company. A telegram, telex, cablegram, facsimile, e-mail, or similar transmission by the Member, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by the Mem-

ber, shall be regarded as signed by the Member for purposes of this section 6.12. The consent shall have the same force and effect as a unanimous vote at a meeting and may be stated as such in any document or instrument filed with the Texas secretary of state, and the execution of the consent shall constitute attendance or presence in person at a meeting of the Members. The signed consent or a signed copy of the consent shall be kept on file at the principal office of the Company.

Note: Section 6.12 requires that consents must be signed by all members. See Tex. Bus. Orgs. Code § 6.201. Tex. Bus. Orgs. Code §§ 6.202, 101.358, however, provide that the consent of a majority of the members will suffice (or whatever vote is required to make that particular decision if decided at a meeting of the members). Determine which alternative is right for the particular LLC being formed. In addition, this section overrides Tex. Bus. Orgs. Code § 101.359 by requiring the consent of the members to be evidenced by a writing and disallowing consent to be presumed by a member's failure to object.

6.13 *Liability of Members and Managers.* Members and Managers shall not be liable as Members or Managers for the debts, obligations, or liabilities of the Company, including a debt, obligation, or liability under a judgment, decree, or order of a court. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Code shall not be grounds for imposing personal liability on a Member or Manager for liabilities of the Company.

Refer to Tex. Bus. Orgs. Code § 101.114.

6.14 *Committees of the Managers.* The Managers may designate one or more committees of the Managers consisting of one or more Managers. The Managers may also designate a Manager to serve as an alternate committee member if a committee member is absent or disqualified. A committee formed hereunder may exercise the authority of the Managers as specified in the resolution by the Managers in forming the committee. The designation of a committee does not relieve the Managers of any responsibility imposed by law or this Agreement. The Managers may remove a committee member for any reason. Committee meetings

shall be set by the committee. The act of a majority of the committee members shall be the act of the committee.

Refer to Tex. Bus. Orgs. Code § 101.253.

Article 7

Confidential Information

7.1 *Confidential Information.* The Members acknowledge that, from time to time, they may receive information from or regarding the Company in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Company or persons with which it does business. Each Member shall hold in strict confidence any information he receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any person other than another Member or a Manager, except for disclosures (a) compelled by law (but all Members thus compelled must notify the Manager and all other Members promptly of any request for that information, before disclosing it, if practicable); (b) to advisers or representatives of the Member or persons to which that Member's Membership Interest may be transferred as permitted by this Agreement, but only if the recipients have agreed to be bound by the provisions of this section 7.1; or (c) of information that Member also has received from a source independent of the Company that the Member reasonably believes obtained that information without breach of any obligation of confidentiality.

7.2 *Specific Performance.* The Members acknowledge that breach of the provisions of section 7.1 of this Agreement may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Members agree that the provisions of section 7.1 of this Agreement may be enforced by specific performance.

Article 8

Officers

8.1 *Qualification.* A Simple Majority of the Members may, from time to time, designate one or more persons to be officers of the Company. No officer need be a resident of the state of Texas, a Member, or a Manager. Any officers so designated shall have the authority and perform the duties as the Members may, from time to time, delegate to them. The Members may assign titles to particular officers. Unless the Members decide otherwise, if the title is one commonly used for officers of a business corporation, the assignment of the title shall constitute the delegation to the officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to the officer by the Members in accordance with this section 8.1. Each officer shall hold office until his successor shall be duly designated and qualify for the office, until his death, or until he shall resign or shall have been removed in the manner hereinafter provided. Any vacancy occurring in any office of the Company (other than Manager) may be filled by the Members. Any number of offices may be held by one person.

Refer to Tex. Bus. Orgs. Code § 3.103.

8.2 *Compensation.* The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by a Simple Majority of the Members. However, election or appointment of an officer or agent shall not of itself, nor shall anything in this Agreement, create contract rights.

8.3 *Resignation.* Any officer may resign as such at any time. The resignation shall be made in writing and shall take effect at the time specified therein, or if no time is specified, at the time of its receipt by the Members. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

8.4 *Removal.* Any officer may be removed as such, either with or without cause, by a Simple Majority of the Members.

Article 9

Indemnification

9.1 *Right to Indemnification.* Subject to the limitations and conditions as provided in this Article 9, each person who was or is made a party or is threatened to be made a party to or is involved in any Proceeding, or any appeal in such a Proceeding, or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Member or Manager of the Company shall be indemnified by the Company to the fullest extent permitted by the Code against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements, and reasonable expenses (including, without limitation, attorney's fees) actually incurred by the person in connection with the Proceeding, and indemnification under this Article 9 shall continue for a person who has ceased to serve in the capacity which initially entitled the person to indemnity hereunder. The rights granted under this Article 9 shall be deemed contract rights, and no amendments, modification, or repeal of this Article 9 shall have the effect of limiting or denying any such rights with respect to actions taken or Proceeding arising before any such amendment, modification, or repeal. It is expressly acknowledged that the indemnification provided in this Article 9 could involve indemnification for negligence or under theories of strict liability. A Member or Manager shall not, however, be indemnified if the actions or conduct of the Member or Manager that gave rise to the litigation, actions, or conduct are for the following:

- a. intentional or willful misconduct or a knowing violation of the law;
- b. gross negligence;

- c. a breach of the duty of loyalty to the Company or its Members;
- d. an act or omission not in good faith that constitutes a breach of duty;
- e. a transaction from which the Member or Manager received an improper benefit to the detriment of the Company, regardless of whether the benefit resulted from an action taken within the scope of the Member's or Manager's duties; or
- f. an act or omission for which the liability of a governing person is expressly provided by an applicable statute.

Notwithstanding anything to the contrary in this Article 9, the Company shall indemnify the parties as set forth herein in this Article 9 if the person is wholly successful, on the merits or otherwise, in the defense of the Proceeding.

Refer to Tex. Bus. Orgs. Code §§ 7.001, 101.401 (limitation of liability).

The Texas Business Organizations Code allows the company to indemnify members, managers, and officers of the company. See Tex. Bus. Orgs. Code § 101.402. Indemnification is mandatory if the person is wholly successful in the defense of the proceeding. See Tex. Bus. Orgs. Code § 8.051. Indemnification may also be court-ordered (see Tex. Bus. Orgs. Code § 8.052) or permissive (see Tex. Bus. Orgs. Code § 8.101). The certificate of formation can, however, restrict the application of the indemnification provisions. See Tex. Bus. Orgs. Code § 8.003(a).

9.2 *Advance Payment.* The right to indemnification conferred in this Article 9 shall include the right to be paid or reimbursed by the Company the reasonable expenses incurred by a person entitled to be indemnified under section 9.1 of this Agreement who was, is, or is threatened to be made a named defendant or respondent in a Proceeding in advance of the final disposition of the Proceeding and without any determination about the person's ultimate entitlement to indemnification. The payment of the expenses incurred by any such person in advance of the final disposition of a Proceeding, however, shall be made only upon delivery to the Company of a written affirmation by that person of his good-faith belief that he has met the standard of conduct necessary for indemnification under this Article 9 and a written undertaking, by or on behalf of the person, to repay all amounts so advanced if it shall ultimately be

determined that the indemnified person is not entitled to be indemnified under this Article 9 or otherwise.

9.3 *Indemnification of Officers, Employees, and Agents.* The Company, by adoption of a resolution by a Simple Majority of the Members, may indemnify and advance expenses to an officer, employee, or agent of the Company to the same extent and subject to the same conditions under which it may indemnify and advance expenses to a Manager or Member under this Article 9.

9.4 *Exclusivity of Rights.* The right to indemnification and the advancement and payment of expenses conferred in this Article 9 shall not be exclusive of any other right which a Member or Manager or other person indemnified under this Article 9 may have or hereafter acquire under any law (common or statutory), under any provision of the Certificate, this Agreement, or another agreement, or under a vote of disinterested Members, or otherwise.

9.5 *Insurance.* The Company may purchase and maintain insurance, at its expense, to protect itself and any person who is or was a Member, Manager, officer, employee, or agent of the Company against any expense, liability, or loss, whether or not the Company would have the power to indemnify the person against the expense, liability, or loss under this Article 9.

Article 10

Taxes

Note: It may be necessary to consult a tax professional regarding this agreement, especially article 10, who may recommend additional provisions or revision of certain sections.

10.1 *Tax Returns.* The Managers shall cause to be prepared and filed all necessary federal and state income tax returns for the Company, including making the elections described in section 10.2 of this Agreement. Each Member shall furnish to the Managers all pertinent

information in his possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

10.2 *Tax Elections.* The Company shall make the following elections on the appropriate tax returns:

- a. to adopt the calendar year as the Company's fiscal year;
- b. to adopt the cash method of accounting for keeping the Company's books and records;
- c. if a distribution of Company property as described in section 734 of the Internal Revenue Code occurs or if a transfer of a Membership Interest as described in section 743 of the Internal Revenue Code occurs, on written request of any Member, to elect, pursuant to section 754 of the Internal Revenue Code, to adjust the basis of Company properties;
- d. to elect to amortize the organizational expenses of the Company and the start-up expenditures of the Company under section 195 of the Internal Revenue Code ratably over a period of sixty (60) months as permitted by section 709(b) of the Internal Revenue Code; and
- e. any other election the Members may deem appropriate and in the best interest of the Members.

Neither the Company nor any Manager or Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1, subtitle A, of the Internal Revenue Code or any similar provisions of applicable state law, and no provision of this Agreement shall be construed to sanction or approve such an election.

10.3 *“Tax Matters Partner.”* The Managers shall designate one of the Managers to be the “tax matters partner” of the Company. Any Manager who is designated tax matters partner shall inform each Member of all significant matters that may come to his attention in his capacity as tax matters partner by giving notice thereof on or before the fifth Business Day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications he may receive in that capacity. Any Manager who is designated tax matters partner may not take action contemplated by the Internal Revenue Code without the consent of a Simple Majority of the Members, but this sentence does not authorize the Manager (or any other Manager) to take any action left to the determination of an individual Member under the Internal Revenue Code.

For a discussion of tax audits, partnership representatives, and the various tax elections available to an LLC taxed as a partnership, see chapter 9 in this manual. For optional provisions for naming a partnership representative, see form 9-1.

Article 11

Books, Records, Reports, and Bank Accounts

11.1 *Maintenance of Books.* The Company shall keep at its principal office (a) books and records of accounts; (b) minutes of the proceedings of its Members, the Managers, and each committee of the Managers; (c) a current record of the name, mailing address, and Membership Interest and Percentage Interest of each Member of the Company; (d) a current record of the Members in each class, if any; (e) income tax returns for each of the six (6) preceding tax years along with state and local tax information; (f) a copy of the Certificate, including any amendments or restatements; and (g) a copy of this Agreement, including any amendments or restatements. The books of account for the Company shall be maintained on a cash basis in accordance with the terms of this Agreement, except that the Capital Accounts of the Members shall be maintained in accordance with Article 4 of this Agreement. The calendar year shall be the accounting year of the Company.

Refer to Tex. Bus. Orgs. Code §§ 3.151, 101.501.

11.2 *Access to Books and Records.* A Member shall have reasonable access to the books and records set forth in section 11.1 of this Agreement for any reasonable purpose and may examine and copy them at the Member's expense. Notwithstanding the foregoing, on written request by a Member, the Company shall provide a free copy of the Certificate and any amendments thereto and restatements thereof, the Agreement and any amendments thereto and restatements thereof, and income tax returns of the Company for each of the six (6) preceding tax years. Managers shall have reasonable access to the books and records set forth in section 11.1 of this Agreement for purposes reasonably related to the Manager's management duties for the Company.

Note: Tex. Bus. Orgs. Code § 101.502 describes the right of a member to examine the records of an LLC. Tex. Bus. Orgs. Code § 101.503, effective September 1, 2019, provides for a penalty if the LLC refuses to allow a member to examine the applicable LLC records. See Acts 2019, 86th Leg., R.S., ch. 658, § 10 (S.B. 1859), eff. Sept. 1, 2019.

Refer to Tex. Bus. Orgs. Code §§ 3.152(a) (access to books and records by managers), 3.153 (access to books and records by members), 101.502 (right to examine records by members). The agreement may not unreasonably restrict right of access to the Company books and records. See Tex. Bus. Orgs. Code § 101.054(e).

11.3 *Accounts.* The Managers shall establish and maintain one or more separate bank and investment accounts and arrangements for Company funds in the Company name with financial institutions and firms that the Managers determine. The Managers may not commingle the Company's funds with the funds of any Member or Manager. Company funds may, however, be invested in a manner the same as or similar to a Manager's or Member's investment of their own funds or investments by their Affiliates.

Article 12

Transfers

12.1 *Limited Right to Transfer.* No Member or Assignee (referred to in this Article 12 as the “Assignor”) shall make any Transfer of all or any part of his Membership Interest, whether now owned or hereafter acquired, except (a) with the unanimous consent of the Members; (b) as provided by Article 13 of this Agreement; (c) as a Defaulting Member as provided by section 14.1(f) of this Agreement; or (d) upon winding up or termination, as provided by Article 15 of this Agreement. Any attempted Transfer by a person of an interest or right, or any part thereof, in or in respect of the Company other than as specifically provided by this Agreement shall be, and is hereby declared, null and void ab initio.

12.2 *Rights of an Assignee of a Membership Interest*

a. Unless the Assignee of a Membership Interest becomes a Member of the Company, the Assignee shall be entitled only (i) to receive an allocation of income, gain, loss, deduction, credit, or similar items and to receive distributions to which the assignor is entitled to the extent these items were assigned; (ii) to receive reasonable information or account of transactions of the Company; and (iii) to make reasonable inspection of the books and records of the Company for any proper purpose. The Assignee shall have no right (i) to participate in the operations or management of the Company; (ii) to become a Member of the Company; or (iii) to exercise any rights of a Member of the Company.

Refer to Tex. Bus. Orgs. Code §§ 101.108, 101.109.

b. If an Assignee becomes a Member of the Company, the Assignee is (i) entitled, to the extent assigned, to the same rights and powers granted or provided to a Member of the Company by this Agreement or the Code; (ii) subject to the same restrictions and liabilities placed or imposed on a Member of the Company by this Agreement or the

Code; and (iii) liable for the Assignor's obligation to make contributions to the Company and any other liabilities of the Assignor to the Company, but only to the extent the Assignee had knowledge of such on the date of becoming a Member or such could be ascertained from the terms of this Agreement.

Refer to Tex. Bus. Orgs. Code § 101.110.

c. The Assignor continues to be a Member of the Company and is entitled to exercise any unassigned rights or powers until the Assignee becomes a Member of the Company. An Assignor is not released from the assignor's liability to the Company for liabilities not assigned to Assignee as set forth in section 12.2(b)(iii) of this Agreement.

Refer to Tex. Bus. Orgs. Code § 101.111.

12.3 *Legal Opinion.* For the right of a Member to transfer a Membership Interest or any part thereof or of the Assignee or any Person to be admitted to the Company in connection therewith to exist or be exercised, the Company must receive an opinion from legal counsel acceptable to the Members that states (a) the Transfer is exempt from registration under federal and state securities laws; (b) the Transfer will not cause the Company to be in violation of federal and state securities laws; (c) the Transfer will not adversely affect the status of the Company as a partnership under the Internal Revenue Code or Treasury regulations; and (d) the Transfer will not result in the Company's being considered to have terminated within the meaning of the Internal Revenue Code or Treasury regulations. The Members, however, may waive the requirements of this section 12.3.

12.4 *Admission as a Member.* An Assignee has the right to be admitted to the Company as a Member along with receiving the Membership Interest and Percentage Interest so transferred to the person, upon the following conditions:

a. the Assignor making the Transfer grants the Assignee the right to be so admitted;

b. the Transfer is consented to in accordance with section 12.1 of this Agreement;
and

c. a written, signed, and dated instrument evidencing the Transfer has been filed with the Company in form and substance reasonably satisfactory to the Members, and the instrument contains (i) the agreement by the Assignee to be bound by all the terms and provisions of this Agreement; (ii) any necessary or advisable representations and warranties, including that the Transfer was made in accordance with all applicable laws, regulations, and securities laws; (iii) the Membership Interests and Percentage Interests being transferred; and (iv) the name, address, and any other pertinent information of the Assignee necessary for an amended Schedule 1 and to make distributions.

12.5 *Reasonable Expenses.* The Assignor and the Assignee shall pay, or reimburse the Company for, all costs incurred by the Company in connection with the Transfer (including, without limitation, the legal fees incurred in connection with the legal opinions referred to in section 12.3 of this Agreement) on or before the tenth (10th) day after the receipt of the Company's invoice for the amount due. If payment is not made by the date due, interest shall accrue on the unpaid amount from the date due until paid at a rate per year equal to the Default Interest Rate.

Article 13

Buyout of Membership Interest

Note: The following provisions amend the default rules regarding disposition of a membership interest upon the divorce or death of a member. Refer to Tex. Bus. Orgs. Code § 101.1115.

13.1 *Termination of Marital Relationship.* If the marital relationship of a Member is terminated by death or divorce and the Member does not succeed to all the Member's spouse's community or separate interest, if any, in the Membership Interest (the spouse is referred to hereafter in this Article 13 as the "Assignee Spouse"), the Member shall have the option to

purchase at Fair Value (as determined in accordance with the terms of section 13.6 of this Agreement) the Assignee Spouse's interest in the Membership Interest to which the Member does not succeed. This option must be exercised within ninety (90) days after the death of or the Member's divorce from the Assignee Spouse. Should the Member fail to exercise this option within this period, the remaining Members, in such proportions as they mutually agree or in proportion to their respective Membership Interests, shall have the option to purchase the subject Membership Interest at Fair Value for a period of ninety (90) days. If the remaining Members do not exercise their options on all the subject Membership Interest, the Company shall be obligated to purchase all, and not less than all, of the subject Membership Interest at Fair Value.

Note: A membership interest is personal property and may be community property. However, a member's right to participate in the management and conduct of the business of the company is not community property. See Tex. Bus. Orgs. Code § 101.106(a).

13.2 *Death of Member.* Commencing upon the death of a Member, the surviving Members, in such proportions as they mutually agree or in proportion to their respective Membership Interests, shall for a period of ninety (90) days have the option to purchase all or any portion of the deceased Member's Membership Interest at Fair Value (determined as of the date of the death of the Member). If the surviving Members do not exercise their options on all the deceased Member's Membership Interest, the Company shall be obligated to purchase all, and not less than all, of the deceased Member's Membership Interest at Fair Value.

13.3 *Bankruptcy of Member.* If any Member becomes Bankrupt, the Company shall have the option, exercisable by notice from the Members to the Bankrupt Member (or his representative) at any time before the expiration of one hundred eighty (180) days after receipt of notice of the occurrence of the event causing him to become a Bankrupt Member, to purchase all or any portion of the Bankrupt Member's Membership Interest at Fair Value (determined as of the date that notice of the exercise of the option is given by the Members). The exercise

of the option, however, shall require the approval of the unanimous consent of the Members. If that notice of the exercise of the option is given by the Members to the Bankrupt Member (or his representative), the Bankrupt Member shall sell his interest to the Company as provided by this Article 13.

13.4 *Insufficient Surplus.* If the Company does not have sufficient surplus to permit it lawfully to purchase the Membership Interest under section 13.1, 13.2, or 13.3 of this Agreement at the time of the closing, the other Members may take action to vote their respective Membership Interests to reduce the capital of the Company or to take other steps that may be appropriate or necessary to enable the Company lawfully to purchase the Membership Interest.

13.5 *Exercise of Option.* Any option to purchase a Membership Interest as provided by this Agreement shall be deemed exercised at the time the purchasing party delivers to the selling party written notice of intent to exercise the option along with an initial payment in the form of a certified or cashier's check in the amount of ten percent (10%) of the estimated purchase price anticipated by the purchaser, in person or by United States registered mail, properly stamped and addressed to the last known address of the selling party.

13.6 *Determination of Fair Value.* The "Fair Value" of a Membership Interest means the amount the Member holding the interest would receive if the assets of the Company were sold for cash and the proceeds, net of liabilities, were distributed to the holders of all Membership Interests in accordance with this Agreement. If the Fair Value of a Membership Interest is to be determined under this Agreement, the Members shall select a qualified independent appraiser ("Independent Appraiser") to make the determination, and the Managers and Members shall make the books and records available to the Independent Appraiser for that purpose. The determination of Fair Value made by the Independent Appraiser shall be final, conclusive, and binding on the Company, all Members, and all Assignees of a Membership Interest. If the sale of the Member's ownership interest is due to the death or divorce of the Member or

death of a Member's spouse, then in addition to the Independent Appraiser selected by the Members, the spouse, the estate of the selling Member, or the estate of the deceased spouse may select its own appraiser ("Seller's Appraiser"). Should the Seller's Appraiser determine a Fair Value of the interest in a different amount than the Independent Appraiser, the Seller's Appraiser and the Independent Appraiser shall select a third appraiser ("Third Appraiser"), who will make a determination of the Fair Value. In this circumstance, the determination of Fair Value made by the Third Appraiser shall be final, conclusive, and binding on the Company, all Members, and all Assignees of a Membership Interest.

13.7 *Fees and Expenses of Appraiser.* In the case of a purchase and sale of Membership Interest under section 13.1 or 13.2 of this Agreement, the fees and expenses of the appraiser shall be paid by the Company. In the case of a purchase and sale of Membership Interest under section 13.3 or 14.1 of this Agreement (the Bankruptcy or default of a Member), the fees and expenses of the appraiser shall be paid by the Bankrupt Member or Defaulting Member, by deducting at closing the fees and expenses from the purchase price to be paid to the Bankrupt Member or Defaulting Member, and remitting the same to the Company. Otherwise, the fees and expenses of the appraiser shall be shared equally by the purchaser and seller.

13.8 *Right-to-Withdraw Option.* If a Member has exercised an election to purchase a Membership Interest under this Agreement and Fair Value has been determined as provided by section 13.6 of this Agreement, the Member may elect to terminate his right to purchase within fifteen (15) days following his receipt of the determination of Fair Value by delivery of written notice to the Company, the Assignee, and any other party involved in the purchase of whom the Member has been made aware. In such an event, the initial payment shall be returned to the Member withdrawing the option, and the other Members may elect to purchase the Membership Interest (or portion thereof) in such proportions as they mutually agree or in proportion to their respective Membership Interests.

13.9 *Terms of Purchase*

- a. The closing date for any sale and purchase made in accordance with this Article 13 shall be the later of (i) thirty (30) days after the notice of the exercise of option has been received by the selling party or (ii) thirty (30) days after the parties have received notice of the Fair Value of the Membership Interest.
- b. Payment of the purchase price for a Membership Interest may be made by the Company or the other Members as follows: (i) a down payment equal to ten percent (10%) of the Fair Value to be made at closing and (ii) the balance of the purchase price, bearing interest at the Default Interest Rate determined on the date of closing, to be paid in thirty-six (36) equal monthly installments, with the first payment due thirty (30) days after the date of closing. Any such purchaser shall have the right to pay all or any part of the obligation at any time or times in advance of maturity without penalty. If the Company becomes a party to a Fundamental Business Transaction, the obligation (or remaining portion thereof) shall be paid in full within thirty (30) days of the date that the Company becomes a party to the transaction.
- c. At the closing, the person selling the Membership Interest will transfer the Membership Interest free and clear of any liens or encumbrances, other than those which may have been created to secure any indebtedness or obligations of the Company.
- d. In each event that a Membership Interest in the Company is purchased as described in this Agreement, upon the execution and delivery of the notes or payment of the cash as required herein, this Agreement shall operate as an automatic transfer to the purchaser of the Membership Interest in the Company. The payment to be made to the selling Member, Assignee, or its representative shall constitute complete release, liquidation, and satisfaction of all the rights and interest of the selling Member, Assignee, or its representative (and of all persons claiming by, through, or under the

selling Member, Assignee, or its representative) in and in respect of the Company, including, without limitation, any Membership Interest, any rights in specific Company property, and any rights against the Company and (insofar as the affairs of the Company are concerned) against the Members. The parties shall perform such actions and execute such document that may be reasonably necessary to effectuate and evidence the purchase and sale, and release as provided by this section 13.9.

13.10 *Third Party's Offer.* If a Member desires to sell all or any portion of his Membership Interest to another person (other than an existing Member and referred to hereafter in this section 13.10 as the "Third Party"), the selling Member shall first offer to sell the Membership Interest to the other existing Members. Upon the receipt of an offer from the Third Party to purchase the Membership Interest, the selling Member shall promptly deliver a copy of the Third Party's offer to all other Members. Each Member will have fifteen (15) days from the date of receipt of the Third Party's offer to notify the selling Member in writing that the other Member intends to purchase the Membership Interest upon the terms and conditions of the Third Party's offer. If more than one other Member desires to purchase the Membership Interest, each of the purchasing Members shall purchase a portion of the Membership Interest that is proportional to that Member's Percentage Interest. If none of the other Members give notification within fifteen (15) days of an intention to purchase the Membership Interest, the selling Member shall be permitted to sell the Membership Interest to the Third Party upon the terms and conditions of the Third Party's offer. Consent by the Members to the sale of the interest to the Third Party shall not be deemed consent to admission of the Third Party as a Member, and it is agreed that substitution is governed by section 12.4 of this Agreement.

Article 14

Default of Member

14.1 *Failure to Contribute.* If a Member does not contribute, by the time required, all or any portion of a Capital Contribution that Member is required to make as provided in this Agreement, the Company may exercise, on notice to that Member (the “Defaulting Member”), one or more of the following remedies:

- a. The Company may take action (including, without limitation, court proceedings) that the other Members (“Nondefaulting Members”) may deem appropriate to obtain payment by the Defaulting Member of the portion of the Defaulting Member’s Capital Contribution that is in default, together with interest thereon at the Default Interest Rate from the date that the Capital Contribution was due until the date that it is made, all at the cost and expense of the Defaulting Member.
- b. The Company may permit the Nondefaulting Members in proportion to their Membership Interests or in such other percentages as they may agree (the “Lending Member,” whether one or more) to advance the portion of the Defaulting Member’s Capital Contribution that is in default, with the following results:
 - i. the sum advanced constitutes a loan from the Lending Member to the Defaulting Member and a Capital Contribution of that sum to the Company by the Defaulting Member in accordance with the applicable provisions of this Agreement;
 - ii. the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth (10th) day after written demand therefor by the Lending Member to the Defaulting Member;

- iii. the amount lent bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued on it, is repaid to the Lending Member;
 - iv. all distributions from the Company that otherwise would be made to the Defaulting Member (whether before or after termination of the Company) instead shall be paid to the Lending Member until the loan and all interest accrued on it have been paid in full to the Lending Member (with payments being applied first to accrued and unpaid interest and then to principal);
 - v. the payment of the loan and interest accrued on it is secured by a security interest in the Defaulting Member's Membership Interest, as more fully set forth in section 14.2 of this Agreement; and
 - vi. the Lending Member has the right, in addition to the other rights and remedies granted to it under this Agreement or available to it at law or in equity, to take any action (including, without limitation, court proceedings) that the Lending Member may deem appropriate to obtain payment by the Defaulting Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Defaulting Member.
- c. The Company may exercise the rights of a secured party under the Uniform Commercial Code of the state of Texas.
 - d. The Company may reduce the Defaulting Member's Membership Interest or other interest in the Company.
 - e. The Company may subordinate the Defaulting Member's Membership Interest to the Defaulting Member.

- f. The Company may force a sale of the Defaulting Member's Membership Interest at Fair Value and upon the terms of purchase as provided in Article 13.
- g. The Company may forfeit the Defaulting Member's Membership Interest.
- h. The Company may exercise any other rights and remedies available at law or in equity.

Refer to Tex. Bus. Orgs. Code § 101.153.

14.2 *Security.* Each Member grants to the Company, and to each Lending Member with respect to any loans made by the Lending Member to that Member as a Defaulting Member under this Article 14, as security, equally and ratably, for the payment of all Capital Contributions that Member has agreed to make and the payment of all loans and interest accrued on them made by Lending Members to that Member as a Defaulting Member in accordance with section 14.1(b) of this Agreement, a security interest in, and a general lien on, its Membership Interest and the proceeds thereof, all under the Uniform Commercial Code of the state of Texas. It is expressly agreed that the security interest created thereby shall be governed by chapter 8 of the Uniform Commercial Code of the state of Texas. On any default in the payment of a Capital Contribution or in the payment of such a loan or interest accrued on it, the Company or the Lending Member, as applicable, is entitled to all the rights and remedies of a secured party under the Uniform Commercial Code of the state of Texas with respect to the security interest granted in this Article 14. Each Member shall execute and deliver to the Company and the other Members all financing statements and other instruments that the Members or the Lending Member, as applicable, may request to effectuate and carry out the preceding provisions of this Article 14. At the option of the Members or a Lending Member, this Agreement or a carbon, photographic, or other copy hereof may serve as a financing statement.

14.3 *Compromise or Release.* The obligation of a Defaulting Member or its legal representative or successor to make a contribution or otherwise pay cash or transfer property or to return cash or property paid or distributed to the Defaulting Member in violation of the Code or this Agreement may be compromised or released only with the approval of the unanimous consent of the Members. Notwithstanding the compromise or release, a creditor of the Company who extends credit or otherwise acts in reasonable reliance on that obligation may enforce the original obligation if the obligation is signed by the Defaulting Member and is not amended or canceled to reflect the compromise or release.

Refer to Tex. Bus. Orgs. Code §§ 101.154, 101.156.

Article 15

Winding Up and Termination

15.1 *Events Requiring Winding Up.* The Company shall begin to wind up its affairs upon the first of the following to occur:

- a. the expiration of any period of duration fixed for the Company in the Certificate;
- b. the execution of an instrument approving the termination of the Company by unanimous consent of the Members;
- c. the occurrence of any event that terminates the continued membership of the last remaining Member of the Company, provided, however, that the Company is not required to wind up if, no later than ninety (90) days after the termination of the membership of the last remaining Member, the legal representative or successor of the last remaining Member, or the legal representative's or successor's designee, agrees to continue the Company and to become a Member as of the date of termination;

Refer to Tex. Bus. Orgs. Code § 11.056. Also note Tex. Bus. Orgs. Code § 101.101(c), which confirms the company will continue without members during the interim between the termination of the last member and the agreement to continue the company.

- d. entry of a decree of judicial dissolution of the Company; or
- e. the act of a Simple Majority of the Members, if no capital has been paid into the Company, and the Company has not otherwise commenced business.

No other event will cause the Company to wind up.

Refer to Tex. Bus. Orgs. Code §§ 11.051, 11.314, 101.551, 101.552.

15.2 *Liquidation.* As soon as possible following an event requiring winding up of the Company, the Managers shall act as liquidator or may appoint one or more Members as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Code. The Company may, however, continue its business wholly or partly, including delaying the disposition of the property of the Company, for the limited period necessary to avoid unreasonable loss of the Company’s property or business. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties to the extent necessary to wind up its business with all the power and authority of the Members. The steps to be accomplished by the liquidator follow:

Refer to Tex. Bus. Orgs. Code § 11.053(d).

- a. as promptly as possible after that event and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company’s assets, liabilities, and operations through the last day of the calendar month in which the termination occurs or the final liquidation is completed, as applicable;

- b. the liquidator shall cause the notice described in Code section 11.052 to be delivered to each known claimant against the Company;
- c. the liquidator shall pay, satisfy, or discharge from Company funds all the debts, liabilities, and obligations of the Company (including, without limitation, all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in an amount and for a term that the liquidator may reasonably determine); and

Refer to Tex. Bus. Orgs. Code § 11.053(a), (b).

d. all remaining assets of the Company shall be distributed based on their respective Membership Interests to the Members as follows:

- i. the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the Capital Accounts of the Members;
- ii. with respect to all Company property that has not been sold, the fair market value of that property shall be determined and the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the Capital Accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and
- iii. Company property shall be distributed among the Members in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the taxable year of the

Company during which the liquidation of the company occurs (other than those made by reason of this clause 15.2(d)(iii)), and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, ninety (90) days after the date of liquidation).

All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed before the date of termination, and those costs, expenses, and liabilities shall be allocated to the distributee in accordance with this section 15.2. Upon completion of all distributions to the Member, the distribution shall constitute a complete return to the Member of its Capital Contributions and release all claims against the Company.

Refer to Tex. Bus. Orgs. Code § 101.551.

15.3 *Deficit Capital Accounts.* Notwithstanding anything to the contrary contained in this Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the Capital Account of any Member results from or is attributable to deductions and losses of the Company (including noncash items such as depreciation) or distributions of money in accordance with this Agreement to all Members in proportion to their respective Membership Interests, upon termination of the Company that deficit shall not be an asset of the Company and that Member shall not be obligated to contribute that amount to the Company to bring the balance of that Member's Capital Account to zero.

15.4 *Revocation.* If an event described in section 15.1(b) of this Agreement occurs or any other voluntary decision is made by the Members to wind up the Company, before the termination of the Company, a Super Majority of the Members may revoke the winding up and continue the Company's business.

Refer to Tex. Bus. Orgs. Code § 11.151. Determine the type of vote required to revoke a winding up. For example, Tex. Bus. Orgs. Code § 101.552(a)(1) provides for a majority vote of the members.

15.5 *Cancellation.* Should an event requiring winding up occur, other than as a result of the event set forth in section 15.1(a), the Members by unanimous consent may cancel the event no later than one (1) year after the event and continue the Company's business. Should the Company's period of duration expire, the Members by unanimous consent may cancel the expiration no later than three (3) years after such and extend the Company's period of duration and continue its business.

Refer to Tex. Bus. Orgs. Code §§ 11.152, 101.552.

15.6 *Certificate of Termination.* On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Managers (or such other person or persons as the Code may require or permit) shall execute, acknowledge, and cause to be filed a certificate of termination, at which time the Company shall cease to exist as a limited liability company.

Article 16

Amendment or Modification

This Agreement, the Certificate, or any restated certificate of formation, may be amended or modified from time to time only with a written instrument executed by unanimous consent of the Members.

Note: The company agreement may be amended only if each member consents. Tex. Bus. Orgs. Code § 101.053. Likewise, an amendment of the certificate of formation or a restated certificate of formation requires unanimous consent of the members. Tex. Bus. Orgs. Code § 101.356(d).

Article 17

General Provisions

17.1 *Construction.* Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter. If there is only one Member, references to Members in the plural should be construed as singular; likewise, if there is only one Manager, references to Managers in the plural should also be construed as singular. The singular form of other nouns, pronouns, and verbs shall include the plural and vice versa.

17.2 *Offset.* Whenever the Company is to pay any sum to any Member, any amounts that Member owes the Company may be deducted from that sum before payment.

17.3 *Notices.* Except as expressly set forth to the contrary in this Agreement, all notices, requests, or consents provided for or permitted to be given under this Agreement must be in writing and must be given either by depositing that writing in the United States mail, addressed to the recipient, postage paid, and registered or certified with return receipt requested or by delivering that writing to the recipient in person, by courier, or by facsimile transmission; and a notice, request, or consent given under this Agreement is effective on receipt by the person. All notices, requests, and consents to be sent to a Member must be sent to or made at the addresses given for that Member on Schedule 1 or another address as that Member may specify by notice to the other Members. Any notice, request, or consent to the Company or the Managers must be given at the following address:

[Name(s) and address(es) of initial manager(s) and address of the company]

Whenever any notice is required to be given by law, the Certificate, or this Agreement, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of notice.

17.4 *Effect of Waiver or Consent.* A waiver or consent, express or implied, to or of any breach or default by any person in the performance by that person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that person of the same or any other obligations of that person with respect to the Company. Failure on the part of a person to complain of any act of any person or to declare any person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that person of its rights with respect to that default until the applicable statute-of-limitations period has run.

17.5 *Binding Effect.* Subject to the restrictions on Transfers set forth in this Agreement, this Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns. Unless and until properly admitted as a Member, however, no Assignee will have any rights of a Member beyond those provided expressly set forth in this Agreement or granted by the Code to assignees.

17.6 *Governing Law.* This Agreement is governed by and shall be construed in accordance with the laws of the state of Texas, excluding any conflict-of-laws rule or principle that might refer the governance or the construction of this Agreement to the laws of another jurisdiction.

17.7 *Severability.* If any provision of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances is not affected thereby, and that provision shall be enforced to the greatest extent permitted by law.

17.8 *Further Assurances.* In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

17.9 *Indemnification by Members.* To the fullest extent permitted by law, each Member shall indemnify the Company, each Manager, and each other Member and hold them harmless from and against all losses, costs, liabilities, damages, and expenses (including, without limitation, costs of suit and attorney's fees) they may incur on account of any breach by that Member of this Agreement.

17.10 *Counterparts.* This Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same instrument.

17.11 *Invalidity of Provisions.* If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, the parties shall be relieved of all obligations arising under that provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying that provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

17.12 *Enforceability against Company.* This Agreement is enforceable by or against the Company regardless of whether the Company has signed or otherwise expressly adopted this Agreement.

Refer to Tex. Bus. Orgs. Code § 101.052(f).

17.13 *Entire Agreement; Supersedes Other Agreements.* This Agreement includes the entire agreement of the Members, the Manager, and the Company relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

IN WITNESS WHEREOF, the Members and Managers have adopted and executed this Company Agreement of [name of limited liability company] as of the Effective Date.

[Name of company]

By: _____

[Name of member]

Repeat signature lines for all members.

[Name of manager], the Manager designated in the foregoing Company Agreement, hereby accepts the designation and agrees to abide by the provisions of the Agreement.

[Name of manager]

Repeat signature lines for all managers.

Note: Consider obtaining the signatures of the spouses of married members for the purpose of the spouses' agreeing to the provisions of article 13 and other applicable provisions.
A signature includes a digital signature, an electronic signature, and a facsimile of a signature. See Tex. Bus. Orgs. Code §§ 1.002(82), 1.007.

Schedule 1

Members of [name of limited liability company]

Members' Names and Addresses	Initial Capital Contribution	Membership Interest and Percentage Interest

Form 8-6**Certificate Representing Ownership Interest**
[For LLC]

Most Texas Business Organizations Code requirements for certificates representing ownership interests in closely held entities do not apply to LLCs unless the company agreement of the LLC specifies such requirements. Tex. Bus. Orgs. Code § 3.201(d).

If the company agreement of the LLC provides that members have the right of dissent and appraisal, a membership certificate representing ownership interests subject to a demand for payment (made under section 10.356 of the Business Organizations Code) must contain a reference to the demand for payment and the name of the original dissenting owner of the ownership interest. Tex. Bus. Orgs. Code § 10.359.

FORMED UNDER THE LAWS OF THE STATE OF TEXAS

[Certificate number]

[Ownership interests represented by certificate]

[Name of LLC]

[Name of LLC] is authorized to issue this [percent] percentage membership interest pursuant to the Company Agreement of [name of LLC] to:

[Name of member]

[Date]

[Name of authorizing manager, member, or officer]

[Name of authorizing manager, member, or officer]

THE MEMBERSHIP INTEREST EVIDENCED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE LAWS (THE "SECURITIES ACTS"). THE MEMBERSHIP INTEREST HAS BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACTS OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

Form 9-1

Limited liability companies taxed as partnerships may wish to include in their company agreements provisions for naming a partnership representative, as provided in 26 U.S.C. § 6223(a), to work with the Internal Revenue Service in the event of an audit. This form contains basic provisions to designate a partnership representative, as well as optional language mandating certain tax elections. The form does not address issues such as resignation, removal, and replacement of the partnership representative or other matters, which the practitioner should consider addressing in the company agreement when appropriate.

The provisions in this form contemplate that the LLC will designate one person or entity as the “Partnership Representative” to handle all tax matters, not just those relating to audits. *See* 26 U.S.C. § 6223(a). However, the partnership representative provided for in the audit procedures of the Internal Revenue Code, 26 U.S.C. §§ 6221–6241, does not necessarily have to be the same person or entity that handles other tax matters, such as filing returns and making non-audit-related elections. For sample language designating a tax matters partner for non-audit tax responsibilities, see section 10.3 in form 8-4 and section 10.3 in form 8-5 in this manual.

See chapter 9 in this manual for further discussion of tax audits, partnership representatives, tax matter partners, and various tax elections available to a partnership.

Optional Provisions for Naming Partnership Representative

Include the following article in the desired location in the company agreement and renumber accordingly any articles below that insertion point and any references within the general text of the agreement to those articles and their subsections.

Article [article number]

Tax Matters and Partnership Representative

[article number].1 *Definitions.* In this Article, “Code” means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time. “Section” or “sections” means sections of the Code. “Consolidated audit rules” means the partnership auditing procedures enacted by the Bipartisan Budget Act of 2015 and encoded at Code sections 6221–6241, as amended from time to time, including any treasury regulations promulgated thereunder.

[article number].2 *Designation of Partnership Representative.* With respect to tax years beginning after December 31, 2017, the partnership representative (“Partnership Representa-

tive”) of the Company, defined in Code section 6223(a), shall be [name of manager, member, or previous tax matters partner], or any Manager, Member, or other person with a substantial presence in the United States designated by the [manager/members] in the manner prescribed by the Internal Revenue Service (IRS). The Partnership Representative shall have the authority to act on behalf of the Company for all tax matters.

[article number].3 *Tax Audits.* In the event the Company is the subject of a tax audit by any federal, state, or local authority, to the extent the Company is treated as an entity for purposes of the audit, including administrative settlement and judicial review, [the Partnership Representative shall have sole authority to act for, and the Partnership Representative’s decision shall be final and binding on, the Company and each Member thereof/before the Partnership Representative takes any actions contemplated by Code sections 6222–6232, the Partnership Representative must obtain the consent of a Simple Majority of all Members. No Member (including the Partnership Representative) shall take any action left to the determination of an individual Member under Code sections 6222–6232 without the consent of a Simple Majority of all Members].

[article number].4 *Obligations between Partnership Representative and Members.* The Partnership Representative shall provide to each Member a copy of any notice, document, or other written communication received from any tax authority as soon as practicable after the Partnership Representative has received such notice, document, or communication. Each Member shall reasonably cooperate with the Partnership Representative in connection with any tax audits or other tax matters.

[article number].5 *Electing Out of Consolidated Audit Rules.* For each tax year in which the Company is eligible to elect out of the consolidated audit rules, pursuant to Code section 6221(b) and Treasury Regulation 301.6221(b)-1, the Company shall do so. The Partnership Representative shall timely comply with all IRS procedures for making such an election.

[article number].6 *Transfer Restrictions.* Any transfer of a Membership Interest that would make the Company ineligible for electing out of the consolidated audit rules is void and shall be treated as if the transfer had never been made.

The following optional section directs the company and partnership representative to make the push-out election provided for in 26 U.S.C. § 6226. See chapter 9 in this manual.

[article number].7 *Push-Out Election.* For any tax year in which the Company is ineligible or unable to elect out of the consolidated audit rules, the Company shall make the push-out election described in Code section 6226. The Partnership Representative shall timely comply with all IRS procedures for making the election. The Partnership Representative shall take any other such action as is reasonably necessary or appropriate to ensure that the allocation among the parties responsible for taxes (including any interest and penalties associated with taxes) imposed with respect to the income of the Company is, to the greatest extent reasonably feasible, consistent with what the responsibility for taxes (including any interest and penalties associated with taxes) would have been if the Company had been eligible to elect out, and had elected out, of the consolidated audit rules. The Partnership Representative shall equitably apportion among current and former Members the cost of contesting any adjustments asserted by the IRS with respect to the Company's income.

The following optional section directs the company and partnership representative to allocate imputed underpayments and other adjustments among current and former members in accordance with the procedures set forth in 26 U.S.C. § 6225(c)(1). See chapter 9 in this manual.

[article number].8 *Partnership Adjustments.* In the event the IRS finally determines a partnership adjustment with respect to the Company, Members shall fully cooperate as reasonably requested by the Partnership Representative in efforts to reduce any imputed underpayments, including by (a) promptly providing any information requested by the Partnership Representative and (b) timely filing amended tax returns and timely paying any tax due in accordance

with Code section 6225(c)(2). Any imputed underpayment or other partnership adjustment shall be apportioned among the Members in such a way that, to the maximum extent possible, the tax and economic consequences of the partnership adjustment and any associated interest and penalties are borne by the Members based on their interests in the Company for the “reviewed year” (as defined in Code section 6225(d)(1)). This apportionment shall be made even if it results in a shifting of tax and economic consequences and any associated interest and penalties from adjustment-year Members to reviewed-year Members. The apportionment shall be made during the Company’s fiscal year in which the adjustment is finally determined by the IRS.

Continue with the following. Renumber section numbers according to which of the above optional sections were included, if any.

[article number].9 *Indemnification.* The Company shall bear all expenses incurred in connection with any tax authority audit, investigation, settlement, or review. The Company and the Members agree to defend, indemnify, and hold the Partnership Representative, or whoever is from time to time appointed or acting as Partnership Representative, harmless from all reasonable claims, costs, and expenses, including fees of attorneys, accountants, and experts, incurred in acting as Partnership Representative during or after the existence of the Partnership. The Company and Members further agree to execute such powers of attorney and other forms and authorizations as may be necessary or required for the Partnership Representative to perform his duties.

[article number].10 *Survival of Membership Obligations.* The obligations of each Member under this Article shall survive the transfer or redemption of all or any portion of the Member’s interest in the Company, the termination of this Agreement, and any dissolution or termination of the Company.

[article number].11 *Intention to Comply with Bipartisan Budget Act of 2015.* The Members intend the provisions of this Article to comply with Code sections enacted pursuant to the Bipartisan Budget Act of 2015, as amended from time to time, and any treasury regulations promulgated thereunder. This Article shall be interpreted consistent with such Code sections and regulations. To the extent that the provisions of this Article conflict with any other provisions of this Agreement, this Article will control.

Form 10-1

A series LLC can be established in the company agreement. *See* Tex. Bus. Orgs. Code § 101.601. However, the notice of limitations set forth by Tex. Bus. Orgs. Code § 101.602 must be included in the certificate of formation in order for such limitations to apply (the notice may be placed in the “Supplemental Provisions/Information” box if using SOS Form 205, form 5-1 in this chapter). *See* Tex. Bus. Orgs. Code § 101.602(b)(3). As a practical matter, it is likely that in most situations the series LLC will benefit from the liability limitations afforded by section 101.602. Therefore, the following is suggested language for the practitioner to use to establish a series and comply with these notice requirements.

Additional Certificate of Formation Provisions for Establishing Series LLCs

Series Authorized: Pursuant to the provisions of the Texas Business Organizations Code, subchapter M of chapter 101, sections 101.601 through 101.622, the Company has the power and is authorized to establish one or more designated series of members, managers, membership interests, or assets that—

1. have separate rights, powers, or duties with respect to specified property or obligations of the Company or profits and losses associated with specified property or obligations or
2. have separate business purposes or investment objectives.

Notice of Limitation on Liability: Pursuant to the provisions of the Texas Business Organizations Code, section 101.602, notice is hereby given that—

1. the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only and shall not be enforceable against the assets of the Company generally or any other series, and

2. none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the Company generally or any other series shall be enforced against the assets of a particular series.

Form 10-2

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Application for Registration of a Foreign Series
Limited Liability Company
(SOS Form 313)**

Form 10-2
Form 313—General Information
(Application for Registration of a Foreign Series Limited Liability Company)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

To transact business in Texas, a foreign entity must register with the secretary of state under chapter 9 of the Texas Business Organizations Code (BOC). The registration requirement applies to a foreign corporation, foreign limited partnership, foreign limited liability company, foreign business trust, foreign real estate investment trust, foreign cooperative, foreign public or private limited company, or another foreign entity, the formation of which, if formed in Texas, would require the filing of a certificate of formation with the secretary of state. Also, a foreign entity that affords limited liability for any owner or member under the laws of its jurisdiction of formation is required to register.

This form is designed to comply with the requirements of section 9.005 and applies only to a limited liability company that is authorized in its jurisdiction of formation to establish a series limited liability company. A limited liability company that is not governed by a law authorizing the establishment of a series LLC should use Form 304 or Form 305, as applicable.

Series Limited Liability Company: A foreign limited liability company that is formed under the laws of a jurisdiction that permits the entity to be governed by a company agreement that establishes or provides for the establishment of a designated series is required to provide certain supplemental information in its application for registration to provide notice of the series structure. (BOC § 9.005)

A series limited liability company that is treated as a single legal entity under the laws of its jurisdiction of organization is treated as a single legal entity for purposes of registration. The limited liability company rather than the individual series should register as the legal entity that is transacting business in Texas. If each or any series of the company transacting business in Texas transacts business under a name other than the name of the limited liability company, the company must file an assumed name certificate in compliance with chapter 71 of the Texas Business & Commerce Code.

Failure to Register: A foreign entity may engage in certain limited activities in the state without being required to register (BOC § 9.251). However, a foreign entity that fails to register when required to do so 1) may be enjoined from transacting business in Texas on application by the attorney general, 2) may not maintain an action, suit, or proceeding in a court of this state until registered, and 3) is subject to a civil penalty in an amount equal to all fees and taxes that would have been imposed if the entity had registered when first required.

Penalty for Late Filing: A foreign entity that has transacted business in the state for more than ninety (90) days is also subject to a late filing fee. The secretary of state may condition the filing of the registration on the payment of a late filing fee that is equal to the registration fee for each year, or part of a year, that the entity transacted business in the state without being registered.

Taxes: Limited liability companies are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers,

federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- **Item 1—Entity Name and Type:** Provide the full legal name of the foreign entity as stated in the entity's formation document. The name of the foreign entity must comply with chapter 5 of the BOC. Chapter 5 requires that:
 - (1) the entity name contain a recognized term of organization for the entity type as listed in section 5.056 of the BOC;
 - (2) the entity name not contain any word or phrase that indicates or implies that the entity is engaged in a business that the entity is not authorized to pursue (BOC § 5.052); and
 - (3) the entity name not be the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state (BOC §5.053).

If the entity name does not comply with chapter 5, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate under a name does not authorize the use of a name in violation of another person's rights to the name.

- **Item 2A—Assumed Name:** If the entity name fails to contain an appropriate organizational designation for the entity type, a recognized organizational designation should be added to the legal name and set forth in item 2A. Accepted organizational designations for a foreign limited liability company are: "limited liability company," "limited company," or an abbreviation of those terms.
- **Item 2B—Assumed Name:** If it has been determined that the entity's legal name is not available for its use in Texas due to a conflict with a previously existing name, the foreign entity must obtain its registration to transact business under an assumed name that complies with chapter 5 of the BOC. State the assumed name that the foreign entity elects to adopt for use in Texas in item 2B of the certificate. In addition, the foreign entity is required to file an assumed name certificate in compliance with chapter 71 of the Texas Business & Commerce Code. The promulgated form for filing the assumed name with the secretary of state is **Form 503**. This form is not acceptable for filing with the county clerk.
- **Item 3—Federal Employer Identification Number:** Enter the entity's federal employer identification number (FEIN) in the space provided. The FEIN is a 9-digit number (e.g., 12-3456789) that is issued by the Internal Revenue Service (IRS). If the entity has not received its FEIN at the time of submission, this should be noted in item 3 on the application form. Provision of the FEIN number at the time of submission will assist in the establishment of the entity's tax account with the Comptroller of Public Accounts.

- **Item 4—Jurisdictional Information:** The application must state the foreign entity’s jurisdiction of formation and the date of its formation in the format shown in the application.
- **Item 5—Certification of Existence:** The application must contain a statement that the entity exists as a valid foreign filing entity of the stated type under the laws of the entity’s jurisdiction of formation.
- **Item 6—Supplemental Information Relating to Series:** Section 9.005 of the BOC requires a series limited liability company to provide additional information in its application for registration. Check each statement that describes the characteristics of any series established or that is to be established by the foreign limited liability company.
- **Item 7—Statement of Purpose:** The application must state each business or activity that the entity proposes to pursue in Texas, which may be stated to be “any lawful business or activity under the law of this state.” In addition, as required by chapter 9, the application must contain a statement that the entity is authorized to pursue the same business or activity under the laws of the entity’s jurisdiction of formation.
- **Item 8—Beginning Date of Business:** Provide the date the foreign entity began or will begin to transact business in the state. If the foreign entity has had prior activities within the state, the entity may wish to consult with a private attorney regarding the beginning date of business. The beginning date of business is the date the entity’s activities were considered the transaction of business for purposes of registration under chapter 9 of the BOC. *If the entity has transacted business in Texas for more than 90 days before submission, a late filing fee will be assessed.*
- **Item 9—Principal Office Address:** Provide the street or mailing address of the principal office of the foreign entity.
- **Item 10—Initial Registered Agent and Registered Office:** A registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The foreign limited liability company cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person’s written or electronic consent need not be submitted with the application for registration. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person’s consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity’s registered agent during normal business hours. Although the registered office is not required to be the entity’s principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Item 11—Appointment of Secretary of State:** By signing the application for registration, the foreign entity consents to the appointment of the secretary of state as an agent of the foreign filing entity for service of process under the circumstances described by section 5.251 of the BOC.

- **Item 12—Governing Persons:** Provide the name and address of each person serving as part of the governing authority of the foreign limited liability company. Generally, this would be the group of persons who are entitled to manage and direct the affairs of the foreign limited liability company. A minimum of one governing person is required. If the governing person is an individual, set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.). If the governing person is an organization, set forth the legal name of the organization. For each governing person, only one name should be entered. Do not include both the name of an individual and the name of an organization. An address is always required for each governing person.

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an item within this form.
- **Effectiveness of Filing:** The application for registration becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity's registration will be shown as "in existence" on the records of the secretary of state.

- **Execution:** Pursuant to section 4.001 of the BOC, the application for registration must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

The application for registration need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be

delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for an application for registration for a limited liability company is **\$750**. In addition, the foreign entity will be assessed a late filing fee for each year of delinquency if the entity has transacted business in Texas for more than 90 days prior to filing the application for registration. For purposes of computing the late filing fee, a partial calendar year is counted as a full year. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A registered foreign limited liability company is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the application for registration. Failure to maintain a registered agent and registered office may result in the revocation of the foreign filing entity's registration.

Revised 05/11

**Form 313
(Revised 05/11)**

Return in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: \$750



**Application for
Registration of a
Foreign Series Limited
Liability Company**

This space reserved for office use.

1. The entity is a foreign limited liability company. The name of the entity is:

Provide the full legal name of the entity as stated in the entity's formation document in its jurisdiction of formation.

2A. The name of the entity in its jurisdiction of formation does not contain the word "limited liability company" or "limited company" (or an abbreviation thereof). The name of the entity with the word or abbreviation that it elects to add for use in Texas is:

2B. The entity name is not available in Texas. The assumed name under which the entity will qualify and transact business in Texas is:

The assumed name must include an acceptable organizational identifier or an accepted abbreviation of one of these terms.

3. Its federal employer identification number is: _____

Federal employer identification number information is not available at this time.

4. It is organized under the laws of: (set forth state) _____

and the date of its formation in that jurisdiction is: _____

mm/dd/yyyy

5. As of the date of filing, the undersigned certifies that the foreign limited liability company currently exists as a valid limited liability company under the laws of the jurisdiction of its formation.

6. The foreign limited liability company is governed by a company agreement that establishes or that provides for the establishment of a designated series of members, managers, membership interests, or assets that has one or more of the characteristics set forth below: *(Check each statement that applies.)*

The series has separate rights, powers, or duties with respect to specified property or obligations of the foreign limited liability company.

The series has separate profits and losses associated with specified property or obligations of the foreign limited liability company.

Any debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of any other series.

Any debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the foreign limited liability company generally or any other series shall not be enforceable against the assets of that series.

7. The purpose or purposes of the limited liability company that it proposes to pursue in the transaction of business in Texas are set forth below.

The entity also certifies that it is authorized to pursue such stated purpose or purposes in the state or country under which it is organized.

8. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas is: _____
mm/dd/yyyy Late fees may apply (see instructions).

9. The principal office address of the limited liability company is:

Address City State Country Zip/Postal Code

Complete item 10A or 10B, but not both. Complete item 10C.

10A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

10B. The registered agent is an individual resident of the state whose name is:

First Name M.I. Last Name Suffix

10C. The business address of the registered agent and the registered office address is:

Street Address City State Zip Code

11. The entity hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

12. The name and address of each governing person is:

NAME AND ADDRESS OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)					
IF INDIVIDUAL					
_____ <i>First Name</i>	_____ <i>M.I.</i>	_____ <i>Last Name</i>	_____ <i>Suffix</i>		
OR					
IF ORGANIZATION					
_____ <i>Organization Name</i>					
_____ <i>Street or Mailing Address</i>		_____ <i>City</i>	_____ <i>State</i>	_____ <i>Country</i>	_____ <i>Zip Code</i>

NAME AND ADDRESS OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)			
IF INDIVIDUAL			
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>
OR			
IF ORGANIZATION			
<i>Organization Name</i>			
<i>Street or Mailing Address</i>		<i>City</i>	<i>State Country Zip Code</i>

NAME AND ADDRESS OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)			
IF INDIVIDUAL			
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>
OR			
IF ORGANIZATION			
<i>Organization Name</i>			
<i>Street or Mailing Address</i>		<i>City</i>	<i>State Country Zip Code</i>

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
 - B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
 - C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____
- The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person.

Form 10-3

A series LLC allows for the assets of the LLC to be divided and segregated and the financial benefits from those assets to be allocated to a designated group of members. The liabilities of each series are likewise segregated (unless agreed to otherwise in the company agreement pursuant to Tex. Bus. Orgs. Code § 101.602(c)); however, there is still only one LLC. Therefore, the members of each series are members of the LLC. Series LLCs can be beneficial for companies involved in real estate investment or the ownership of oil and gas interests or operating separate lines of business. See Tex. Bus. Orgs. Code §§ 101.601–.622 for provisions relating to series LLCs.

This agreement satisfies the minimum requirements for allowing an LLC to have series under the Texas Business Organizations Code (TBOC) and includes a simple management structure of one manager for both the LLC and each series. Many other provisions of the company agreement would need to be changed to accommodate the series on a case-by-case basis. In this agreement, members of each series vote only on matters relating to that series (and such matters requiring a vote, as opposed to falling under the control of the manager, may be further delineated), and distributions are allocated to the members of each series. These provisions are only a starting point for the practitioner to consider. As long as the certificate of formation and the company agreement authorize the creation of one or more series, additional provisions related to the series can also be formulated under a separate agreement as members and series are added. See Tex. Bus. Orgs. Code § 101.602(b) and form 10-1 in this manual for the requirements of a certificate of formation used to create a series LLC.

This form can be modified to include any provision related to the regulation and management of the company as long as the provision is not inconsistent with law or the certificate of formation of the company. See Tex. Bus. Orgs. Code § 101.052(d). To the extent the company agreement does not otherwise provide, the TBOC will govern the internal affairs and management of the business of the company. See Tex. Bus. Orgs. Code §§ 101.052(b), 101.252. Conversely, the agreement may waive or modify the TBOC provisions. In the case of those items listed in section 101.054, a waiver or modification requires that the company agreement contain a provision that the item is intended to be waived or modified and who must approve the waiver or modification.

References to the TBOC are included following certain sections of this form to allow the practitioner to consider alternative language that might be appropriate for inclusion and to provide additional guidance on areas that should be addressed in the agreement.

Company Agreement of [name of LLC]
[For Series LLC]

This Company Agreement (“Agreement”) of [name of limited liability company], a Texas limited liability company (“Company”), is entered into effective [date] (“Effective Date”), by and between [names of members] (collectively referred to herein as the “Members” and individually as a “Member”) and [name of manager] (“Manager”).

Article 1

Formation

1.1 *Formation.* The Company was organized pursuant to the provisions of the Texas Business Organizations Code (“Code”) by filing a certificate of formation (“Certificate”) with the Texas secretary of state on the Effective Date. The Certificate provides for the establishment of one or more Series (defined in Article 6).

Provisions that would normally be included in a company agreement may be contained in the certificate of formation. See Tex. Bus. Orgs. Code §§ 3.005(b), 101.051. Therefore, when issues arise regarding the governance or operation of the LLC, review the certificate of formation as well as the company agreement.

Note: The governing authority of an LLC must be set forth in the certificate of formation as either managers or members. See Tex. Bus. Orgs. Code § 101.251.

1.2 *Purpose.* The purpose and business of the Company shall be to [list company’s purpose] and all related activities incidental thereto and the transaction of any other business or activity allowed under the Code that is approved by the Manager. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described in this section 1.2.

1.3 *Term.* The Company shall continue in existence perpetually or until the termination of the Company in accordance with the provisions of section 8.1 of this Agreement or the Code.

1.4 *Registered Agent and Office.* The registered agent for the service of process for the Company and each Series is [name], and the address is [address]. The principal office of the Company and all Series shall be located at [address]. The Company or any Series may have other offices and places of business at locations, both within and without the state of Texas, as

the Manager may from time to time determine or as the business and affairs of the Company or any Series may require.

Note: Tex. Bus. Orgs. Code §§ 5.302–.306 were added effective September 1, 2017, and apply to service of process, notice, or demand on a series of an LLC. See Acts 2017, 85th Leg., R.S., ch. 74, § 4 (S.B. 1517), eff. Sept. 1, 2017.

1.5 *Members.* As of the Effective Date, the Members of the Company and each Series have the following membership interests (“Membership Interests”) in the Company and each Series:

[name of member]	[percent]%
[name of member]	[percent]%

Repeat as necessary.

100%

The Member’s Membership Interest is that Member’s right (a) to an allocable share of the profits, losses, deductions, distributions, and credits of the Company and any Series; (b) to a distributive share of the assets of the Company and any Series; and (c) to vote on those matters described in this Agreement and the Code and to participate in the management and operation of the Company and any Series as set forth in this Agreement.

The membership interest as used herein contains all economic, noneconomic, and management rights. Often, a membership interest would include only the economic rights set forth above. If it is anticipated that a membership interest should not include management and voting rights, the practitioner should refer to and incorporate the provisions of the long-form manager-managed company agreement at form 8-5 in this manual.

1.6 *Manager.* The Manager is the person named in the Certificate of Formation as the initial Manager of the Company and any person hereafter elected as a Manager of the Company as provided in this Agreement, but does not include any person who has ceased to be a Manager of the Company. A Manager is not required to be a resident of Texas or a Member of

the Company. The Manager of the Company is also the Manager of each Series established as provided for in the Certificate and this Agreement.

Refer to Tex. Bus. Orgs. Code § 101.608.

1.7 *No State-Law Partnership.* The Members intend that neither the Company nor any Series be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than applicable tax laws, and this Agreement may not be construed to suggest otherwise.

Article 2

Capital Contributions

2.1 *Initial Capital Contributions.* The Members have contributed to the Company the property listed on Schedule 1.

2.2 *Capital Accounts.* The Company and any Series shall maintain for each Member a separate capital account in accordance with this section 2.2, which shall control the division of assets upon liquidation of the Company or a Series as provided in this Agreement. The capital account shall be increased by the cash amount or fair market value of all capital contributions made by that Member to the Company or a Series pursuant to this Agreement and by that Member's allocable share of profits. The capital account shall be decreased by the cash amount or fair market value of any property distributed to that Member pursuant to this Agreement and by that Member's allocable share of losses.

2.3 *Ownership of Assets.* All assets and property of the Company shall be owned by the Company, subject to the terms and provisions of this Agreement, and no Member, individually, shall have any ownership of those assets or property. Legal title to all assets and property of the Company shall be held and conveyed in the name of the Company. All assets and property of a Series shall be owned by the Series, subject to the terms and provisions of this

Agreement, and no Member, individually, shall have any ownership of those assets or property. Legal title to all assets and property of a Series shall be held and conveyed in the name of that Series or in the name of the Company pursuant to the provisions of Code section 101.603.

Refer to Tex. Bus. Orgs. Code §§ 101.106(b), 101.603.
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2.4 *Return of Capital Contributions.* Capital contributions to the Company shall be expended in furtherance of the business of the Company. All costs and expenses of the Company shall be paid from the Company's resources, and the Members shall not be liable for any obligations of the Company, directly or indirectly. No interest shall be paid by the Company on capital contributions. Capital contributions to any Series shall be expended in furtherance of the business of that Series. All costs and expenses of any Series shall be paid from that Series' resources, and the Members shall not be liable for any obligations of the Series, directly or indirectly. No interest shall be paid by the Series on capital contributions.

Article 3

Financial Matters

3.1 *Net Cash Flow.* There shall be distributed annually, or more often as determined by the Manager, to the Members from net cash flow of the LLC and from each Series an amount that the Manager may determine. Such distributions shall be made among all the Members in accordance with their Membership Interests. Net cash flow shall mean the amount by which the receipts from operations of the Company or any applicable Series and distributions to the Company or any applicable Series exceed (a) applicable expenses (excluding deductions for amortization and depreciation) and (b) any cash reserve that the Manager determines necessary for the operations of the Company or any applicable Series. Distributions shall be made to each Member in the form of cash, regardless of the form of the Member's contribution to the Company or any Series.

Refer to Tex. Bus. Orgs. Code §§ 101.202–
.204, 101.603.

3.2 *Prohibited Distributions.* Distributions may not be made to Members if, immediately after making the distribution, the Company's or any applicable Series' total liabilities exceed the fair value of the Company's or any applicable Series' total assets as set forth in Code sections 101.206 ("Prohibited Distribution") and 101.613 ("Distributions"). A Member who receives a Prohibited Distribution is not required to return the Prohibited Distribution unless the Member had knowledge of the violation of this section 3.2 or the Code. A Prohibited Distribution does not include an amount constituting reasonable compensation for present or past services or a reasonable payment made in the ordinary course of business under a bona fide retirement plan or another benefits program.

Note: The provisions of section 3.2 cannot be waived or modified in the company agreement unless a specific provision authorizes it. See Tex. Bus. Orgs. Code § 101.054. For example, "The Members of the Company hereby agree to waive the application of the provisions of Code sections 101.206 and 101.613 to allow the Company to make distributions to Members that would result in the Company's total liabilities exceeding the fair value of the Company's total assets." Alternatively, the Prohibited Distribution language could be included and the requirement for returning the distribution could be waived as follows: "The Members of the Company hereby waive the application of the provisions of Code sections 101.206(d) and 101.613(e), and thus a Member who receives a Prohibited Distribution is required to return the distribution to the Company."

The liabilities of the company do not include those certain liabilities listed in Tex. Bus. Orgs. Code §§ 101.206(b) and 101.613(c). Such provisions should be reviewed to ascertain if they are likely to affect the practitioner's particular LLC and therefore should be addressed in the company agreement.

3.3 *General Allocations of Profits and Losses.* Profits, losses, deductions, and credits for any fiscal year shall be allocated to the Members in proportion to their respective Membership Interests.

Refer to Tex. Bus. Orgs. Code § 101.201.

3.4 *Taxes.* The Manager may make any tax elections for the Company or any Series allowed under the Internal Revenue Code of 1986, as amended from time to time, or the tax

laws of any state or other jurisdiction having taxing authority over the Company or any Series that the Manager may deem appropriate and in the best interests of the Company, any Series, and the Members.

3.5 *Books and Records.* The Company and all Series shall keep at its principal office the books and records of the Company and all Series required by Code sections 3.151 and 101.501. Members shall have reasonable access to the books and records of the Company and any applicable Series.

Note: Tex. Bus. Orgs. Code § 101.502 describes the right of a member to examine the records of an LLC. Tex. Bus. Orgs. Code § 101.503, effective September 1, 2017, provides for a penalty if the LLC refuses to allow a member to examine the applicable LLC records. See Acts 2019, 86th Leg., R.S., ch. 658, § 10 (S.B. 1859), eff. Sept. 1, 2019. See also Tex. Bus. Orgs. Code § 3.153.

Article 4

Management

4.1 *Management Authority.* Subject to the provisions of Article 5, management of the Company and of each Series shall be vested in the Manager. The Manager shall have the exclusive power and authority to conduct the business of the Company and of each Series. In conducting the business of the Company, the Manager shall have all rights, duties, and powers conferred by the Code. Subject to Article 5, the Manager shall have the authority to buy and sell assets for the Company or make commitments in the name of the Company in the ordinary course of the Company's business and is hereby expressly authorized on behalf of the Company to make all decisions with respect to the Company's business and to take all actions necessary to carry out those decisions, including, but not limited to, borrowing money for the Company and encumbering any of the Company's assets. In conducting the business of a Series, the Manager shall have all rights, duties, and powers conferred by the Code. Subject to Article 5, the Manager shall have the authority to buy and sell assets for a Series or make commitments in the name of a Series in the ordinary course of the Series' business and is hereby

expressly authorized on behalf of each Series to make all decisions with respect to the business of that Series and to take all actions necessary to carry out those decisions, including, but not limited to, borrowing money for a Series and encumbering any of a Series' assets.

Note: The broad grant of authority to the manager in this section should be carefully reviewed. This type of provision can be useful when the manager is also a trusted member of the company, and all members want the manager to make most of the decisions regarding the company. However, the manager is not required to be a member of the company. Tex. Bus. Orgs. Code § 101.302(d). In that event, consider drafting this section along with section 5.2 to give the members a vote on key decisions of the company. A list of key decisions to review are in the long-form manager-managed company agreement at form 8-5 in this manual.

Refer to Tex. Bus. Orgs. Code §§ 10.251, 10.252 regarding conveyances of company property.

4.2 *Duties.* The Manager shall carry out his duties in good faith, in a manner that is in the best interest of the Company or any applicable Series, and with the care that an ordinarily prudent manager in a like position would use under similar circumstances. As long as the Manager complies with the provisions of this section 4.2, he shall not have any liability by reason of being or having been a manager of the Company or a Series.

4.3 *Time Devoted to Business.* The Manager shall devote the time to the business of the Company or any Series that the Manager, in his discretion, deems necessary for the efficient carrying on of the Company's or any Series' business. The Manager shall at all times be free to engage for his own account in any business whether or not that business competes with any business of the Company or any Series.

Note: Determine if the last sentence of this section 4.3 is appropriate for the particular situation involved, or whether it should be deleted or modified to allow only enumerated competition.

4.4 *Number of Managers.* The number of managers may be increased or decreased by vote of the Members with aggregate Membership Interests of more than fifty percent (50%). Initially, there shall be one Manager: [name of manager].

Note: The initial manager of the company is as listed in the certificate of formation. See Tex. Bus. Orgs. Code § 101.302(b). With only one manager, a decrease in managers would obviously result in there being no manager, with the company then being managed by the members. In that event, the certificate of formation would need to be amended to provide for member management.

4.5 *Officers.* The Manager may designate one or more persons to be officers of the Company (“Officers”). Any Officer so designated shall have such authority and perform such duties as the Manager may delegate to him. The Manager may assign titles to particular Officers. Unless the Manager decides otherwise, if the title is one commonly used for Officers of a business corporation formed under the Code, the assignment of such title shall constitute the delegation to such Officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties by the Manager. Each Officer shall hold office until his successor shall be duly designated and shall qualify, or until his death, or until he shall resign or shall have been removed in the manner provided herein. Any number of offices may be held by the same person. The salaries or other compensation, if any, of the Officers of the Company shall be fixed by the Manager. Any Officer may be removed, with or without cause, by the Manager whenever in the Manager’s judgment the best interests of the Company will be served thereby. Initially, the Officers of the Company shall be as follows: [name[s] of officer[s]].

4.6 *Tenure and Removal.* The Manager shall hold office until his successor has been duly elected and qualified as provided in this section 4.6. A Manager may be elected or removed by the vote of the Members with aggregate Membership Interests of more than fifty percent (50%). No person shall be eligible to serve as a manager of the Company or a Series until that person has accepted the provisions of this Agreement in writing.

Note: Section 4.6 changes the default rule set forth in Tex. Bus. Orgs. Code § 101.302(c), which states that a manager’s term is not shortened upon a decrease in the number of managers. Refer also to Tex. Bus. Orgs. Code §§ 101.303–.305.

4.7 *Reliance by Third Parties.* No third party dealing with the Company or a Series shall be required to ascertain whether the Manager is acting in accordance with the provisions of this Agreement. All third parties may rely on a document executed by the Manager as binding the Company or any applicable Series. If the Manager acts outside the authority set forth in this Agreement or as provided in the Certificate or the Code, he shall be liable to the Members for any damages arising out of his unauthorized actions.

4.8 *Reimbursement.* The Manager shall be entitled to a management fee for managing the assets of the Company and/or a Series, which shall be set by a vote of the Members with aggregate Membership Interests of more than fifty percent (50%). The Manager shall be reimbursed by the Company and any applicable Series for any reasonable out-of-pocket costs incurred on behalf of the Company or that Series.

<p>Note: If the manager is also a member, the manager is seldom paid a fee, especially if the company has few day-to-day operations that require the manager's action.</p>

4.9 *Insurance.* The Company may maintain for the protection of the Company, any Series, the Members, and the Manager such insurance as the Manager, in the Manager's sole discretion, deems necessary for the operations being conducted.

4.10 *Exculpation.* The Manager shall not be liable to the Company, a Series, or the Members for any act or failure to act or for any errors of judgment, but for only willful misconduct or gross negligence. The Company and any applicable Series shall indemnify and hold harmless the Manager and his agents against and from any personal loss, liability, or damage incurred as a result of any act or omission, or any error of judgment, unless the loss, liability, or damage results from the Manager's willful misconduct or gross negligence. Any such indemnification shall be paid only from the assets of the Company or any applicable Series, and no Member, Manager, or third party shall have recourse against the personal assets of any Member for such indemnification.

Note: The liability of the manager can be limited pursuant to Tex. Bus. Orgs. Code §§ 7.001, 101.401. Consider a more stringent standard if representing a member who is not a manager.

4.11 *Conflicts of Interest.* A Manager shall be entitled to enter into transactions that may be considered competitive with, or business opportunities that may be beneficial to, the Company or any Series, it being expressly understood that the Manager may enter into transactions that are similar to the transactions into which the Company or a Series may enter. A Manager does not violate a duty or obligation to the Company or a Series merely because the Manager's conduct furthers the Manager's own interest. No transaction with the Company or a Series shall be voidable solely because a Manager has a direct or indirect interest in the transaction if the transaction is fair to the Company or any applicable Series.

Note: Determine if section 4.11 is appropriate depending on the particular situation involved. Refer to Tex. Bus. Orgs. Code §§ 101.255, 101.401.

Article 5

Members

5.1 *Participation.* The Members, in their capacity as Members, shall take no part in the control, management, direction, or operation of the affairs of the Company or a Series and shall have no power to bind the Company or a Series, except as specifically provided herein.

5.2 *Unanimous Vote of Members.* The following actions by the Company shall require the unanimous vote of all Members: (a) voluntary dissolution of the Company; (b) voluntary termination of a Series; (c) admission of an additional Member; (d) amendment of this Agreement or the Certificate; or (e) selling all or substantially all of the assets of the Company or a Series other than in the ordinary course of business.

5.3 *Quorum.* A majority of the outstanding Membership Interests, represented in person or by proxy, shall be necessary to constitute a quorum at meetings of the Members. Each

Member hereby consents and agrees that one or more Members may participate in a meeting of the Members by means of conference telephone or similar communication equipment by which all persons participating in the meeting can hear each other at the same time, and that participation shall constitute presence in person at the meeting. If a quorum is present, the affirmative vote of the majority of the Membership Interests represented at the meeting and entitled to vote on the subject matter shall be the act of the Members, unless a greater number is required by this Agreement or the Code. In the absence of a quorum, those present may adjourn the meeting for a period, but in no event shall the period exceed sixty (60) days. Jointly held membership interests shall be voted pursuant to Code section 6.157.

Note: Tex. Bus. Orgs. Code § 6.157 was added effective September 1, 2017, and provides that jointly held ownership interests may be voted by any one of the record owners (or any one of the persons having the right to vote the interest if that interest is held by an estate or trust). See Acts 2017, 85th Leg., R.S., ch. 75, § 3 (S.B. 1518), eff. Sept. 1, 2017.

Refer to Tex. Bus. Orgs. Code §§ 6.001 (location of meetings), 6.002 (alternative forms of meetings), 6.003 (participation in a meeting constitutes presence), 6.051, 6.052, 101.352 (general notice requirements), 101.353 (quorum requirements), 101.357 (proxy voting by members).

5.4 *Informal Action.* Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if the action is evidenced by a written consent describing the action taken and signed by each Member entitled to vote. Action taken under this section 5.4 is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date, which may be before or after the date the consent is signed.

Section 5.4 requires that consents must be signed by all members. See Tex. Bus. Orgs. Code § 6.201. Tex. Bus. Orgs. Code §§ 6.202, 101.358, however, provide that the consent of a majority of the members will suffice (or whatever vote is required to make that particular decision if decided at a meeting of the members). Determine which alternative is right for the particular LLC being formed. In addition, this section overrides Tex. Bus. Orgs. Code § 101.359(2)(A), (C) by requiring the consent of the members to be evidenced by a writing.

5.5 *Meetings.* Meetings of the Members for any purpose or purposes may be called by the Manager or any Member. The place of meeting shall be the principal office of the Company or any other reasonable place designated by the Manager or Member calling the meeting. Written notice stating the place, day, and hour and purpose or purposes of the meeting shall be delivered either personally or by mail to each Member of record entitled to vote at the meeting. Waiver of notice and actions taken at a meeting shall be effective as provided in the Code. Following each meeting, copies of the minutes of the meeting shall be sent to each Member, and the original of all minutes and consents of the Members shall be maintained in the minute book of the Company.

5.6 *Liability of Members.* A Member shall not be liable as a Member for the debts, obligations, or liabilities of the Company or a Series, including a debt, obligation, or liability under a judgment, decree, or order of a court. The failure of the Company or a Series to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Code shall not be grounds for imposing personal liability on a Member for liabilities of the Company or a Series.

Refer to Tex. Bus. Orgs. Code § 101.114.

5.7 *Representations and Warranties.* Each Member hereby represents and warrants to the Company, any applicable Series, and each other Member that (a) the Member is familiar with the existing or proposed business, financial condition, properties, operations, and prospects of the Company and any Series in which the Member is receiving a Membership Interest; (b) the Member has asked the questions and conducted the due diligence concerning the acquisition of his Membership Interest in the Company and Series that he has desired to ask and conduct, and all those questions have been answered to the Member's full satisfaction; (c) the Member has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of an investment in the Company and Series; (d) the Member understands that owning the Membership Interest in the Company and Series

involves various risks, including the restrictions on transfers as set forth in Article 7 of this Agreement, the lack of any public market for the Membership Interests, the risk of owning the Membership Interest for an indefinite time, and the risk of losing his entire investment in the Company or Series; (e) the Member is able to bear the economic risk of the investment; (f) the Member is acquiring the Membership Interest in the Company or Series for investment, solely for his own beneficial account and not with a view to, or any present intention of, directly or indirectly selling, transferring, offering to sell or transfer, participating in any distribution, or otherwise disposing of the Membership Interest; and (g) the Member acknowledges that the Membership Interests have not been registered under the Securities Act, or any other applicable federal or state securities laws, and that the Company and Series have no intention, and shall not have any obligation, to register or to obtain an exemption from registration for the Membership Interests or to take action so as to permit sales pursuant to the Securities Act.

5.8 *Conflicts of Interest.* A Member shall be entitled to enter into transactions that may be considered competitive with, or business opportunities that may be beneficial to, the Company, it being expressly understood that the Member may enter into transactions that are similar to the transactions into which the Company may enter. A Member does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company. The rights and obligations of a Member who lends money to or transacts business with the Company are the same as those of a person who is not a Member, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member has a direct or indirect interest in the transaction if the transaction is fair to the Company.

Determine if section 5.8 is appropriate depending on the particular situation involved. Refer to Tex. Bus. Orgs. Code §§ 101.255, 101.401.
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Article 6

Series

6.1 *Series.* “Series” means a series of the Company created pursuant to the provisions of Code sections 101.601 through 101.622, composed of Members and their associated Membership Interests, that has separate rights, powers, or duties with respect to specified property or obligations of the Company and the allocation of profits and losses that are associated with such property and may have a separate business purpose or investment objective, all as set forth in this Agreement.

6.2 *Establishment and Designation of Series.* The Manager, at any time and from time to time, may authorize the creation of one or more Series and, additionally, may authorize the division of existing Members and Membership Interests into one or more Series.

6.3 *Series Schedule.* Series Schedule 2 attached hereto and incorporated herein contains the name and purpose of each Series along with the names of the Members of the Series and each Member’s Capital Contribution. Notwithstanding the provisions of section 9.1, the Manager may amend Schedule 2 from time to time to reflect changes to any Series or the addition of a Series. Any such amended Schedule 2 shall (a) supersede all prior Schedule 2s; (b) become part of this Agreement; and (c) be kept on file at the principal office of the Company.

6.4 *Assets and Liabilities Associated with Series; Records.* The Manager shall cause the Company to maintain separate and distinct records for each Series and shall cause the assets, contributions, debts, liabilities, obligations, expenses, and profits and losses associated with any such Series to be held and accounted for separately from the other assets, contributions, debts, liabilities, obligations, expenses, and profits and losses of any other Series or the Company generally. The Manager shall maintain the records of each Series so that the assets of each Series can be reasonably identified by specific listing, category, type, quantity, or

computational or allocational formula or procedure, including a percentage or share of any assets, or by any method in which the identity of the assets of a Series can be objectively determined. Assets of a Series may be held in the name of the Series or in the name of the Company. In the event an asset is held in the name of the Series, the Manager may file an assumed name certificate under the Texas Assumed Business or Professional Name Act and any applicable local county provisions for the name of the Series.

Note: Refer to Tex. Bus. & Com. Code § 71.002(2)(H), which authorizes an LLC to obtain an assumed name certificate for a series established in its company agreement.

6.5 *Limitation on Enforceability of Obligations and Expenses of Series against*

Assets. Notwithstanding any other provision of this Agreement, the Code, or of other law:

- a. the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular Series shall be enforceable against the assets of that Series only, and shall not be enforceable against the assets of the Company generally or any other Series; and
- b. none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the Company generally or any other Series shall be enforceable against the assets of a particular Series. All persons who extend credit to (or with respect to) a particular Series, or who contract with (or with respect to) or have a claim against a particular Series, may look only to the assets associated with that Series for repayment of such credit or to enforce or satisfy any such contract or claim.

The provisions of section 6.5 are required to be stated in the company agreement and certificate of formation of a series LLC. See Tex. Bus. Orgs. Code § 101.602.

Note: Notwithstanding the liability protections afforded to a series, the company or any other series can provide for cross-collateralization agreements in the company agreement or certificate of formation. Tex. Bus. Orgs. Code § 101.602.

Article 7

Restrictions on Transfers

7.1 *Additional Members.* Additional members shall not be admitted to the Company or any Series without the prior written consent of all the Members.

Include the following if applicable.

7.2 *Dispositions and Encumbrances of Membership Interests.* A Member shall not encumber or make a sale, assignment, transfer, conveyance, gift, exchange, or other disposition (voluntarily, involuntarily, or by operation of law) of all or any portion of his Membership Interest in the Company or any Series, including a disposition resulting from the death or divorce of a Member, without the prior written consent of all the remaining Members. Any attempted disposition or encumbrance, other than in strict compliance with this section 7.2, shall be, and is hereby declared, null and void ab initio.

7.3 *Withdrawal.* A Member does not have the right or power to withdraw, resign, or retire from the Company or any Series as a member. The Company, any Series, or the remaining Members may not expel a Member from the Company or any Series.

Note: Section 7.3 does not allow a member to withdraw from the company. See Tex. Bus. Orgs. Code § 101.107. If, however, a right of withdrawal is desired for the company agreement, consider substituting the following language: "A Member of the Company who validly exercises that Member's right to withdraw from the Company as a Member is entitled to receive, within a reasonable time after the date of the withdrawal, the fair market value of that Member's Membership Interest as determined as of the date of withdrawal." See Tex. Bus. Orgs. Code § 101.205.

Article 8

Dissolution and Winding Up

8.1 *Dissolution.* The Company or any Series shall be dissolved upon (a) an election to dissolve the Company or that Series by the unanimous vote of the Members or (b) any other event that would cause its dissolution under the Code.

Refer to Tex. Bus. Orgs. Code §§ 101.551, 101.552, 101.614–.616.

8.2 *Liquidation.* Upon the dissolution of the Company or a Series, a liquidator shall be selected by the Members. The liquidator shall liquidate the assets of the Company or the Series and apply and distribute the proceeds of the liquidation in the following order or priority: (a) to the payment of the expenses of the terminating transactions including, without limitation, brokerage commission, legal fees, accounting fees, and closing costs; (b) to the payment of creditors of the Company or the Series, including Members, in order of priority provided by law; (c) to the Members in accordance with their capital account balances at the time of distribution until full repayment of those capital accounts has occurred; and (d) any remaining assets to the Members in accordance with their Membership Interests.

8.3 *Distribution in Kind.* The liquidator may, in his discretion, distribute assets of the Company or the Series in kind to a Member. The liquidator shall determine the fair market value of the property distributed in kind using such reasonable method of valuation as he may adopt.

8.4 *Certificate of Termination.* On completion of the distribution of Company or Series property as provided in this Article 8, the Company or the Series is terminated, and the liquidator shall cause the cancellation of the Certificate and any other filings made by the Company or the Series and shall take any other actions that may be necessary to terminate the Company or the Series.

8.5 *Deficit Capital Accounts.* No Member shall be required to pay to the Company or the Series, to any other Member, or to any third party any deficit balance that may exist from time to time in that Member's capital or similar account.

Article 9

General Provisions

9.1 *Amendments to This Agreement or to Certificate.* Any amendment to this Agreement, the Certificate, or any restated certificate of formation shall be adopted only with the written consent of all Members.

Note: The company agreement may be amended only if each member consents. See Tex. Bus. Orgs. Code § 101.053. Likewise, an amendment of the certificate of formation or a restated certificate of formation requires unanimous consent of the members. See Tex. Bus. Orgs. Code § 101.356(d).

9.2 *Pronouns and Plurals.* Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine, and neuter forms, and the singular form of nouns, pronouns, and verbs shall include the plural and vice versa.

9.3 *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.

9.4 *Invalidity of Provisions.* If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, the parties shall be relieved of all obligations arising under that provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying that provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

9.5 *Governing Law.* This Agreement is governed by and shall be construed in accordance with the laws of the state of Texas.

9.6 *Counterparts.* This Agreement may be executed in any number of counterparts, all of which shall constitute the same instrument.

9.7 *Enforceability against Company.* This Agreement is enforceable by or against the Company regardless of whether the Company has signed or otherwise expressly adopted this Agreement.

Refer to Tex. Bus. Orgs. Code § 101.052(f).

9.8 *Entire Agreement.* This Agreement embodies the entire understanding and agreement between the parties concerning the Company and the Series and supersedes all prior negotiations, understandings, or agreements in regard thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Company Agreement of [name of limited liability company] as of the Effective Date.

[Name of company]

By: _____
 [Name of member]

Repeat signature lines for all members.

[Name of manager], the Manager designated in the foregoing Company Agreement, hereby accepts that designation and agrees to abide by the provisions of the Agreement.

 [Name of manager]

Note: A signature includes a digital signature, an electronic signature, and a facsimile of a signature. See Tex. Bus. Orgs. Code §§ 1.002(82), 1.007.

Schedule 1

Members of [name of limited liability company]

Members' Names and Addresses	Class	Initial Capital Contribution	Membership Interest and Percentage Interest

Series Schedule 2

**to the Company Agreement of
[name of limited liability company], LLC**

Dated [date]

Name of Series	Purpose	Members	Capital Contributions, If Any, from Each Member

[Name of member]

Repeat signature lines for all members.

Form 12-1

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Formation—For-Profit Corporation
(SOS Form 201)**

Form 12-1

**Form 201—General Information
(Certificate of Formation – For-Profit Corporation)**

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A for-profit corporation is governed by titles 1 and 2 of the Texas Business Organizations Code (BOC). Title 1, chapter 3, subchapter A, of the BOC governs the formation of a for-profit corporation and sets forth the provisions required or permitted to be contained in the certificate of formation.

Taxes: Corporations are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100; (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- **Article 1—Entity Name and Type:** Provide a corporate name and organizational designation. Under section 5.053 of the BOC, if the name chosen is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate of formation under a name does not authorize the use of a name in violation of another person's rights to the name.
- **Article 2—Registered Agent and Registered Office:** The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The corporation cannot act as its own registered agent; do not enter the corporate name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the certificate of formation. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of

business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Article 3—Directors:** *This form is not drafted for use in forming a close corporation or a corporation that is to be managed by a shareholders' agreement. A minimum of one director is required.* A director must be a natural person; there are no residency requirements for directors. Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.).

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for directors, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Article 4—Authorized Shares:** Shares represent ownership interest in the corporation. The total number of shares that the corporation will have authority to issue must be provided in article 4. Select and complete option A if the shares are to have a stated par value or select option B if the shares are without a stated par value.

Option A—Par Value: “Par value” means the stated dollar amount assigned to a share. In general terms, it represents the minimum stated amount for which each share shall be issued. For example, if the corporation has authorized a total of 1,000 shares of common stock of \$1 par value and if payment for the share is to be made in cash, the corporation must receive at least \$1 for each share issued. Do not state that the shares have \$0 par value if the shares are to be without a stated par value (i.e., option B).

Option B—No Par Value: Shares that are designated as having no par value may be issued for an amount of consideration determined by the board of directors.

- **Article 5—Purpose:** This form creates a corporation with the general purpose of conducting any lawful business. This form cannot be used to operate a nonprofit organization, or to engage in a licensed activity when such license cannot be issued to a corporation.
- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an article within this form or to provide for additional articles to contain optional provisions.

Duration: Pursuant to section 3.003 of the BOC, a Texas for-profit corporation exists perpetually unless provided otherwise in the certificate of formation. If formation of a corporation with a stated period of duration is desired, use the “Supplemental Provisions/Information” section of this form to provide for a limited duration.

- **Organizer:** Only one organizer is required for the formation of a for-profit corporation. An organizer may be any person having the capacity to contract for the person or for another; that is, a natural person 18 years of age or older, or a corporation or other legal entity. There are no residency requirements for an organizer.
- **Effectiveness of Filing:** A certificate of formation becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a

future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity will be shown as "in existence" on the records of the secretary of state.

- **Execution:** The organizer must sign the certificate of formation, but it does not need to be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by an organizer is an affirmation that the person named in the certificate of formation has consented to serve in that capacity. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for a certificate of formation for a for-profit corporation is **\$300**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A corporation is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the certificate of formation. Failure to maintain a registered agent and registered office may result in the involuntary termination of the corporation. In addition, section 21.802 of the BOC provides a penalty for the failure to timely file a statement of change of registered office or registered agent with the secretary of state. To be timely, the filing must be made by the corporation before the 30th day after the change.

Revised 05/11

Director 2				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 3				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Article 4 – Authorized Shares

(Provide the number of shares in the space below, then select option A or option B, do not select both.)

The total number of shares the corporation is authorized to issue is: _____

A. The par value of each of the authorized shares is: _____
OR

B. The shares shall have no par value.

If the shares are to be divided into classes, you must set forth the designation of each class, the number of shares of each class, the par value (or statement of no par value), and the preferences, limitations, and relative rights of each class in the space provided for supplemental information on this form.

Article 5 – Purpose

The purpose for which the corporation is formed is for the transaction of any and all lawful business for which a for-profit corporation may be organized under the Texas Business Organizations Code.

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Organizer

The name and address of the organizer:

Name

Street or Mailing Address

City

State

Zip Code

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: _____

Signature of organizer

Printed or typed name of organizer

Form 12-2

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Application for Registration of a Foreign For-Profit Corporation
(SOS Form 301)**

Form 12-2

**Form 301—General Information
(Application for Registration of a Foreign For-Profit Corporation)**

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

To transact business in Texas, a foreign entity must register with the secretary of state under chapter 9 of the Texas Business Organizations Code (BOC). The registration requirement applies to a foreign corporation, foreign limited partnership, foreign limited liability company, foreign business trust, foreign real estate investment trust, foreign cooperative, foreign public or private limited company, or another foreign entity, the formation of which, if formed in Texas, would require the filing of a certificate of formation with the secretary of state. Also, a foreign entity that affords limited liability for any owner or member under the laws of its jurisdiction of formation is required to register.

Failure to Register: A foreign entity may engage in certain limited activities in the state without being required to register (BOC § 9.251). However, a foreign entity that fails to register when required to do so 1) may be enjoined from transacting business in Texas on application by the attorney general, 2) may not maintain an action, suit, or proceeding in a court of this state until registered, and 3) is subject to a civil penalty in an amount equal to all fees and taxes that would have been imposed if the entity had registered when first required.

Penalty for Late Filing: A foreign entity that has transacted business in the state for more than ninety (90) days is also subject to a late filing fee. The secretary of state may condition the filing of the registration on the payment of a late filing fee that is equal to the registration fee for each year, or part of a year, that the entity transacted business in the state without being registered.

Taxes: Corporations are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- **Item 1—Entity Name and Type:** Provide the full legal name of the foreign entity as stated in the entity's formation document. The name of the foreign entity must comply with chapter 5 of the BOC. Chapter 5 requires that:
 - (1) the entity name contain a recognized term of organization for the entity type as listed in section 5.054 of the BOC;
 - (2) the entity name not contain any word or phrase that indicates or implies that the entity is engaged in a business that the entity is not authorized to pursue (BOC § 5.052); and
 - (3) the entity name not be the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state (BOC § 5.053).

If the entity name does not comply with chapter 5, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4,

chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate under a name does not authorize the use of a name in violation of another person's rights to the name.

- **Item 2A—Assumed Name:** If the entity name fails to contain an appropriate organizational designation for the entity type, a recognized organizational designation should be added to the legal name and set forth in item 2A. Accepted organizational designations for a foreign for-profit corporation are: “corporation,” “incorporated,” “company,” “limited,” or an abbreviation of those terms.
- **Item 2B—Assumed Name:** If it has been determined that the entity’s legal name is not available for its use in Texas due to a conflict with a previously existing name, the foreign entity must obtain its registration to transact business under an assumed name that complies with chapter 5 of the BOC. State the assumed name that the foreign entity elects to adopt for use in Texas in item 2B of the certificate. In addition, the foreign entity is required to file an assumed name certificate in compliance with chapter 71 of the Texas Business & Commerce Code. The promulgated form for filing the assumed name with the secretary of state is **Form 503**. This form is not acceptable for filing with the county clerk.
- **Item 3—Federal Employer Identification Number:** Enter the corporation’s federal employer identification number (FEIN) in the space provided. The FEIN is a 9-digit number (e.g., 12-3456789) that is issued by the Internal Revenue Service (IRS). If the corporation has not received its FEIN at the time of submission, this should be noted in item 3 on the application form. Provision of the FEIN number at the time of submission will assist in the establishment of the corporation’s tax account with the Comptroller of Public Accounts.
- **Item 4—Jurisdictional Information:** The application must state the foreign entity’s jurisdiction of formation and the date of its formation in the format shown in the application.
- **Item 5—Certification of Existence:** The application must contain a statement that the entity exists as a valid foreign filing entity of the stated type under the laws of the entity’s jurisdiction of formation.
- **Item 6—Statement of Purpose:** The application must state each business or activity that the entity proposes to pursue in Texas, which may be stated to be “any lawful business or activity under the law of this state.” In addition, as required by chapter 9, the application must contain a statement that the entity is authorized to pursue the same business or activity under the laws of the entity’s jurisdiction of formation.
- **Item 7—Beginning Date of Business:** Provide the date the foreign entity began or will begin to transact business in the state. If the foreign entity has had prior activities within the state, the entity may wish to consult with a private attorney regarding the beginning date of business. The beginning date of business is the date the entity’s activities were considered the transaction of business for purposes of registration under chapter 9 of the BOC. *If the entity has transacted business in Texas for more than 90 days before submission, a late filing fee will be assessed.*

- **Item 8—Principal Office Address:** Provide the street or mailing address of the principal office of the foreign entity.
- **Item 9—Initial Registered Agent and Registered Office:** The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The foreign corporation cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the application for registration. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Item 10—Appointment of Secretary of State:** By signing the application for registration, the foreign entity consents to the appointment of the secretary of state as an agent of the foreign filing entity for service of process under the circumstances described by section 5.251 of the BOC.
- **Item 11—Governing Persons:** Provide the name and address of each person serving as part of the governing authority of the foreign corporation. Generally, this would be the board of directors of the corporation or other group of persons who are entitled to manage and direct the affairs of the foreign corporation. A minimum of one governing person is required. Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.).

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for directors or governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an item within this form.
- **Effectiveness of Filing:** The application for registration becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity's registration will be shown as "in existence" on the records of the secretary of state.

- **Execution:** Pursuant to section 4.001 of the BOC, the application for registration must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

The application for registration need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for an application for registration for a for-profit corporation is **\$750**. In addition, the foreign entity will be assessed a late filing fee for each year of delinquency if the entity has transacted business in Texas for more than 90 days prior to filing the application for registration. For purposes of computing the late filing fee, a partial calendar year is counted as a full year. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A registered foreign corporation is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the application for registration. Failure to maintain a registered agent and registered office may result in the revocation of the foreign filing entity's registration. In addition, section 21.802 of the BOC provides a penalty for the failure to timely file a statement of change of registered office or registered agent with the secretary of state. To be timely, the filing must be made by the corporation before the 30th day after the change.

Revised 05/11

**Form 301
(Revised 05/11)**

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: \$750



**Application for
Registration of a
Foreign For-Profit
Corporation**

This space reserved for office use.

1. The entity is a foreign for-profit corporation. The name of the entity is:

Provide the full legal name of the entity as stated in the entity's formation document in its jurisdiction of formation.

2A. The name of the corporation in its jurisdiction of formation does not contain the word "corporation," "company," "incorporated," or "limited" (or an abbreviation thereof). The name of the corporation with the word or abbreviation that it elects to add for use in Texas is:

2B. The corporation name is not available in Texas. The assumed name under which the corporation will qualify and transact business in Texas is:

The assumed name must include an acceptable organizational identifier or an accepted abbreviation of one of these terms.

3. Its federal employer identification number is: _____

Federal employer identification number information is not available at this time.

4. It is incorporated under the laws of: (set forth state or foreign country) _____

and the date of its formation in that jurisdiction is: _____
mm/dd/yyyy

5. As of the date of filing, the undersigned certifies that the foreign corporation currently exists as a valid corporation under the laws of the jurisdiction of its formation.

6. The purpose or purposes of the corporation that it proposes to pursue in the transaction of business in Texas are set forth below.

The corporation also certifies that it is authorized to pursue such stated purpose or purposes in the state or country under which it is incorporated.

7. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas is: _____
mm/dd/yyyy Late fees may apply (see instructions).

8. The principal office address of the corporation is:

Address City State Country ZipCode

Complete item 9A or 9B, but not both. Complete item 9C.

9A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

9B. The initial registered agent is an individual resident of the state whose name is:

First Name *M.I.* *Last Name* *Suffix*

9C. The business address of the registered agent and the registered office address is:

Street Address *City* *State* *Zip Code*

TX

10. The corporation hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

11. The name and address of each person on the board of directors is:

Director 1				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

Director 2				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

Director 3				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person.

Form 12-3

Supplemental Provisions for Certificate of Formation

“Blank-Check” Authorization (More Than One Class of Stock with Board Authorization to Create Series)

The Texas Business Organizations Code permits the certificate of formation to authorize more than one class of stock and to authorize the corporation’s board of directors to create and issue series of stock from time to time. See Tex. Bus. Orgs. Code §§ 3.007(b), 21.155, 21.156.

Clause 12-3-1

The corporation is authorized to issue two classes of capital stock to be designated “Common Stock” and “Preferred Stock” respectively. The total number of shares of all classes of capital stock that the corporation has authority to issue is [number] shares, consisting of [number] shares of Preferred Stock, \$[amount] par value per share, and [number] shares of Common Stock, \$[amount] par value per share.

And/Or

Clause 12-3-2

The board of directors of the corporation is granted authority to, from time to time, (1) establish by resolution one or more series of unissued shares of the class of Preferred Stock by specifying the designations, preferences, limitations, and relative rights, including voting rights, of the series to be established and (2) issue shares of the series of Preferred Stock so established.

Change in Required Shareholder Vote

The Texas Business Organizations Code (TBOC) requires the affirmative vote of holders of at least two-thirds of the outstanding shares and, if applicable, the affirmative vote of at least two-thirds of the outstanding shares of a class or series entitled to vote to approve a “fundamental action” and a “fundamental business transaction.” See Tex. Bus. Orgs. Code §§ 21.364, 21.457. The TBOC, however, permits the required vote to be increased or decreased by a provision in the certificate of formation. If decreased, the required vote must be at least a majority of the outstanding shares and (if applicable) a majority of the outstanding shares of a class or series entitled to vote. Tex. Bus. Orgs. Code § 21.365.

Clause 12-3-3

The affirmative vote of the holders of [a majority/[percent] percent] of the outstanding shares or, if applicable, [a majority/[percent] percent] of the outstanding shares of a class or series entitled to vote on or approve any matter or action as to which the Code requires a vote of two-thirds or any other specified portion of the shares will be sufficient to effect the matter or action subject to that vote, notwithstanding the vote required by the Code.

Limitation of Liability of Directors

The Texas Business Organizations Code (TBOC) permits the corporation's certificate of formation to eliminate or limit the liability of its directors (who are the “governing authorities” or “governing persons” of a corporation under sections 1.002(35) and 1.002(37) of the TBOC) for monetary damages for an act or omission in the capacity of director, subject to specified exceptions. See Tex. Bus. Orgs. Code § 7.001.

Clause 12-3-4

No director of the corporation will be liable to the corporation or its shareholders for monetary damages for an act or omission in the director's capacity as a director, except as provided by the Code.

Form 12-4

This form includes provisions commonly found in the bylaws of a corporation. See various Texas Business Organizations Code (TBOC) sections for additional provisions to tailor the bylaws to the needs of the corporation. For example, see sections 3.251–.255 for governance during emergencies; see section 21.201(b) regarding shares held by nominees; and add appropriate provisions as needed.

**Bylaws
of
[name of corporation]

(A Texas Corporation)**

Article 1

Offices

See Tex. Bus. Orgs. Code §§ 5.200–.208 regarding registered agents and registered offices.

1.1 *Registered Office.* The registered office and registered agent of [name of corporation] (the “Corporation”) will be as set forth in the Corporation’s certificate of formation. The Corporation may change its registered office, registered agent, or both by filing a statement of change with the secretary of state of the state of Texas.

See Tex. Bus. Orgs. Code §§ 2.101(12), 21.401 regarding management by the board of directors, which may include the board’s determination that the corporation have other offices.

1.2 *Other Offices.* The Corporation may also have offices at other places, both within and outside the state of Texas, as the board of directors determines or as the business of the Corporation requires.

Article 2

Shareholders

See Tex. Bus. Orgs. Code §§ 6.001, 21.351, 21.352 regarding place of meetings.

2.1 *Place of Meetings.* All meetings of the shareholders for the election of directors will be held at a place, within or outside the state of Texas, fixed by the board of directors. Meetings of shareholders for any other purpose will be held at a time and place, within or outside the state of Texas, stated in the notice of the meeting or in a duly executed waiver of notice. The board of directors may determine that any meeting may be held solely by remote communication in accordance with Texas law.

See Tex. Bus. Orgs. Code § 21.351 regarding annual meetings.

2.2 *Annual Meeting.* An annual meeting of the shareholders will be held at a time determined by the board of directors. At that meeting, the shareholders will elect a board of directors and transact any other business properly brought before the board.

See Tex. Bus. Orgs. Code §§ 21.353, 21.3531, 21.354, 21.372 regarding list of shareholders.

2.3 *List of Shareholders.* A complete list, arranged in alphabetical order, of the shareholders entitled to vote at the meeting, along with each shareholder's address, the type and number of shares held by each shareholder, and the number of votes to which each shareholder is entitled (if different from the number of shares), will be prepared by the officer or agent in charge of the share transfer records at least eleven days before the date of each shareholders' meeting. The list will be kept on file at the registered office or principal executive office of the Corporation for a period of at least ten days before the date of the meeting and will be subject to inspection by any shareholder at any time during usual business hours.

Alternatively, the list of shareholders may be kept on a reasonably accessible electronic network, if the information required to gain access to the list is provided with the notice of the meeting. The Corporation is not required to include any electronic contact information of any shareholder on the list. If the Corporation elects to make the list available on an electronic network, the Corporation will take reasonable steps to ensure that the information is available only to shareholders of the Corporation. The list will be produced and kept open at the place and for the duration of the meeting and will be subject to inspection by any shareholder present. If the meeting is held by remote communication, the list must be open to the examination of any shareholder for the duration of the meeting on a reasonably accessible electronic network, and the information required to access the list must be provided to shareholders with the notice of the meeting. The original share transfer records will be prima facie evidence of who is entitled to examine the list or transfer records or to vote at any such meeting of shareholders.

See Tex. Bus. Orgs. Code § 21.352 regarding special meetings. The required percentage of shareholders may not exceed 50 percent or be less than 10 percent. If no percentage is stated, the TBOC requires that 10 percent of the shareholders be required to call a special meeting.

2.4 *Special Meetings.* Special meetings of the shareholders (unless otherwise prescribed by law, the certificate of formation, or these bylaws) may be called by the president or the board of directors [**include if applicable:** or [**name[s] of other person[s] authorized**]] or will be called by the president or secretary at the written request of the holders of not more than [10 percent/[**percent**] percent] of all the shares issued, outstanding, and entitled to vote (unless a different percentage is specified in the certificate of formation). The request will state the purposes of the proposed meeting. Business transacted at all special meetings will be confined to the purposes stated in the notice of the meeting unless all shareholders entitled to vote are present and consent otherwise.

See Tex. Bus. Orgs. Code §§ 6.051, 21.353, 21.3531 regarding notice.

2.5 *Notice.* Written or printed notice stating the place, day, and time of any meeting of the shareholders, the means of any remote communications by which shareholders may be considered present and may vote at the meeting, and, in case of a special meeting, the purposes for which the meeting is called will be given not less than ten nor more than sixty days before the meeting. The notice will be given in person, by electronic transmission, or by mail at the direction of the president, the secretary, or any other person calling the meeting to each shareholder of record entitled to vote at the meeting. If mailed, the notice will be deemed given when deposited in the United States mail, addressed to the shareholder at the shareholder's address as it appears on the share transfer records of the Corporation, with postage prepaid. If transmitted by facsimile or electronic message, the notice will be deemed given when the facsimile or electronic message is transmitted to a facsimile number or an electronic message address provided by the shareholder, or to which the shareholder has consented, for the purpose of notice.

The quorum requirement can range from one-third to 100 percent of the shares entitled to vote. The quorum provision is controlled by and must be adjusted to any similar provisions in the corporation's certificate of formation. See Tex. Bus. Orgs. Code § 21.358.

2.6 *Quorum.* With respect to any matter at a shareholders' meeting, the presence in person or by proxy at the meeting of the holders of [a majority/[other amount]] of the shares entitled to vote will be necessary and sufficient to constitute a quorum for the transaction of business except as otherwise provided by law, the certificate of formation, or these bylaws. If, however, a quorum is not represented at any meeting of the shareholders, the shareholders entitled to vote at the meeting, present in person or represented by proxy, will have the power to adjourn the meeting without notice (other than announcement at the meeting) until a quorum is represented. If the adjournment is for more than thirty days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting will be

given to each shareholder of record entitled to vote at the meeting. At a rescheduled meeting at which a quorum is represented, any business may be transacted that might have been transacted at the meeting as originally notified.

The vote on directors can range from a majority to 100 percent of (1) shares entitled to vote, (2) shares entitled to vote and represented in person or by proxy, or (3) shares entitled to vote and voted on that matter. See Tex. Bus. Orgs. Code § 21.359.

The affirmative vote on matters other than the election of directors can range from a majority to 100 percent of (1) shares entitled to vote, (2) shares entitled to vote and represented in person or by proxy, (3) shares entitled to vote and voted on that matter, or (4) shares entitled to vote and voted or abstained on that matter. See Tex. Bus. Orgs. Code § 21.363.

The affirmative vote of at least two-thirds of the outstanding shares entitled to vote is required for approval of a "fundamental action," and in some cases two-thirds of each class of stock is required. Tex. Bus. Orgs. Code § 21.364. However, the certificate of formation may reduce the two-thirds vote to no lower than a majority. Tex. Bus. Orgs. Code § 21.365.

A corporation may authorize in its certificate of formation shareholders to cumulatively vote the number of shares the shareholder owns in the election of directors. Tex. Bus. Orgs. Code § 21.361. Shareholders of a corporation incorporated before September 1, 2003, have the right to cumulatively vote the number of shares the shareholder owns in the election of directors. Tex. Bus. Orgs. Code § 21.362.

2.7 *Voting.* When a quorum is present at any meeting of the Corporation's shareholders, the vote of the holders of [a majority/[**other amount**]] of the shares entitled to vote on any question brought before the meeting will be sufficient to decide that question, provided that if the question is one on which by express provision of law, the certificate of formation, or these bylaws a different vote is required, that express provision governs the decision of the question.

See Tex. Bus. Orgs. Code §§ 6.151, 21.359–.371 regarding voting, including cumulative voting and voting by proxy.

2.8 *Method of Voting.* Each outstanding share of the Corporation's capital stock, regardless of class or series, will be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or

series are limited or denied by the certificate of formation. At any meeting of the shareholders, every shareholder having the right to vote will be entitled to vote in person or by proxy executed in writing by the shareholder and bearing a date not more than eleven months before the meeting, unless the proxy provides for a longer period. A telegram, telex, cablegram, or other form of electronic transmission, including telephonic transmission, by the shareholder, or a photographic, photostatic, facsimile, or similar reproduction of a writing executed by the shareholder, will be treated as an execution in writing. Any electronic transmission must contain or be accompanied by information from which it can be determined that the transmission was authorized by the shareholder. Each proxy will be revocable unless it conspicuously provides that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. Each proxy will be filed with the secretary of the Corporation before or at the time of the meeting. Voting for directors will be in accordance with article 3 of these bylaws. Voting on any question or in any election may be by voice vote or show of hands unless the presiding officer orders or any shareholder demands that voting be by written ballot.

See Tex. Bus. Orgs. Code §§ 6.101, 21.355–.357 regarding record date and closing transfer records.

2.9 *Record Date; Closing Transfer Records.* The board of directors may fix in advance a record date for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders. The record date must be not less than ten nor more than sixty days before the meeting. The board of directors may close the share transfer records for this purpose for a period of not less than ten nor more than sixty days before the meeting. In the absence of any action by the board of directors, the date on which the notice of the meeting is given will be the record date.

See Tex. Bus. Orgs. Code §§ 6.201–.205 regarding action by written consent.

2.10 *Action without Meeting*

- a. Any action required by law or permitted to be taken at a meeting of the shareholders may be taken without a meeting, without prior notice, or without a vote, if a consent in writing, setting forth the action taken, is signed by the holders of all shares necessary to take the action or if permitted by the certificate of formation by the holders of shares having not less than the minimum number of votes necessary to take the action at a meeting.
- b. Every written consent of the shareholders must bear the date of signature. No written consent will be effective to take the action that is the subject of the consent unless, within sixty days after the date of the earliest dated consent delivered to the Corporation as provided below, a consent signed by the holders of shares having not less than the minimum number of votes necessary to take the action that is the subject of the consent is delivered to the Corporation. Delivery must be made by hand or by certified or registered mail, return receipt requested, and, in the case of delivery to the Corporation's principal place of business, addressed to the president of the Corporation.
- c. An electronic transmission by a shareholder or a photographic, photostatic, facsimile, or similarly reliable reproduction of a writing signed by a shareholder is regarded as signed by the shareholder for the purposes of this section of the bylaws. An electronic transmission by a shareholder consenting to an action to be taken is considered to be written, signed, and dated if the transmission sets forth or is delivered with information from which the Corporation can determine that the transmission was transmitted by the shareholder and the date on which it was transmitted. The date of transmission is the date on which the consent was signed. If the consent is not solicited by the Corporation or its board of directors, consent given by electronic transmis-

sion will not be considered delivered until the consent is reproduced in paper form and delivered to the Corporation (i) at its registered office or its principal place of business, addressed to the president of the Corporation, or (ii) to an officer or agent of the Corporation having custody of the records of shareholder meetings. If the consent is solicited by the Corporation or its board of directors, consent given by electronic transmission may be delivered to the Corporation in the manner described in the preceding sentence or in any other manner provided by resolution of the board of directors of the Corporation. Any photographic, photostatic, facsimile, or similarly reliable reproduction of a consent in writing signed by a shareholder may be substituted for the original writing for any purpose for which the original writing could be used, if the reproduction is a complete reproduction of the original writing.

- d. Prompt notice of any action taken by shareholders without a meeting by less than unanimous written consent, if permitted, must be given to those shareholders who did not consent in writing to the action, but advance notice is not required.

See Tex. Bus. Orgs. Code §§ 6.002–.003 regarding telephone or remote communication meetings. See also Tex. Bus. Orgs. Code § 6.051 regarding general notice requirements, including notice for telephone or remote communication meetings.

See also Tex. Bus. Orgs. Code §§ 21.353, 21.3531, 21.354, 21.372 discussing a list of shareholders for telephone or remote communication meetings.

2.11 *Telephone or Remote Communication Meetings.* Shareholders may participate in and hold a meeting by means of a conference telephone or other similar means of remote communication equipment so that all participants in the meeting can communicate with each other. Participation in such a meeting will constitute presence at the meeting, except when a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting had not been lawfully called or convened. If vot-

ing takes place at such a meeting, the Corporation must (a) implement reasonable measures to verify that each person considered present and permitted to vote at the meeting is a shareholder and (b) maintain a record of any vote or other action taken at the meeting.

Article 3

Board of Directors

See Tex. Bus. Orgs. Code § 21.401 regarding management by the board of directors.

3.1 *Management.* The business and affairs of the Corporation will be managed by or under the direction of the board of directors, who may exercise all such powers of the Corporation and do all such lawful acts not directed or required by law, the certificate of formation, or these bylaws to be exercised by the shareholders.

The certificate of formation and bylaws may prescribe other qualifications for directors. Tex. Bus. Orgs. Code § 21.402. See Tex. Bus. Orgs. Code §§ 21.402, 21.405, 21.407–.410 regarding qualification, election, and term.

3.2 *Qualification; Election; Term.* None of the directors need be a shareholder of the Corporation or a resident of the state of Texas. The directors will be elected by [plurality vote/ [describe type of vote]] at the annual meeting of the shareholders, except as hereinafter provided. Each elected director will hold office until whichever of the following occurs first: (a) a successor is elected and qualified, (b) resignation, (c) removal from office by the shareholders, or (d) death.

See Tex. Bus. Orgs. Code § 21.403 regarding number of directors. Also, the Texas Business Organizations Code provides for the classification of directors, subject to the election of a minimum of nine directors if cumulative voting is permitted. See Tex. Bus. Orgs. Code § 21.408.

3.3 *Number.* The number of directors of the Corporation will be at least [one/[number]] and not more than [number]. The number of directors will be fixed as the board of direc-

tors may designate, or, if no designation has been made, the number of directors will be the same as the number of members of the initial board of directors as set forth in the certificate of formation. No decrease in the number of directors will shorten the term of any incumbent director.

See Tex. Bus. Orgs. Code § 21.409 regarding removal of directors.

3.4 *Removal.* Any director may be removed with or without cause at any special meeting of shareholders by the affirmative vote of a majority of shares of the shareholders present in person or represented by proxy at the meeting and entitled to vote for the election of a director, provided that notice of intention to act on the matter has been given in the notice calling the meeting.

See Tex. Bus. Orgs. Code § 21.410 regarding vacancies.

3.5 *Vacancies.* Any vacancy occurring in the initial board of directors before the issuance of shares may be filled by an affirmative vote or written consent of a majority of the remaining directors even if the remaining directors constitute less than a quorum of the board of directors. A vacancy occurring in the board of directors after the issuance of shares may be filled by election at an annual or special meeting of shareholders called for that purpose or by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum. The term of a director elected to fill a vacancy will be the unexpired term of his predecessor in office. A directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office only until the next election of one or more directors by the shareholders. A vacancy in a director position that the certificate of formation entitles the holders of a class or series of shares or group of classes or series of shares to elect may be filled only by the affirmative vote of the majority of the directors then in office elected by class, series, or group; by the sole remaining director

elected in that manner; or by the affirmative vote of the holders of the outstanding shares of the class, series, or group.

See Tex. Bus. Orgs. Code § 6.001 regarding place of meetings.

3.6 *Place of Meetings.* Regular or special meetings of the board of directors may be held at any place within or outside the state of Texas as fixed by the board of directors.

See Tex. Bus. Orgs. Code § 21.411 regarding notice of meetings of the board of directors and Tex. Bus. Orgs. Code § 21.412 regarding waiver of notice.

3.7 *Annual Meeting.* The first meeting of each newly elected board of directors will be held without further notice immediately following the annual meeting of shareholders and at the same place, unless the directors then elected and serving change the time or place by unanimous consent.

3.8 *Regular Meetings.* Regular meetings of the board of directors may be held without notice at any time and place determined by resolution of the board of directors. Except as may be otherwise expressly provided by law, the certificate of formation, or these bylaws, neither the business to be transacted nor the purpose of any regular meeting need be specified in a notice or waiver of notice.

The Texas Business Organizations Code provides that special meetings of the board of directors are to be held as prescribed in the bylaws. See Tex. Bus. Orgs. Code § 21.411(b). Therefore, the president and secretary are suggested but not required to be the parties calling the meeting. The written request of at least two directors is suggested but not required, and the minimum number of directors needed for the written request can be increased from two.

3.9 *Special Meetings.* Special meetings of the board of directors may be called by the [chair/president] on oral or written notice to each director, given either personally, by telephone, by mail, or (if consented to by the director) by electronic transmission. Special meetings will be called by the president, the secretary, or any other person authorized in like

manner and on like notice [on the written request of at least two directors/[**describe other procedure as prescribed in bylaws**]]. Except as may be otherwise expressly provided by law, the certificate of formation, or these bylaws, neither the business to be transacted nor the purpose of any special meeting need be specified in a notice or waiver of notice.

The quorum requirement can range from one-third to 100 percent of the number of directors. See Tex. Bus. Orgs. Code § 21.413. A vote of a majority to 100 percent may also be specified.

The provision allowing the directors present at a meeting to adjourn the meeting if a quorum is not present is not specifically authorized by the Texas Business Organizations Code but has become a standard provision often used by practicing attorneys.

See Tex. Bus. Orgs. Code § 21.415 regarding action by directors.

3.10 *Quorum and Action by Directors.* At all meetings of the board of directors the presence of a majority of the directors then in office will be necessary and sufficient to constitute a quorum for the transaction of business. The affirmative vote of at least a majority of the directors present at any meeting at which there is a quorum at the time of the act will be the act of the board of directors, except as may be otherwise specifically provided by law, the certificate of formation, or these bylaws. If a quorum is not present at any meeting of the board of directors, the directors present may adjourn the meeting without notice other than announcement at the meeting until a quorum is present.

See Tex. Bus. Orgs. Code § 21.418 regarding interested directors.

3.11 *Interested Directors.* No contract or transaction between the Corporation and one or more of the directors or officers, or one or more affiliates or associates of one or more directors or officers of the Corporation, or between the Corporation and any other entity in which one or more of the directors or officers, or one or more affiliates or associates of one or more directors or officers of the Corporation, is a managerial official or has a financial interest will be void or voidable for this reason if (a) the material facts of the relationship or interest

and of the contract or transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee in good faith authorizes the contract or transaction by the approval of a majority of the disinterested directors or committee members, even though the disinterested directors or committee members are less than a quorum; (b) the material facts of the relationship or interest and of the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the shareholders; or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved, or ratified by the board of directors, a committee thereof, or the shareholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee that authorizes the contract or transaction. A person who has the relationship or interest (a) may be present at or participate in and, if the person is a director or committee member, may vote at a meeting of the board of directors or of a committee that authorizes the contract or transaction or (b) may sign, in the person's capacity as a director or committee member, a unanimous written consent of directors or committee members to authorize the contract or transaction.

It is important to note that some provisions in the following section on committees are not statutorily mandated and may be modified. See Tex. Bus. Orgs. Code § 21.416.

3.12 *Committees.* The board of directors may designate committees, each of which will be composed of one or more directors, and may designate one or more of its directors as alternate members of any committee, who may, subject to any limitations imposed by the board of directors, replace absent or disqualified committee members at any meeting of that committee. Any committee, to the extent provided by resolution of the board of directors, will have and may exercise all of the authority of the board of directors in the business and affairs of the Corporation except when the action of the board of directors is required or the authority of the committee is limited by statute. The number of members on each committee may be changed

by resolution of the board of directors. Any member of any committee may be removed from that committee at any time by resolution of the board of directors. Vacancies in the membership of a committee (whether by death, resignation, removal, or any other manner) may be filled by resolution of the board of directors. The time, place, and notice of any meetings of any committee will be determined by that committee. At meetings of any committee, a majority of the members of that committee constitutes a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present will be the act of the committee, except as otherwise specifically provided by statute, the certificate of formation, or these bylaws. If a quorum is not present at a meeting of any committee, the members present may adjourn the meeting without notice (other than an announcement at the meeting) until a quorum is present. Each committee will keep regular minutes of its proceedings and report them to the board when required. The designation of any committee of the board of directors and the delegation thereto of authority will not operate to relieve the board of directors or any member thereof of any responsibility imposed on the board or the member by law.

See Tex. Bus. Orgs. Code § 21.415 regarding action by directors. See also Tex. Bus. Orgs. Code §§ 6.201, 6.204–.205 regarding consent and voting.

3.13 *Action by Consent.* Any action required or permitted to be taken at any meeting of the board of directors or any committee of the board of directors may be taken without a meeting if a consent in writing, setting forth the action taken, is signed by all the members of the board of directors or the committee, as the case may be. An electronic transmission by a director consenting to an action to be taken and transmitted by a director is considered written, signed, and dated for the purposes of this section if the transmission sets forth or is delivered with information from which the Corporation can determine that the transmission was transmitted by the director and the date on which the director transmitted the transmission. A con-

sent will have the same force and effect as a unanimous vote at a duly called and held meeting of the board of directors or the committee, as the case may be.

See Tex. Bus. Orgs. Code § 21.401 regarding management by the board of directors, which may include the issue of compensation.

3.14 *Compensation of Directors.* Directors will receive the compensation for their services and reimbursement for their expenses established by the board of directors, by resolution, provided that nothing herein will preclude any director from serving the Corporation in any other capacity and receiving compensation for that service.

See Tex. Bus. Orgs. Code § 21.4091 regarding resignations of directors.

3.15 *Resignations.* A director may resign at any time by giving written notice, including by electronic transmission, to the board of directors or the chair of the board. The resignation will take effect as of the date of receipt of notice, unless the notice prescribes a later effective date or states that the resignation will take effect on the occurrence of a future event. If the resignation is to take effect on a later date or on the occurrence of a future event, the resignation will take effect on that later date or the occurrence of that event. The resignation is irrevocable when it takes effect. The resignation is revocable before it takes effect, unless the notice of resignation states that it is irrevocable. Unless specified in the notice of resignation, the acceptance of the resignation will not be necessary to make it effective.

Article 4

Notice

See Tex. Bus. Orgs. Code §§ 6.051, 21.353, 21.3531, 21.411 regarding notice.

4.1 *Form of Notice*

- a. Whenever notice is required by law, the certificate of formation, or these bylaws to be given to any director, committee member, or shareholder, and if no provision is made as to how notice is to be given, notice may be given in writing, by mail, postage prepaid, addressed to the director, committee member, or shareholder at the address that appears on the books of the Corporation or by any other method permitted by law. Any notice required or permitted to be given by mail will be deemed to be given at the time it is deposited in the United States mail. Notice to directors, committee members, or shareholders may also be given by a nationally recognized overnight delivery or courier service and will be deemed delivered when the notice is received by the proper recipient or, if earlier, one day after the notice is sent by the overnight delivery or courier service.

- b. With consent of a shareholder, director, or committee member, notice from the Corporation may be given to that shareholder, director, or committee member by electronic transmission. The shareholder, director, or committee member may specify the form of electronic transmission to be used to communicate notice. The shareholder, director, or committee member may revoke this consent by written notice to the Corporation. The consent is deemed to be revoked if the Corporation is unable to deliver by electronic transmission two consecutive notices and the person responsible for delivering notice on behalf of the Corporation knows that delivery of these two electronic transmissions was unsuccessful, provided, however, that the inadvertent failure to treat the unsuccessful transmissions as a revocation of consent does not invalidate a meeting or other action. Notice by electronic transmission is deemed given when the notice is (i) transmitted to a facsimile

number provided by the shareholder, director, or committee member for the purpose of receiving notice; (ii) transmitted to an electronic mail address provided by the shareholder, director, or committee member for the purpose of receiving notice; (iii) posted on an electronic network, and a message is sent to the shareholder, director, or committee member at the address provided by the shareholder, director, or committee member for the purpose of alerting the shareholder, director, or committee member of a posting; or (iv) communicated to the shareholder, director, or committee member by any other form of electronic transmission consented to by the shareholder, director, or committee member.

See Tex. Bus. Orgs. Code §§ 6.052, 21.412 regarding waivers.

4.2 *Waiver.* Whenever any notice is required to be given to any shareholder, director, or committee member of the Corporation as required by law, the certificate of formation, or these bylaws, a written waiver signed by the person or persons entitled to notice or a waiver by electronic transmission by the person entitled to notice, given before or after the time stated in the notice, will be equivalent to giving the notice. Attendance of a shareholder, director, or committee member at a meeting will constitute a waiver of notice of that meeting, except when the shareholder, director, or committee member attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting has not been lawfully called or convened. Neither the business to be transacted at a regular or special meeting of the shareholders, directors, or committee members nor the purpose of such a meeting is required to be specified in a written waiver of notice or a waiver by electronic transmission unless required by the certificate of formation. Participation or attendance at a meeting constitutes waiver of notice of a matter not included in the purposes

or business of the meeting described in the notice, unless the person objects to considering the matter when it is presented.

Article 5

Officers and Agents

See Tex. Bus. Orgs. Code §§ 3.103, 21.417 regarding officers and the election of officers.

5.1 *In General.* The board of directors will elect a president and a secretary according to the election provision of these bylaws. The board may also elect a chair of the board, a vice chair of the board, vice presidents, assistant vice presidents, a treasurer, assistant secretaries, and assistant treasurers. Any two or more offices may be held by the same person.

5.2 *Election.* The board of directors, at its first meeting after each annual meeting of shareholders, will elect a president and a secretary [**include if applicable:** , neither of whom need be a member of the board of directors or a shareholder of the Corporation]. [**Describe corporation's election procedure and rules.**]

5.3 *Other Officers and Agents.* The board of directors may also elect and appoint any other officers and agents it deems necessary, who will be elected and appointed for the terms and will exercise the powers and perform the duties determined by the board. Any person may hold two or more offices at the same time.

See Tex. Bus. Orgs. Code § 21.401 regarding management by the board of directors, which may include the issue of compensation.

5.4 *Compensation.* The compensation of all officers and agents of the Corporation will be fixed by the board of directors or any committee of the board, if so authorized by the board.

See Tex. Bus. Orgs. Code §§ 3.103, 3.104, 21.417 regarding term of office and removal.

5.5 *Term of Office and Removal.* Each officer of the Corporation will hold office until death, resignation or removal from office, or the election and qualification of a successor, whichever occurs first. Any officer or agent elected or appointed by the board of directors may be removed at any time, with or without cause, by [the affirmative vote of a majority of the entire board of directors/[describe other removal method]], but removal will not prejudice the contract rights, if any, of the person removed. If any office becomes vacant for any reason, the vacancy may be filled by the board of directors.

See Tex. Bus. Orgs. Code §§ 3.103, 21.401, 21.418 authorizing employment and other contracts.

5.6 *Employment and Other Contracts.* The board of directors may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of or on behalf of the Corporation, and the authority may be general or confined to specific instances. The board of directors may, when it believes the interest of the Corporation will best be served, authorize executive employment contracts that will have terms no longer than ten years and contain any other terms and conditions that the board of directors deems appropriate. Nothing herein will limit the authority of the board of directors to authorize employment contracts for shorter terms.

Include the following if applicable. See Tex. Bus. Orgs. Code §§ 3.103, 21.417 regarding mandatory and permitted officers.

5.7 *Chair of the Board of Directors.* If the board of directors has elected a chair of the board, the chair will preside at all meetings of the shareholders and the board of directors. The chair shall also have such other authority and duties as may be assigned by the board of directors of the Corporation.

Continue with the following.

5.8 *President.* The president will be the chief executive officer of the Corporation and, subject to the control of the board of directors, will supervise and control all of the business

and affairs of the Corporation. The president will [**include if applicable:** , in the absence of the chair of the board,] preside at all meetings of the shareholders and the board of directors. The president will have all powers and perform all duties incident to the office of president and will have all other powers and perform all other duties that the board of directors may prescribe.

Include the following if applicable.

5.9 *Vice Presidents.* Each vice president will have the usual and customary powers and perform the usual and customary duties incident to the office of vice president and will have other powers and perform other duties the board of directors or any committee of the board may prescribe or the president may delegate. In the absence or disability of the president, a vice president designated by the board of directors or, in the absence of such designation, the vice presidents in the order of their seniority in office will exercise the powers and perform the duties of the president.

Continue with the following.

5.10 *Secretary.* The secretary will attend all meetings of the shareholders and record all votes and minutes of all proceedings in records to be kept for that purpose. The secretary will perform like duties for the board of directors and committees of the board when required. The secretary will give, or cause to be given, notice of all meetings of the shareholders and special meetings of the board of directors. [**Include if applicable:** The secretary will keep in safe custody the seal of the Corporation.] The secretary will be under the supervision of the president. The secretary will have other powers and perform other duties the board of directors prescribes or the president delegates.

Include the following if applicable.

5.11 *Assistant Secretaries.* The assistant secretaries in the order of their seniority in office, unless otherwise determined by the board of directors, will, in the absence or disability

of the secretary, exercise the powers and perform the duties of the secretary. They will have other powers and perform other duties the board of directors prescribes or the president delegates.

And/Or

5.12 *Treasurer.* The treasurer will have responsibility for the receipt and disbursement of all corporate funds and securities, will keep full and accurate accounts of the receipts and disbursements, and will deposit or cause to be deposited all moneys and other valuable effects in the name and to the credit of the Corporation in the depositories designated by the board of directors. The treasurer will render to the directors, whenever they may require it, an account of the operating results and financial condition of the Corporation and will have other powers and perform other duties the board of directors prescribes or the president delegates.

And/Or

5.13 *Assistant Treasurers.* The assistant treasurers in the order of their seniority in office, unless otherwise determined by the board of directors, will, in the absence or disability of the treasurer, exercise the powers and perform the duties of the treasurer. They will have other powers and perform other duties the board of directors prescribes or the president delegates.

Continue with the following. See Tex. Bus. Orgs. Code § 2.101 regarding bonding.

5.14 *Bonding.* The Corporation may secure a bond to protect the Corporation from loss in the event of defalcation by any of the officers. The bond may be in the form and amount and with the surety the board of directors deems appropriate.

Article 6

Certificates Representing Shares

See Tex. Bus. Orgs. Code §§ 3.201–.204 regarding form of certificates.

6.1 *Form of Certificates.* Certificates, representing shares to which shareholders are entitled in the form determined by the board of directors, will be delivered to each shareholder. Certificates will be consecutively numbered and entered in the share transfer records of the Corporation as they are issued. Each certificate will state on its face (a) that the Corporation is organized under the laws of Texas; (b) the holder's name, the number, and class of shares and any designation of the series; and (c) the par value of the shares or a statement that the shares are without par value. They will be signed by the president or a vice president and the secretary or the treasurer or an assistant secretary or an assistant treasurer and may be sealed with the seal of the Corporation (if any) or a facsimile thereof. If any certificate is countersigned by a transfer agent or an assistant transfer agent or registered by a registrar, any of which is other than the Corporation or an employee of the Corporation, the signatures of the Corporation's officers may be facsimiles. If any officer who has signed or whose facsimile signature has been used on a certificate ceases for any reason to be an officer of the Corporation before the certificate has been delivered by the Corporation or its agents, the certificate may nevertheless be adopted by the Corporation and be issued and delivered as though the person had not ceased to be an officer of the Corporation.

See Tex. Bus. Orgs. Code §§ 3.201–.202, 21.401 regarding management by the board of directors, which may include authorizing the issuance of new certificates.

6.2 *Lost Certificates.* The board of directors may direct that a new certificate be issued in place of any certificate issued by the Corporation alleged to have been lost or destroyed, on the making of an affidavit of fact by the person claiming the certificate to be lost or destroyed. When authorizing the issue of a new certificate, the board of directors, in its discretion and as

a condition precedent to the issuance, may require the owner of the lost or destroyed certificate or the owner's legal representative to advertise the same in any manner as the Corporation may require and/or to give the Corporation a bond, in the form and amount and with surety as it may direct, as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost or destroyed. When (a) a certificate has been lost, destroyed, or wrongfully taken; (b) the holder of record fails to notify the Corporation within a reasonable time after the holder has notice that the certificate has been lost, destroyed, or wrongfully taken; and (c) the Corporation registers a transfer of the shares represented by the certificate before receiving notification, the holder of record is precluded from making any claim against the Corporation for the transfer of a new certificate.

See Tex. Bus. Orgs. Code §§ 21.209–.211 regarding transfer of shares.

6.3 *Transfer of Shares.* Shares of stock will be transferable only on the share transfer records of the Corporation by the holder of the share in person or by the holder's duly authorized attorney in fact. On surrender to the Corporation or the transfer agent of the Corporation of a certificate representing shares duly endorsed or accompanied by proper evidence of succession, assignment, or authority to transfer, the Corporation or the transfer agent of the Corporation will issue a new certificate to the person entitled to it, cancel the old certificate, and record the transaction in its records.

See Tex. Bus. Orgs. Code § 21.201 regarding registered shareholders.

6.4 *Registered Shareholders.* The Corporation will be entitled to treat the holder of record of any share of stock as the holder in fact and, accordingly, will not be bound to recognize any equitable or other claim to or interest in the share on the part of any other person, whether or not the Corporation has express or other notice, except as otherwise provided by law.

Article 7

General Provisions

See Tex. Bus. Orgs. Code § 21.302 regarding authority for distributions.

7.1 *Dividends.* Dividends on the outstanding shares of the Corporation, subject to the provisions of the certificate of formation, if any, may be declared by the board of directors at any regular or special meeting. Dividends may be declared and paid in cash, in property, or in shares of the Corporation, subject to the provisions of the Texas Business Organizations Code and the certificate of formation. The board of directors may fix in advance a record date, which is not to be more than sixty days before the payment date of the dividend, for the purpose of determining shareholders entitled to receive payment of any dividend, or the board of directors may close the share transfer records for that purpose for a period of not more than sixty days before the payment date of the dividend. In the absence of any action by the board of directors, the date on which the board of directors adopts the resolution declaring dividends will be the record date.

See Tex. Bus. Orgs. Code § 21.309 regarding reserves.

7.2 *Reserves.* There may be created by resolution of the board of directors out of the surplus of the Corporation any reserves the directors in their discretion deem proper to provide for contingencies, to equalize dividends, to repair or maintain any property of the Corporation, or for any other purpose the directors deem beneficial to the Corporation. The directors may modify or abolish any reserve in the manner in which it was created. Surplus of the Corporation to the extent reserved will not be available for the payment of dividends or other distributions by the Corporation.

See Tex. Bus. Orgs. Code §§ 6.002–.003 regarding telephone and other alternative forms of meetings.

7.3 *Telephone and Similar Meetings.* Shareholders, directors, and committee members may participate in and hold meetings by means of conference telephone or similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. Participation in such a meeting will constitute presence in person at the meeting, except when a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting had not been lawfully called or convened.

See Tex. Bus. Orgs. Code § 3.151 regarding books and records.

7.4 *Books and Records.* The Corporation will keep correct and complete books and records of account and minutes of the proceedings of its shareholders and board of directors and will keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each.

See Tex. Bus. Orgs. Code § 21.401 regarding management by the board of directors, which includes fixing the fiscal year.

7.5 *Fiscal Year.* The fiscal year of the Corporation will be fixed by resolution of the board of directors.

See Tex. Bus. Orgs. Code §§ 2.101(2), 3.202(a) regarding the corporate seal.

7.6 *Seal.* The Corporation may have a seal, and the seal may be used by causing it or a facsimile of it to be impressed, affixed, or reproduced, or otherwise. Any officer of the Corporation will have authority to affix the seal to any document requiring it.

See Tex. Bus. Orgs. Code §§ 8.001–.152 regarding indemnification and insurance.

7.7 *Indemnification.* The Corporation will indemnify its directors and officers to the fullest extent permitted by the Texas Business Organizations Code and may, if and to the extent authorized by the board of directors, indemnify any other person whom it has the power to indemnify against liability, reasonable expense, or any other matter whatever.

7.8 *Insurance.* The Corporation may at the discretion of the board of directors purchase and maintain insurance on behalf of the Corporation and any person whom it has the power to indemnify pursuant to law, the certificate of formation, or these bylaws, or otherwise.

7.9 *Resignation.* Any officer or agent of the Corporation (other than a director, the resignation of whom is addressed in section 3.15 of these bylaws) may resign by giving written notice to the president or the secretary of the Corporation. The resignation will take effect at the time specified in the resignation or immediately if no time is specified. Unless otherwise specified, acceptance of the resignation will not be necessary to make it effective.

See Tex. Bus. Orgs. Code § 21.057 regarding amendment of bylaws.

7.10 *Amendment of Bylaws.* These bylaws may be altered, amended, or repealed at any meeting of the board of directors at which a quorum is present, by the affirmative vote of a majority of the directors present at such a meeting, or by the corporation's shareholders if that power is exclusively reserved to them. The board of directors may not amend, appeal, or readopt a bylaw to the extent that the law, the certificate of formation, or the shareholders expressly provide that the board of directors may not do so.

7.11 *Invalid Provisions.* If any part of these bylaws is held invalid or inoperative for any reason, the remaining parts, as far as possible and reasonable, will be valid and operative.

See Tex. Bus. Orgs. Code § 21.057 regarding relation to certificate of formation.

7.12 *Relation to Certificate of Formation.* These bylaws are subject to and governed by the certificate of formation.

7.13 *Section Headings.* The headings contained in these bylaws are for reference purposes only and will not affect in any way the meaning or interpretation of these bylaws.

7.14 *Gender and Number of Words.* When the context requires, the gender of all words used in these bylaws includes the masculine, feminine, and neuter, and the number of all words includes the singular and the plural.

Form 12-5**Unanimous Written Consent of the Directors of [name of corporation]**

In accordance with section 21.415 of the Texas Business Organizations Code (the “BOC”), the undersigned, as all the directors of [name of corporation], a Texas corporation (the “Corporation”), hereby adopt the following resolutions to have the same force and effect as if adopted at the organizational meeting of the board of directors of the Corporation, duly called and held under section 21.059 of the BOC:

Certificate of Formation

RESOLVED, that the certificate of formation of the Corporation having been duly filed in the office of the secretary of state of the state of Texas on [date], the secretary of the Corporation is instructed to insert a copy of the certificate of formation, as certified by the secretary of state of Texas, in the minute books of the Corporation.

Bylaws

RESOLVED, that the bylaws, which have been reviewed by the directors of the Corporation, hereby are adopted as the bylaws of the Corporation, and the secretary of the Corporation is hereby instructed to certify the adoption on a copy of the bylaws and insert that copy in the minute books of the Corporation.

Officers

RESOLVED, that the following persons hereby are elected to the office[s] of the Corporation set forth opposite their names, to serve in [that/these] capacity[ies] until the election and qualification of their respective successor[s]:

Name

Office

[Name]

[office]

Repeat as necessary for all officers.

Organizer's Actions

RESOLVED, that the actions of the organizer of the Corporation taken on behalf of the Corporation, other than any such actions as may have been illegal, tortious, or ultra vires, hereby are ratified and adopted as the actions of the Corporation.

Corporate Seal

RESOLVED, that the seal, an impression of which is affixed to the margin of this page, hereby is adopted as the seal of the Corporation.

Fiscal Year

RESOLVED, that the fiscal year of the Corporation will begin on the [first/[number]] day of [month] and end on the [last/[number]] day of [month] of each calendar year.

Bank Accounts

RESOLVED, that the officers of the Corporation hereby are authorized to establish bank accounts in the name and on behalf of the Corporation with any bank, either within or outside the United States, as the officers deem necessary or advisable and, in connection therewith, to execute each bank's regular corporate resolution forms, which are incorporated by reference in and made a part of this resolution, and that the secretary hereby is directed to place a copy of each corporate resolution form so executed in the minute books of the Corporation;

RESOLVED FURTHER, that the president [include if applicable: and the treasurer] of the Corporation be the authorized signatory[ies] on any bank accounts established in the name and on behalf of the Corporation;

RESOLVED FURTHER, that the president [include if applicable: and the treasurer] of the Corporation [is/are] hereby authorized (1) to designate any other employee of the Corporation as an authorized signatory on any bank account established in the name and on behalf of the Corporation, if [include if applicable: either] the president [include if applicable: or the treasurer] deems the designation necessary or advisable, and in connection with that designation (2) to establish limitations on the authority of the designated signatory, including amounts or requirements for cosigners; and

RESOLVED FURTHER, that the secretary or any assistant secretary of the Corporation, when requested by the president [include if applicable: or the treasurer], will certify the adoption of these resolutions to any bank in which an account is established, together with a certificate of incumbency naming the persons then holding the offices of the Corporation.

Organization Expenses

RESOLVED, that the officers of the Corporation hereby are directed to pay all expenses properly incurred in connection with the organization of the Corporation.

Books and Records

RESOLVED, that the secretary of the Corporation hereby is instructed to purchase any record books, books of account, checks, stationery, or office supplies necessary or appropriate for the proper administration of the affairs of the Corporation.

Foreign Qualification

RESOLVED, that for the purpose of authorizing the Corporation to do business in any state or territory of the United States or any foreign country necessary for the Corporation to transact business, the officers of the Corporation hereby are authorized to appoint and substitute all necessary agents or attorneys for the service of process to execute, for and on behalf of the Corporation, all necessary certificates, reports, powers of attorney, and other such instruments as may be required by the laws of the state, territory, or country to authorize the Corporation to transact business therein and, whenever it is necessary for the Corporation to cease doing business and withdraw therefrom, (1) to revoke any appointment of agent or attorney for service of process and to file any certificates, reports, revocation of appointment, or surrender of authority necessary to terminate the authority of the Corporation to do business in any state, territory, or country; and (2) to execute all general corporate resolution forms that may be required to effect any of the foregoing, the resolution forms being hereby incorporated by reference and made a part of this resolution; and the secretary of the Corporation hereby is directed to place a copy of each corporate resolution form so executed in the minute books of the Corporation.

Issuance of Shares

RESOLVED, that the following shares of the Corporation’s Common Stock (“Common Stock”), \$[amount] par value per share, be issued to the following persons or entities in consideration of [the payment of cash equal to \$[amount] per share/[describe consideration]]:

<u>Name of Shareholder</u>	<u>Number of Shares</u>
[Name]	[number] shares

Repeat as necessary for all shareholders.

RESOLVED FURTHER, that on the Corporation’s receipt of the consideration described in the preceding resolution, the officers of the Corporation hereby are authorized and directed to take all action (including, without limitation, the preparation and delivery of share certificates) necessary or in their judgment appropriate to issue or cause to be issued the above-stated shares of Common Stock to [name[s] of shareholder[s]], with the shares to be deemed fully paid and nonassessable; and

RESOLVED FURTHER, that the form of share certificate attached hereto is hereby adopted to represent the shares of common stock, \$[amount] par value per share, of the Corporation.

General Implementing Authority

RESOLVED, that the officers of the Corporation hereby are authorized and directed on behalf of the Corporation to execute and deliver all other instruments, documents, and certificates, to pay all costs, fees, and taxes, and to take all other actions as may be in their judgment necessary, proper, or advisable to carry out and comply with the purposes and intent of the foregoing resolutions; and that all the actions of the officers of the Corporation that are consistent with the purposes and intent of these resolutions are in all respects hereby approved, ratified, confirmed, and adopted as the actions of the Corporation.

This consent may be signed in counterparts.

IN WITNESS WHEREOF, this consent has been signed to be effective [date].

[Name of director]

Repeat signature lines for all directors.

Form 12-6

[Preformation] Common Stock Subscription**[Name and address of corporation]**

Under the Texas Business Organizations Code, subscriptions for shares may be either preformation or postformation of a corporation. See Tex. Bus. Orgs. Code §§ 21.165, 21.166 for subscriptions entered into before the formation of a corporation and Tex. Bus. Orgs. Code § 21.165 for subscriptions after a corporation is formed. Notably, once the corporation is formed, the subscription represents a contract between the subscriber and the corporation.

I, **[name of subscriber]**, subscribe for **[number]** shares of common stock, par value **[\$amount]** per share (“Common Stock”), of **[name of corporation]**, a Texas corporation (the “Corporation”), at a price of **[\$amount]** per share and tender my check in the amount of **[\$amount]**, representing the purchase price for these shares of Common Stock.

I further acknowledge and agree to the following:

1. I represent that I (a) understand the risks associated with the proposed operations of the Corporation, (b) am able to bear the economic risk of an investment in the Common Stock and can afford to sustain a total loss of the investment, and (c) have such knowledge and experience in financial and business matters that I am capable of evaluating the merits and risks of the proposed investment in the Corporation.

2. I am purchasing the shares of Common Stock described herein for investment and not for distribution in contravention of state and federal securities laws and understand that the shares must be held indefinitely unless they are registered for resale under applicable securities laws or an exemption from registration is otherwise available.

3. I consent to the imprinting of legends on the certificates evidencing my Common Stock to the effects set forth in the paragraphs below:

See Tex. Bus. Orgs. Code § 1.005 regarding conspicuous information.

- (a) THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE LAWS (THE "SECURITIES ACTS"). THE SHARES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACTS OR AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION THAT SUCH REGISTRATION IS NOT REQUIRED.

Include the following if applicable. See Tex. Bus. Orgs. Code § 3.202(b).

- (b) THE CORPORATION IS AUTHORIZED TO ISSUE SHARES OF MORE THAN ONE CLASS OF STOCK OR SERIES PURSUANT TO THE AUTHORITY GRANTED IT UNDER ITS CERTIFICATE OF FORMATION. THE CORPORATION WILL FURNISH A COPY OF SUCH STATEMENT TO THE RECORD HOLDER OF THE CERTIFICATE WITHOUT CHARGE ON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS OR REGISTERED OFFICE.

Include the following if applicable. See Tex. Bus. Orgs. Code § 21.732.

- (c) THESE SHARES ARE ISSUED BY A CLOSE CORPORATION AS DEFINED BY THE TEXAS BUSINESS ORGANIZATIONS CODE. UNDER CHAPTER 21 OF THAT CODE, A SHAREHOLDERS' AGREEMENT MAY PROVIDE FOR MANAGEMENT OF A CLOSE CORPORATION BY THE SHAREHOLDERS OR IN OTHER WAYS DIFFERENT FROM AN ORDINARY CORPORATION. THIS MAY SUBJECT THE HOLDER OF THIS CERTIFICATE TO CERTAIN OBLIGATIONS AND LIABILITIES NOT OTHERWISE IMPOSED ON SHAREHOLDERS OF AN ORDINARY CORPORATION. ON A SALE OR

TRANSFER OF THESE SHARES, THE TRANSFEROR IS REQUIRED TO DELIVER TO THE TRANSFEREE A COMPLETE COPY OF ANY SHAREHOLDERS' AGREEMENT.

Include the following if applicable. See Tex. Bus. Orgs. Code § 3.202(d).

- (d) A RESTRICTION EXISTS PURSUANT TO A [title of document]. THE CORPORATION WILL FURNISH A COPY OF THIS DOCUMENT TO THE RECORD HOLDER OF THE CERTIFICATE WITHOUT CHARGE ON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS OR REGISTERED OFFICE.

Continue with the following. In the following clause, the length of duration is typically a six-month period unless otherwise provided. See Tex. Bus. Orgs. Code § 21.165(b).

4. I may not revoke this subscription for Common Stock during the [six-month/length of duration]] period following the date of this subscription.

Include the following clause if the subscription amount for the common stock is a preformation subscription or is otherwise not payable at the time of the subscription.

5. In case of default in the payment of any installment or call when payment is due, the Corporation may (a) proceed to collect the amount due in the same manner as any debt due the Corporation or, (b) provided I fail to pay the amount due within twenty days after written demand has been made, declare the subscription forfeited and retain any amount previously paid on the subscription.

Continue with the following.

6. This subscription may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, will constitute one and the same instrument. Further, it is understood and agreed that signatures submitted by facsimile transmission will be deemed to be, and will constitute, original signatures.

7. This subscription and the rights and obligations of the parties will be governed by and construed in accordance with the laws of the state of Texas.

Please issue my certificate in the name noted below and mail or otherwise deliver it to my address set forth under my signature.

Sincerely,

[Name of subscriber]

Name: [name]

Address: [address]

Date: [date]

Social Security or Taxpayer Identification Number: [number]

Acknowledged and agreed as of _____, 20____.

[Name of corporation]

[Name of officer], [title]

Form 12-7

Certificate Representing Ownership Interest
[For Corporation]

See Tex. Bus. Orgs. Code § 3.202 regarding the form and validity of certificates. Managerial officials authorized to sign certificates representing ownership interests must sign any certificate representing an ownership interest. Tex. Bus. Orgs. Code § 3.203. The certificate may contain an impression of the entity's seal, or a facsimile of the entity's seal may be printed on the certificate, but the certificate may not be issued in bearer form. Tex. Bus. Orgs. Code § 3.202(a).

When an ownership interest that is the subject of a demand for payment (made under section 10.356 of the Texas Business Organizations Code) is transferred, the new certificate must contain a reference to the demand and disclose the name of the original dissenting owner of the ownership interest. Tex. Bus. Orgs. Code § 10.359.

Each certificate representing shares issued by a close corporation must conspicuously state on the front or back of the certificate the exact language specified in section 21.732 of the Texas Business Organizations Code. *See* Tex. Bus. Orgs. Code § 21.732.

The following must appear on the front of the certificate. See Tex. Bus. Orgs. Code § 3.202(c)(1).

ORGANIZED UNDER THE LAWS OF THE STATE OF TEXAS

Continue with the following.

[Certificate number]

[Ownership interests represented by certificate]

[Name of corporation]

The following clause must appear on the front of the certificate. Choose "par value" if the ownership interests are shares, or include a statement that shares are without par value. See Tex. Bus. Orgs. Code § 3.202(c)(4).

[Name of corporation] is authorized to issue [number] [class of ownership interests] [include if applicable: designation of the series] [par value/[statement indicating that shares are without par value]].

Include the following if applicable.

THE OWNERSHIP INTERESTS REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO [A VOTING AGREEMENT/AN IRREVOCABLE PROXY/A DEMAND FOR PAYMENT UNDER SECTION 10.356 OF THE TEXAS BUSINESS ORGANIZATIONS CODE. **[Include a statement identifying the name of the original dissenting owner if there is a demand for payment under section 10.356.]]**.

Continue with the following. The following information must be stated on the front of the certificate. See Tex. Bus. Orgs. Code § 3.202(c)(2), (3).

[Name of person or entity to whom this certificate is issued]
[Number] [class of ownership interests] [include if applicable: designation of the series represented by the certificate]

[Date]

[Name of officer], [title]

[Name of officer], [title]

Continue with the following.

Include one of the two following clauses on the front or back of the certificate if the corporation is authorized to issue ownership interests of more than one class or series. See Tex. Bus. Orgs. Code § 3.202(b).

[Conspicuously state the designations, preferences, limitations, and relative rights as described in section 3.202(b)(1) of the Texas Business Organizations Code.]

Or

THE CORPORATION IS AUTHORIZED TO ISSUE SHARES OF MORE THAN ONE CLASS OF STOCK OR SERIES PURSUANT TO THE AUTHORITY GRANTED IT UNDER ITS CERTIFICATE OF FORMATION. THE CORPORATION WILL FURNISH A COPY OF SUCH STATEMENT TO THE RECORD HOLDER OF THE CERTIFICATE WITHOUT CHARGE ON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS OR REGISTERED OFFICE.

Continue with the following.

Include one of the four following options if applicable. See Tex. Bus. Orgs. Code § 3.202(d).

Option A: If you choose to include the following clause, it must appear on the front of the certificate. See Tex. Bus. Orgs. Code § 3.202(d)(1).

[Conspicuously state the restriction on transfer or registration of transfer of ownership interests represented by this certificate.]

Or

Option B: Note that this option has a set of two clauses. If you choose to include the following clauses, the first clause must appear on the front of the certificate, and the second clause must appear on the back of the certificate. See Tex. Bus. Orgs. Code § 3.202(d)(2).

TRANSFER OR REGISTRATION OF TRANSFER OF THE OWNERSHIP INTERESTS REPRESENTED BY THIS CERTIFICATE IS RESTRICTED. SEE REVERSE SIDE.

Reminder: Include the following clause on the back of the certificate only if you choose option B and included the preceding clause on the front of the certificate.

[State the restriction on transfer or registration of transfer of ownership interests represented by this certificate.]

Or

Option C: If you choose to include the following clause, it may appear on the front or the back of the certificate. See Tex. Bus. Orgs. Code § 3.202(d)(3)(A).

A RESTRICTION EXISTS PURSUANT TO A [title of document]. THE CORPORATION WILL FURNISH A COPY OF THIS DOCUMENT TO THE RECORD HOLDER OF THE CERTIFICATE WITHOUT CHARGE ON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS.

Or

Option D: If you choose to include the following clause, it may appear on the front or the back of the certificate. See Tex. Bus. Orgs. Code § 3.202(d)(3)(B).

[Conspicuously state that a restriction exists pursuant to a specified document and a statement that is in accordance with section 3.202(d)(3)(B) of the Texas Business Organizations Code.]

Continue with the following.

Include the following on the front or back of the certificate if applicable. See Tex. Bus. Orgs. Code § 21.732.

THESE SHARES ARE ISSUED BY A CLOSE CORPORATION AS DEFINED BY THE TEXAS BUSINESS ORGANIZATIONS CODE. UNDER CHAPTER 21 OF THAT CODE, A SHAREHOLDERS' AGREEMENT MAY PROVIDE FOR MANAGEMENT OF A CLOSE CORPORATION BY THE SHAREHOLDERS OR IN OTHER WAYS DIFFERENT FROM AN ORDINARY CORPORATION. THIS MAY SUBJECT THE HOLDER OF THIS CERTIFICATE TO CERTAIN OBLIGATIONS AND LIABILITIES NOT OTHERWISE IMPOSED ON SHAREHOLDERS OF AN ORDINARY CORPORATION. ON A SALE OR TRANSFER OF THESE SHARES, THE TRANSFEROR IS REQUIRED TO DELIVER TO THE TRANSFEREE A COMPLETE COPY OF ANY SHAREHOLDERS' AGREEMENT.

Include the following if applicable.

THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE LAWS (THE "SECURITIES ACTS"). THE SHARES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACTS OR AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION THAT SUCH REGISTRATION IS NOT REQUIRED.

Form 12-8

Affidavit of Lost Certificate Representing Ownership Interest

I, **[name of affiant]**, being first duly sworn under oath, depose and say:

1. My current address is **[address]**.
2. I am the legal and beneficial owner of the following ownership interest in **[name of corporation]**:

Certificate No.	Class	Number of Interests	Date of Issue	Registered in the Name of:
[certificate no.]	[class]	[number]	[date]	[name]

Repeat as necessary.

3. None of the above certificates, nor any of the rights of the owner therein, have in whole or in part been assigned, transferred, hypothecated, gifted, or otherwise disposed of.
4. I am entitled to the full and exclusive possession of the above certificates.
5. The circumstances giving rise to the loss, destruction, or theft of the certificates are as follows: **[describe circumstances.]**
6. The following efforts were made to locate the certificates: **[describe efforts.]**
7. I am making this Affidavit to request **[name of corporation]** to issue new certificates in lieu of those described above that have been lost, destroyed, or stolen. If new certificates are issued, I agree to surrender immediately to **[name of corporation]** any of the replaced certificates if I find them or if they are returned to me.
8. As an inducement for **[name of corporation]** to issue duplicate replacement certificates, I agree to fully indemnify and hold harmless **[name of corporation]** for any claim of ownership by any asserted owner or holder of the shares.

Dated: [date], in [city], [county] County, Texas.

[Name of affiant]

Notary Public, State of Texas

My commission expires:

_____, 20____

Form 12-9

See Tex. Bus. Orgs. Code §§ 21.168–.170 regarding stock rights, options, and convertible indebtedness.

**[Name of corporation]
[year] Stock Incentive Plan**

A. Purpose and Eligibility

The purpose of this [year] Stock Incentive Plan (the “Plan”) of [name of corporation], a Texas corporation (the “Corporation”), is to provide stock options and other equity interests in the Corporation (each an “Award”) to employees, officers, directors, consultants, and advisors of the Corporation and its Subsidiaries, all of whom are eligible to receive Awards under the Plan. Any person to whom an Award has been granted under the Plan is called a “Participant.” Additional definitions are contained in section B below and throughout the Plan.

B. Definitions

1. “IRC” means the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

2. “Corporation,” for purposes of eligibility under the Plan, will include any present or future subsidiary corporations of the Corporation, as defined in section 424(f) of the IRC (a “Subsidiary”), and any present or future parent corporation of the Corporation, as defined in section 424(e) of the IRC. For purposes of Awards other than Incentive Stock Options (as defined in section E(2) below), the term “Corporation” will include any other business venture in which the Corporation has a direct or indirect significant interest, as determined by the Board in its sole discretion, but only to the extent that, with respect to such an Award, the Corporation’s Common Stock constitutes “service recipient stock” under Treas. Reg. § 1.409A–1(b)(5)(iii)(E).

3. “Employee” for purposes of eligibility under the Plan (but not for purposes of section E(2) below) will include a person to whom an offer of employment has been extended by the Corporation.

C. Administration

1. *Administration by Board of Directors.* The Plan will be administered by the board of directors of the Corporation (the “Board”). The Board, in its sole discretion, will have the authority to grant and amend Awards, to adopt, amend, and repeal rules relating to the Plan, and to interpret and correct the provisions of the Plan and any Award. All decisions by the Board will be final and binding on all Participants and other interested persons. Neither the Corporation nor any member of the Board will be liable for any action or determination relating to the Plan.

2. *Appointment of Committees.* To the extent permitted by applicable law, the Board may delegate any or all of its powers under the Plan to one or more committees or subcommittees of the Board (a “Committee”). All references in the Plan to the Board will mean any such Committee or the Board. The provisions of this section C(2) will not amend or limit the applicability of any agreement pursuant to which the Corporation has agreed to limit the grant of Awards or to subject the grant of Awards to the approval of persons other than the Board.

3. *Delegation to Executive Officers.* To the extent permitted by applicable law, the Board may delegate to one or more executive officers of the Corporation the power to grant Awards and exercise such other powers under the Plan as the Board may determine, provided that the Board will fix the maximum number of Awards to be granted and the maximum number of shares issuable to any one Participant pursuant to Awards granted by such executive officers.

D. Stock Available for Awards

1. *Number of Shares.* Subject to adjustment under section D(3) below, the aggregate number of shares of Common Stock of the Corporation (the “Common Stock”) that may be issued pursuant to the Plan is [number] shares, of which [number] shares may be issued pursuant to incentive stock options as defined in section 422 of the IRC. If any Award expires or is terminated, surrendered, or forfeited, in whole or in part, the shares of Common Stock covered by that Award will again be available for the grant of Awards under the Plan, provided, however, that only shares forfeited back to the Corporation, shares canceled on account of termination, expiration, or lapse of an Award, shares surrendered in payment of the exercise price of an option, or shares withheld for payment of applicable employment taxes and/or withholding obligations resulting from the exercise of an option will again be available for grant of Incentive Stock Options under the Plan but will not increase the maximum number of shares that may be delivered pursuant to Incentive Stock Options. If shares of Common Stock issued under the Plan are repurchased by or surrendered or forfeited to the Corporation at no more than the Participant’s cost, those shares of Common Stock will again be available for the grant of Awards under the Plan, provided, however, that the cumulative number of such shares that may be so reissued under the Plan will not exceed [number]. Shares issued under the Plan may consist in whole or in part of authorized but unissued shares or treasury shares.

2. *Per-Participant Limit.* Subject to adjustment under section D(3) below, no Participant may be granted Awards during any one fiscal year to purchase more than [number] shares of Common Stock. Subject to adjustment under section D(3), no Participant may receive in any calendar year (a) Options relating to more than [number] shares of Common Stock or (b) Restricted Stock or Other Stock-Based Awards relating to more than [number] shares of Common Stock.

3. *Adjustment to Common Stock.* Upon any stock split, stock dividend, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, combination,

exchange of shares, liquidation, spin-off, split-up, or other similar change in capitalization or event, (a) the number and class of securities available for Awards under the Plan and the per-Participant share limit, (b) the number and class of securities, vesting schedule, and exercise price per share subject to each outstanding Option, (c) the repurchase price per security subject to repurchase, and (d) the terms of each other outstanding Award will be adjusted by the Corporation (or substituted Awards may be made) to the extent the Board will determine, in good faith, that such an adjustment (or substitution) is appropriate. If section H(5)(a) applies to any event, however, this section D(3) will not apply to that event.

E. Stock Options

1. *General.* The Board may grant options to purchase Common Stock (each, an “Option”) and determine the number of shares of Common Stock to be covered by each Option, the exercise price of each Option, the conditions and limitations applicable to the exercise of each Option, and the shares of Common Stock issued upon the exercise of each Option, including, without limitation, vesting provisions, repurchase provisions, and restrictions relating to applicable federal or state securities laws, as it considers advisable. Without limiting the generality of the foregoing, the Board may make the exercise of any Option subject to an agreement by the holder thereof to be a party to any other agreement, including, without limitation, an agreement not to engage in competition with the Corporation following termination of employment.

2. *Incentive Stock Options.* An Option that the Board intends to be an incentive stock option as defined in section 422 of the IRC (an “Incentive Stock Option”) will be granted only to Employees of the Corporation and will be subject to and construed consistently with the requirements of section 422 of the IRC. The Board and Corporation will have no liability if an Option or any part thereof intended to be an Incentive Stock Option does not qualify as such. An Option or any part thereof that does not qualify as an Incentive Stock Option is referred to herein as a “Nonstatutory Stock Option.” The Board may not grant

Incentive Stock Options under the Plan to any Employee that would permit the aggregate fair market value (determined on the date of grant of the Award) of the Common Stock with respect to which Incentive Stock Options are exercisable for the first time by the Employee during any calendar year to exceed \$100,000. To the extent any Option granted under this Plan that is designated as an Incentive Stock Option exceeds this limit or otherwise fails to qualify as an Incentive Stock Option, that Option (or any such portion thereof) will be a non-qualified Option.

Consult a tax adviser regarding the tax consequences to the corporation and to the individual of a stock option grant.

3. *Exercise Price.* The Board will establish the exercise price (or determine the method by which the exercise price will be determined) at the time each Option is granted and specify it in the applicable option agreement. [**Include if applicable:** The exercise price will in no event be less than the fair market value of the Corporation's Common Stock on the date of the grant of the Option.]

4. *Duration of Options.* Each Option will be exercisable at such times and subject to such terms and conditions as the Board may specify in the applicable option agreement.

5. *Exercise of Option.* Options may be exercised only by delivery to the Corporation of a written notice of exercise signed by the proper person together with payment in full as specified in section E(6) below for the number of shares for which the Option is exercised.

6. *Payment upon Exercise.* Shares of Common Stock purchased on the exercise of an Option will be paid for by one or any combination of—

- a. check payable to the order of the Corporation;
- b. except as otherwise explicitly provided in the applicable option agreement, and only if the Common Stock is then publicly traded, delivery of an irrevocable

cable and unconditional undertaking by a creditworthy broker to deliver promptly to the Corporation sufficient funds to pay the exercise price, or delivery by the Participant to the Corporation of a copy of irrevocable and unconditional instructions to a creditworthy broker to deliver promptly to the Corporation cash or a check sufficient to pay the exercise price; or

- c. to the extent explicitly permitted in the applicable option agreement, (1) delivery of shares of Common Stock owned by the Participant valued at fair market value (as determined by the Board or as determined under the applicable option agreement), (2) delivery to the Corporation by the Participant of a check in an amount equal to the par value of the shares purchased and delivery to the Corporation of a promissory note of the Participant in the principal amount of the rest of the aggregate exercise price, or (3) payment of other lawful consideration as the Board may determine.

F. Restricted Stock

1. *Grants.* The Board may grant Awards entitling recipients to acquire shares of Common Stock, subject to (a) delivery to the Corporation by the Participant of cash or other lawful consideration in an amount at least equal to the par value of the shares purchased and (b) the right of the Corporation to repurchase all or part of such shares at their issue price or other stated or formula price from the Participant if the conditions specified by the Board in the applicable Award are not satisfied before the end of any applicable restriction periods established by the Board for that Award (each, a “Restricted Stock Award”).

2. *Terms and Conditions.* The Board will determine the terms and conditions of any Restricted Stock Award. Any stock certificates issued under a Restricted Stock Award will be registered in the name of the Participant and, unless otherwise determined by the Board, deposited by the Participant, together with a stock power endorsed in blank, with the

Corporation (or its designee). After the expiration of any applicable restriction periods, the Corporation (or its designee) will deliver the certificates no longer subject to restrictions to the Participant or, if the Participant has died, to the beneficiary designated by a Participant, in a manner determined by the Board, to receive amounts due or exercise rights of the Participant in the event of the Participant's death (the "Designated Beneficiary"). In the absence of an effective designation by a Participant, the Designated Beneficiary will be the Participant's estate.

Under Treas. Reg. § 1.409A-1, stock appreciation rights that are issued with respect to stock that would be "service recipient stock" under Treas. Reg. § 1.409A-1(b)(5)(iii)(E) and that have an exercise price equal to the underlying stock's fair market value at the stock appreciation right's grant date will generally not be treated as nonqualified deferred compensation subject to I.R.C. § 409A. However, phantom stock awards and typical "restricted stock units" will generally be treated as nonqualified deferred compensation. Note that 26 U.S.C. § 409A was amended in December 2017, but as of the publication date of the latest supplement of this manual, Treas. Reg. § 1.409A has not been updated to reflect changes to that Code section. See Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, Title 1, § 13603(c)(2), 131 Stat. 2054. See also Treas. Reg. § 1.409A-1 and consult with tax counsel.

G. Other Stock-Based Awards

The Board will have the right to grant other Awards based on the Common Stock having the terms and conditions the Board determines, including, without limitation, the grant of shares based on certain conditions, the grant of securities convertible into Common Stock, and the grant of stock appreciation rights, phantom stock awards, or stock units.

H. General Provisions Applicable to Awards

1. *Transferability of Awards.* Except as the Board may otherwise determine, Awards may not be sold, assigned, transferred, pledged, or otherwise encumbered by the Participant, either voluntarily or by operation of law, except by will or the laws of descent and distribution and, during the life of the Participant, will be exercisable only by the Participant.

References to a Participant, to the extent relevant in the context, will include references to authorized transferees.

2. *Documentation.* Each Award under the Plan will be evidenced by a written instrument in the form the Board determines or executed by an officer of the Corporation under authority delegated by the Board. Each Award may contain terms and conditions in addition to those set forth in the Plan, provided that such terms and conditions do not contravene the provisions of the Plan.

3. *Board Discretion.* The terms of each type of Award need not be identical and the Board need not treat Participants uniformly.

4. *Termination of Status.* The Board will determine the effect on an Award of the disability, death, retirement, authorized leave of absence, or other change in the employment or other status of a Participant and the extent to which, and the period during which, the Participant or the Participant's legal representative, conservator, guardian, or Designated Beneficiary may exercise rights under the Award.

5. *Acquisition of the Corporation.*

- a. *Consequences of an Acquisition.* On the consummation of an Acquisition (as defined in section H(5)(b) below), the Board or the board of directors of the surviving or acquiring entity (as used in this section H(5)(a), also referred to as the Board) will, as to outstanding Awards (on the same terms or on such different terms as the Board will specify), make appropriate provision for the continuation of such Awards by the Corporation or the assumption of such Awards by the surviving or acquiring entity. The continuation or assumption of Awards in the event of Acquisition will be made by substituting on an equitable basis for the shares then subject to such Awards either (1) the consideration payable for outstanding shares of Common Stock in connection

with the Acquisition, (2) shares of stock or other ownership interests of the surviving or acquiring entity, or (3) other securities or consideration that the Board deems appropriate, the fair market value of which (as determined by the Board in its sole discretion) will not materially differ from the fair market value of the shares of Common Stock subject to such Awards immediately before the Acquisition. In addition to or in lieu of the foregoing, with respect to outstanding Options, the Board, on the same terms or on such different terms as the Board specifies, on written notice to the affected Participants, may provide that one or more Options then outstanding (1) must be exercised, in whole or in part, within a specified number of days of the date of the notice, at the end of which period the Options will terminate; or (2) will be terminated, in whole or in part, in exchange for a cash payment equal to the excess of the fair market value (as determined by the Board in its sole discretion) for the shares subject to such Options over the exercise price thereof. However, before terminating any Option or portion of an Option that is not vested or exercisable (other than in exchange for a cash payment), the Board must first accelerate in full the exercisability of the portion that is to be terminated. Unless otherwise determined by the Board (on the same terms or on such different terms as the Board specifies), any repurchase rights or other rights of the Corporation that relate to an Option or other Award will continue to apply to consideration, including, without limitation, cash, that has been substituted, assumed, or amended for an Option or other Award under this section H(5)(a). The Corporation may hold in escrow all or any portion of any such consideration to effectuate any continuing restrictions.

- b. *Acquisition Defined.* “Acquisition” means (1) the sale of the Corporation by merger, consolidation, or reorganization in which the shareholders of the Corporation immediately before that transaction in their capacity as share-

holders no longer own a majority of the outstanding equity securities of the Corporation (or its successor) entitling them to cast a majority of the votes entitled to be cast in the election of directors; (2) any sale of all or substantially all of the outstanding capital stock of the Corporation or any sale of all or substantially all of the assets of the Corporation requiring shareholder approval (in either case, other than in a spin-off or similar transaction); or (3) any other acquisition of the business of the Corporation, as determined by the Board.

- c. *Assumption of Awards on Certain Events.* In connection with a merger or consolidation of an entity with the Corporation or the acquisition by the Corporation of property or stock of an entity, the Board may grant Awards under the Plan in substitution for stock and stock-based awards issued by such an entity or its affiliates. The substitute Awards will be granted on the terms and conditions the Board considers appropriate in the circumstances.

6. *Withholding.* Each Participant will pay to the Corporation, or make provisions satisfactory to the Corporation for payment of, any taxes required by law to be withheld in connection with Awards to the Participant no later than the date of the event creating the tax liability. The Board may allow Participants to satisfy such tax obligations in whole or in part by transferring shares of Common Stock, including, without limitation, shares retained from the Award creating the tax obligation, valued at their fair market value (as determined by the Board or the applicable Award agreement). The Corporation may, to the extent permitted by law, deduct any such tax obligations from any payment of any kind otherwise due a Participant.

Any contemplated extension of the term or other modification of an option should be reviewed by tax counsel to ensure that it does not cause the option to be treated as nonqualified deferred compensation subject to I.R.C. § 409A. See Treas. Reg. § 1.409A-1(b)(5)(v).

7. *Amendment of Awards.* The Board may amend, modify, or terminate any outstanding Award, including, without limitation, substituting another Award of the same or a different type, changing the date of exercise or realization, and converting an Incentive Stock Option to a Nonstatutory Stock Option, provided that the Participant's consent to such action will be required unless the Board determines that the action, taking into account any related action, would not materially and adversely affect the Participant.

8. *Conditions on Delivery of Stock.* The Corporation will not be obligated to deliver any shares of Common Stock under the Plan or to remove restrictions from shares previously delivered under the Plan until (a) all conditions of the Award have been met or removed to the satisfaction of the Corporation; (b) in the opinion of the Corporation's counsel, all legal matters in connection with the issuance and delivery of the shares have been satisfied, including, without limitation, any applicable securities laws and any applicable stock exchange or stock market rules and regulations; and (c) the Participant has executed and delivered to the Corporation all representations or agreements the Corporation considers appropriate to satisfy the requirements of any applicable laws, rules, or regulations.

Acceleration of payment with respect to any stock-based awards that are treated as nonqualified deferred compensation under I.R.C. § 409A (see last sentence of comment box above section G.) could have unacceptable tax consequences under I.R.C. § 409A.

9. *Acceleration.* The Board may at any time provide that any Options will become immediately exercisable in full or in part, that any Restricted Stock Awards will be free of some or all restrictions, or that any other stock-based Awards may become exercisable in full or in part or free of some or all restrictions or conditions or otherwise realizable in full or in part, as the case may be, despite the fact that the foregoing actions may (a) cause the applica-

tion of the golden parachute provisions found in sections 280G and 4999 of the IRC if a change in control of the Corporation occurs or (b) disqualify all or part of the Option as an Incentive Stock Option. On the acceleration of the exercisability of one or more outstanding Options, including, without limitation, pursuant to section H(5)(a) above, the Board may provide, as a condition of full exercisability of any or all such Options, that the Common Stock or substituted consideration, including, without limitation, cash, as to which exercisability has been accelerated will be restricted and subject to forfeiture back to the Corporation at the option of the Corporation at the cost of the Common Stock or substituted consideration on termination of employment or other relationship, with the timing and other terms of vesting of the restricted stock or other consideration being equivalent to the timing and other terms of the superseded exercise schedule of the accelerated Option.

I. Miscellaneous

1. *No Right to Employment or Other Status.* No person will have any claim or right to be granted an Award, and the grant of an Award will not be construed as giving a Participant the right to continued employment or any other relationship with the Corporation. The Corporation expressly reserves the right at any time to dismiss or otherwise terminate its relationship with a Participant free from any liability or claim under the Plan.

2. *No Rights as Shareholder.* Subject to the provisions of the applicable Award, no Participant or Designated Beneficiary will have any rights as a shareholder with respect to any shares of Common Stock to be distributed under an Award until becoming the record holder of those shares of Common Stock.

3. *Effective Date and Term of Plan.* The Plan will become effective on the date on which it is adopted by the Board. No Awards will be granted under the Plan after ten years from the date on which the Plan was adopted by the Board, but Awards previously granted may extend beyond that date.

4. *Amendment of Plan.* The Board may amend, suspend, or terminate the Plan or any portion of the plan at any time; provided, however, that no amendment for which shareholder approval is required either (a) by any securities exchange or interdealer quotation system on which the Common Stock is listed or traded or (b) in order for the Plan and Options awarded under the Plan to continue to comply with sections 162(m), 421, and 422 of the IRC, including any successors to such sections, will be effective unless such amendment is approved by the requisite vote of the shareholders of the Corporation entitled to vote thereon.

5. *Governing Law.* The provisions of the Plan and all Awards made under the Plan will be governed by, enforced under, and interpreted in accordance with the laws of the state of Texas, without regard to any applicable conflict-of-laws principles that would apply the laws of any other jurisdiction.

6. *Section Headings.* The headings contained in this Plan are for reference purposes only and will not affect in any way the meaning or interpretation of this Plan.

7. *Gender and Number of Words.* When the context requires, the gender of all words used in this Plan includes the masculine, feminine, and neuter, and the number of all words includes the singular and the plural.

Form 12-10

See Tex. Bus. Orgs. Code §§ 21.168–.170 regarding stock rights, options, and convertible indebtedness.

[Name of corporation] Incentive Stock Option Agreement

[Name of corporation], a Texas corporation (the “Corporation”), grants the following stock option under its [year] Stock Incentive Plan. The terms and conditions attached to this agreement are incorporated into this option as an integral part of it.

This option and any shares acquired under this option are subject to the Corporation’s right of repurchase. The Optionee should consult with a tax or financial advisor concerning this option on grant and before exercise.

Name of optionee (the “Optionee”): [name]

Date of this option grant: [date]

Number of shares of the Corporation’s common stock subject to this option (“Shares”): [number]

For an option to qualify as an incentive stock option, the exercise price per share must be at least equal to the fair market value of the corporation’s stock on the date of grant as determined in accordance with the regulations promulgated under section 422 of the Internal Revenue Code. Also, the exercise price must be at least 110 percent of fair market value of the corporation’s stock on the date of grant if the optionee owns (or is deemed to own by reason of the attribution rules of section 424(d) of the Code) 10 percent of the combined voting power of all classes of stock of the corporation (or any parent or subsidiary organization) on the date of grant. 26 U.S.C. § 422. See also 26 U.S.C. § 424(d).

Option exercise price per share: \$[amount]

Number, if any, of Shares that may be purchased on or after the grant date: [number]

Shares subject to vesting schedule: **[specify]**

Vesting Start Date: **[date]**

Vesting Schedule

One year from Vesting Start Date: **[number]** Shares

Two years from Vesting Start Date: an additional **[number]** Shares

Three years from Vesting Start Date: an additional **[number]** Shares

Four years from Vesting Start Date: all remaining Shares

All vesting is dependent on the continuation of a Business Relationship with the Corporation, as provided herein.

Payment alternatives: **[specify any or all of sections G(1)(a) through (d) below, e.g., sections G(1)(a) through (c)]**

This option satisfies in full all commitments that the Corporation has to the Optionee with respect to the issuance of stock, stock options, or other equity securities.

[Name of corporation]

[Name of optionee], Optionee

[Name of officer], [title]

Street Address

City/State/Zip Code

[Name of corporation]
Incentive Stock Option Agreement—Incorporated
Terms and Conditions

A. Grant under Plan

Subject to the provisions of this section A, this option is granted under and governed by the Corporation's [year] Stock Incentive Plan (the "Plan"). Unless otherwise defined herein or as the context otherwise requires, capitalized terms used in this agreement will have the same meanings as in the Plan. Notwithstanding the foregoing, the grant of this option will be subject to and conditioned on the approval of the Plan by the Corporation's shareholders on or before the first anniversary of the date of grant. If approval of the Plan does not occur as described in the preceding sentence, this option will terminate and be of no further force or effect.

B. Grant as Incentive Stock Option

This option is intended to qualify as an incentive stock option under section 422 of the Internal Revenue Code of 1986, as amended (the "IRC").

C. Vesting of Option

1. *Vesting If Business Relationship Continues.* The Optionee may exercise this option on or after the date of this option for the number of Shares, if any, set forth in this agreement; provided, however, that in no event may the Optionee exercise this option after the expiration of ten years from the date of grant (five years from the date of grant if the Optionee owns or is deemed to own (by reason of the attribution rules of section 424(d) of the IRC) 10 percent of the combined voting power of all classes of stock of the Corporation (or any parent of the Corporation or Subsidiary) on the date of grant). If the Optionee has continuously maintained a Business Relationship (as defined in section C(2) below) with the Corporation through the dates listed on the vesting schedule set forth on the cover page of this agreement,

the Optionee may exercise this option for the additional number of Shares set forth opposite the applicable vesting date. Notwithstanding the foregoing, the Board may, in its discretion, accelerate the date that any installment of this option becomes exercisable. The foregoing rights are cumulative and may be exercised only before the date that is ten years from the date of this option.

2. *Definitions.* The following definitions will apply:

“Business Relationship” means service to the Corporation or its successor in the capacity of an Employee, officer, director, or consultant.

“Cause” means (a) gross negligence or willful malfeasance in the performance of the Optionee’s work or a breach of fiduciary duty or confidentiality obligations to the Corporation by the Optionee; (b) continued failure to follow the proper directions of the Optionee’s direct or indirect supervisor after written notice of an initial failure; (c) the commission by the Optionee of illegal conduct directly or indirectly involving the Corporation or any of its customers; (d) disregard by the Optionee of the material rules or material policies of the Corporation that is not cured within fifteen days after notice thereof from the Corporation; (e) intentional acts on the part of the Optionee that generate material adverse publicity toward or about the Corporation; or (f) unsatisfactory performance by the Optionee of his work for the Corporation, as determined by the Board in its sole discretion.

“Private Transaction” means any Acquisition in which the consideration received or retained by the holders of the then outstanding capital stock of the Corporation does not consist of (a) cash or cash equivalent consideration, (b) securities registered under the Securities Act (as defined in section H of this agreement), or (c) securities for which the Corporation or any other issuer thereof has agreed, including, without limitation, pursuant to a demand, to file a registration statement within ninety days of completion of the transaction for resale to the public pursuant to the Securities Act.

D. Termination of Business Relationship

1. *Termination.* If the Optionee's Business Relationship with the Corporation ceases, voluntarily or involuntarily, with or without Cause, no further installments of this option will become exercisable. In that event, this option will expire and may no longer be exercised after the passage of three months from the date of termination, but in no event later than the scheduled expiration date described in section C(1) of this agreement. Any determination under this agreement as to the status of a Business Relationship or other matters referred to above will be made in good faith by the Board.

2. *Employment Status.* For this option to be treated as an incentive stock option under section 422 of the IRC on exercise, the Optionee must have been an Employee at all times during the period beginning on the date of grant of this option and ending on the day three months before the date of exercise. For purposes of this agreement, with respect to employees of the Corporation, employment will not be considered as having been terminated during any leave of absence if the leave of absence has been approved in writing by the Corporation and if the written approval contractually obligates the Corporation to continue the employment of the Optionee after the approved period of absence. During such an approved leave of absence, vesting of this option will be suspended (and the period of the leave of absence will be added to all vesting dates) unless otherwise provided in the Corporation's written approval of the leave of absence. For purposes hereof, a termination of employment followed by another Business Relationship will be deemed a termination of the Business Relationship, ceasing all vesting, unless the Corporation enters into a written agreement related to the other Business Relationship in which it is specifically stated that there is no termination of the Business Relationship under this agreement. This option will not be affected by any change of employment within or among the Corporation and its Subsidiaries as long as the Optionee continuously remains an Employee of the Corporation or any Subsidiary.

3. *Termination for Cause.* If the Business Relationship of the Optionee is terminated for Cause, this option may no longer be exercised after the Optionee's receipt of written notice of the termination. In that event, the repurchase option described in section U of this agreement will also be applicable.

E. Death or Disability

1. *Death.* On the death of the Optionee while the Optionee maintains a Business Relationship with the Corporation, this option may be exercised (to the extent exercisable on the date of the Optionee's death) by the Optionee's estate, personal representative, or beneficiary to whom this option has been transferred pursuant to section J of this agreement any time within twelve months after the date of death, but not later than the scheduled expiration date.

2. *Disability.* If the Optionee ceases to maintain a Business Relationship with the Corporation by reason of disability, this option may be exercised (to the extent otherwise exercisable on the date of cessation of the Business Relationship) any time within twelve months after the cessation of the Business Relationship, but not later than the scheduled expiration date. For purposes hereof, "disability" means "permanent and total disability" as defined in section 22(e)(3) of the IRC.

F. Partial Exercise

This option may be exercised in part at any time and from time to time within the limits described in this agreement, except that this option may not be exercised for a fraction of a share.

G. Payment of Exercise Price

1. *Payment Options.* The exercise price will be paid by one or any combination of the following forms of payment that are applicable to this option, as indicated in this agreement:

- a. By check payable to the order of the Corporation.

Use of shares received on exercise to pay the exercise price will result in a disqualifying disposition under section 422 of the Internal Revenue Code, which will cause those shares to lose their incentive stock option status and result in ordinary income to the optionee. See 26 U.S.C. § 422.

- b. If the Common Stock is publicly traded, by delivery of an irrevocable and unconditional undertaking, satisfactory in form and substance to the Corporation, by a creditworthy broker to deliver promptly to the Corporation sufficient funds to pay the exercise price, or delivery by the Optionee to the Corporation of a copy of irrevocable and unconditional instructions, satisfactory in form and substance to the Corporation, to a creditworthy broker to deliver promptly to the Corporation cash or a check sufficient to pay the exercise price.
- c. Subject to section G(2) of this agreement, if the Common Stock is then traded on a national securities exchange or on the NASDAQ stock market (or successor trading system), by delivery of shares of Common Stock having a fair market value equal to the option price as of the date of exercise.
- d. Unless a loan to the Optionee by the Corporation is not permitted under applicable law, by check payable to the order of the Corporation for the par value of the shares being purchased plus delivery of the Optionee's three-year personal full-recourse promissory note for the balance of the exercise price,

bearing interest, payable not less than annually, at the then market rate, as determined by the Board.

Notwithstanding tender of the exercise price under this section G, no exercise will be effective unless the Optionee is in full compliance with this agreement, including, without limitation, section N of this agreement (regarding withholding taxes) and the Plan. In the case of section (G)(1)(c), fair market value as of the date of exercise will be determined as of the last business day for which prices or quotes are available before the date of exercise and will mean (a) the last reported sale price (on that date) of the Common Stock on the principal national securities exchange on which the Common Stock is traded, if the Common Stock is then traded on a national securities exchange; or (b) the last reported sale price (on that date) of the Common Stock on the NASDAQ stock market (or successor trading system), if the Common Stock is then traded on the NASDAQ stock market (or successor trading system).

2. *Limitations on Payment by Delivery of Common Stock.* If section G(1)(c) is applicable, and if the Optionee delivers shares of Common Stock held by the Optionee (“Old Stock”) to the Corporation in full or partial payment of the exercise price and the Old Stock is subject to restrictions or limitations imposed by agreement between the Optionee and the Corporation, an equivalent number of Shares will be subject to all restrictions and limitations applicable to the Old Stock to the extent that the Optionee paid for the Shares by delivery of Old Stock, in addition to any restrictions or limitations imposed by this agreement. Notwithstanding the foregoing, the Optionee may not pay any part of the exercise price by transferring shares of Common Stock to the Corporation unless the Common Stock has been owned by the Optionee free of any substantial risk of forfeiture for at least six months plus one day.

H. Securities Laws, Restrictions on Resale, and Additional Agreements

Until registered under the Securities Act of 1933, as amended, or any successor statute (the “Securities Act”), the Shares will be illiquid and will be deemed to be “restricted securi-

ties” for purposes of the Securities Act. Accordingly, such Shares must be sold in compliance with the registration requirements of the Securities Act and may need to be held indefinitely. Unless the Shares have been registered under the Securities Act, each certificate evidencing any of the Shares will bear a restrictive legend specified by the Corporation. To the extent that the Optionee will be bound by any agreement with the Corporation under which the Optionee has agreed to subject any Shares to restrictions, including without limitation restrictions on resale, then any actual or attempted transfer, sale, assignment, or hypothecation will be conditioned on and subject to that agreement, and the Corporation will be entitled to require compliance and evidence of compliance with that agreement as a condition to the issuance of any Shares.

I. Method of Exercising Option

Subject to the terms and conditions of this agreement, this option may be exercised by written notice to the Corporation at its principal executive office or to any transfer agent the Corporation designates. The notice must state the election to exercise this option and the number of Shares for which it is being exercised and be signed by the person or persons exercising this option. The notice must be accompanied by payment of the full purchase price of such shares, and the Corporation will deliver a certificate or certificates representing such Shares as soon as practicable after the notice is received. The certificate or certificates will be registered in the name of the person or persons exercising this option (or in the name of the Optionee and another person jointly, with right of survivorship, if this option is exercised by the Optionee and if the Optionee so requests in the notice). If this option is exercised pursuant to section E of this agreement by any person or persons other than the Optionee, the notice must be accompanied by appropriate proof of the right of the person or persons to exercise this option.

J. Option Not Transferable

This option is not transferable or assignable except by will or by the laws of descent and distribution. During the Optionee's lifetime, only the Optionee may exercise this option.

K. No Obligation to Exercise Option

The grant and acceptance of this option imposes no obligation on the Optionee to exercise it.

L. No Obligation to Continue Business Relationship

Neither the Plan, this agreement, nor the grant of this option imposes any obligation on the Corporation to continue the Optionee in employment or other Business Relationship.

M. Adjustments

Except as expressly provided in the Plan with respect to certain changes in the capitalization of the Corporation, no adjustment will be made for dividends or similar rights with record dates before the date of exercise of this option.

N. Withholding Taxes

If the Corporation in its discretion determines that it is obligated to withhold any tax in connection with the exercise of this option or in connection with the transfer of, or the lapse of restrictions on, any Shares or other property acquired under this option, the Optionee agrees that, as a condition to any exercise of this option, the Corporation may withhold from the Optionee's wages or other remuneration the appropriate amount of tax. At the discretion of the Corporation, the amount required to be withheld may be withheld in cash from wages or other remuneration or in kind from the Shares or other property otherwise deliverable to the Optionee on exercise of this option. The Optionee further agrees that, if the Corporation does not withhold an amount from the Optionee's wages or other remuneration sufficient to satisfy

the withholding obligation of the Corporation, the Optionee will reimburse the Corporation on demand, in cash, for the amount not withheld.

O. Restrictions on Transfer; Corporation's Right of First Refusal

1. *Exercise of Right.* Shares may not be transferred without the Corporation's written consent except by will, by the laws of descent and distribution, or in accordance with the provisions of this section O. If the Optionee desires to transfer all or any part of the Shares to any person other than the Corporation (an "Offeror"), the Optionee will (a) obtain in writing an irrevocable and unconditional *bona fide* offer (the "Offer") for the purchase thereof from the Offeror and (b) give written notice (the "Option Notice") to the Corporation setting forth the Optionee's desire to transfer the Shares. The Option Notice will be accompanied by a copy of the Offer and will set forth at least the name and address of the Offeror and the price and other material terms of the Offer. On receipt of the Option Notice, the Corporation will have an assignable option to purchase any or all of such Shares (the "Offered Shares") specified in the Option Notice, exercisable by giving a written counternotice to the Optionee within fifteen days after receipt of the Option Notice. If the Corporation or its assignees elects to purchase all Offered Shares, it will be obligated to purchase, and the Optionee will be obligated to sell to the Corporation or its assignees, the Offered Shares at the price and other material terms indicated in the Offer within thirty days from the date of delivery by the Corporation of the counternotice. To the extent that the consideration proposed to be paid by the Offeror for the Shares consists of property other than cash or a promissory note, the consideration required to be paid by the Corporation may consist of cash equal to the fair market value of such property, as determined in good faith by the Board.

2. *Sale of Shares to Offeror.* The Optionee may, for sixty days after the expiration of the thirty-day option period set forth in section O(1) of this agreement, sell to an Offeror, under the terms of the Offer, all Offered Shares not purchased or agreed to be purchased by the Corporation or its assignees, provided, however, that the Optionee will not sell such

Shares to an Offeror if that Offeror is a competitor of the Corporation and the Corporation gives written notice to the Optionee, within thirty days of its receipt of the Option Notice, stating that the Optionee must not sell his Shares to that Offeror. Further, before the sale of such Shares to an Offeror, that Offeror must execute an agreement with the Corporation under which the Offeror agrees to be subject to the restrictions set forth in this section O. If any or all of the Shares are not sold pursuant to an Offer within the time permitted in this section, the unsold Shares will remain subject to the terms of this section O.

3. *Failure to Deliver Shares.* If the Optionee (or his legal representative) becomes obligated to sell Shares under this section O but fails to deliver such Shares to the Corporation in accordance with the terms of this agreement, the Corporation may, at its option, in addition to all other remedies it may have, mail or deliver to the Optionee the purchase price for such Shares. The Corporation (a) will cancel on its books the certificate or certificates representing such Shares to be sold and (b) will issue, in lieu thereof, a new certificate or certificates in the name of the Corporation representing such Shares (or cancel such Shares), and then all of the Optionee's rights in such Shares will terminate.

4. *Expiration of Corporation's Right of First Refusal and Transfer Restrictions.* The first-refusal rights of the Corporation and the transfer restrictions set forth in this section O will expire as to Shares on the earliest of (a) the tenth anniversary of the date of this agreement, (b) immediately before the closing of the first underwritten public offering of shares of Common Stock by the Corporation pursuant to an effective registration statement filed under the Securities Act, or (c) the occurrence of an Acquisition that is not a Private Transaction.

5. *Conflicting or Concurrent Agreements.* Notwithstanding this section O, as long as the Corporation and the Optionee are parties to an agreement containing first-refusal provisions regarding the Shares similar to the foregoing, including without limitation any agreement under which the Optionee grants first-refusal or similar rights to any third party with the

consent of the Corporation or in connection with any financing transaction by the Corporation, such other agreement will control.

P. Early Disposition

The Optionee agrees to notify the Corporation in writing immediately after the Optionee transfers any Shares, if the transfer occurs on or before the later of (1) the date that is two years after the date of this agreement or (2) the date that is one year after the date on which the Optionee acquired the Shares. The Optionee also agrees to provide the Corporation with any information concerning the transfer required by the Corporation for tax purposes. The provisions of this section P will not be deemed to waive any of the provisions of section O of this agreement.

Q. Lockup Agreement

The Optionee agrees that if the Corporation effects an initial underwritten public offering of shares of common stock registered under the Securities Act, the Shares may not be sold, offered for sale, or otherwise disposed of, directly or indirectly, by the Optionee without the prior written consent of the managing underwriters of the offering, for the period of time after the execution of an underwriting agreement in connection with the offering that all the Corporation's then directors and executive officers agree to be similarly bound (regarding any of their shares of common stock).

R. Arbitration

Except as provided in section U of this agreement regarding any valuation dispute under that section, any dispute, controversy, or claim arising out of, in connection with, or relating to the performance of this agreement or its termination will be settled by arbitration in [county] County, Texas, under the then-effective rules of the American Arbitration Associa-

tion. Any award will be final, binding, and conclusive on the parties, and judgment rendered on the award may be entered in any court having jurisdiction.

S. Provision of Documentation to Optionee

By signing this agreement, the Optionee acknowledges receipt of a copy of this agreement and a copy of the Plan.

T. Miscellaneous

1. *Notices.* All notices hereunder will be in writing and will be deemed given when sent by mail or delivered in person or by courier, (a) if to the Optionee, to the address set forth above or at the address then shown on the records of the Corporation, and (b) if to the Corporation, to the Corporation's principal executive offices to the attention of the corporate secretary.

2. *Entire Agreement; Modification.* Together with the Plan, this agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all proposals, written or oral, and all other communications between the parties regarding the subject matter of this agreement. This agreement may be modified, amended, or rescinded only by a written agreement executed by both parties.

3. *Fractional Shares.* If this option becomes exercisable for a fraction of a Share because of the adjustment provisions contained in the Plan, the fraction will be rounded down.

4. *Issuances of Securities; Changes in Capital Structure.* Except as expressly provided in this agreement or in the Plan, no issuance by the Corporation of shares of stock of any class or securities convertible into shares of stock of any class will affect, and no adjustment by reason thereof will be made with respect to, the number or price of Shares subject to this option. No adjustments need be made for dividends paid in cash or in property other than securities of the Corporation. If there is any change in the Common Stock of the Corporation

through merger, consolidation, reorganization, recapitalization, stock dividend, stock split, combination or exchange of shares, spin-off, split-up, or other similar change in capitalization or event, the restrictions contained in this agreement will apply with equal force to additional or substitute securities, if any, received by the Optionee in exchange for, or by virtue of his ownership of, Shares, except as otherwise determined by the Board.

5. *Severability.* The unenforceability of any provision of this agreement will in no way affect the enforceability of any other provision.

6. *Successors and Assigns.* Nothing in this agreement, express or implied, is intended to confer on any party, other than the parties hereto and their respective permitted assigns, any rights, remedies, obligations, or liabilities under or by reason of this agreement, and no person who is not a party to this agreement may rely on the terms except as otherwise set out. This agreement will be binding on and inure to the benefit of the parties hereto and their respective successors and assigns, subject to the limitations set forth in sections J and O of this agreement.

7. *Governing Law.* This agreement will be governed by, enforced under, and interpreted in accordance with the laws of the state of Texas, without regard to any applicable conflict-of-laws principles that would apply the laws of any other jurisdiction.

Include the following boilerplate provisions if applicable.

8. *Assignment.* No party to this agreement may assign its rights or delegate its obligations hereunder without the prior written consent of each party. Any such attempted assignment will be void *ab initio*.

And/Or

9. *Counterparts.* This agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which will constitute one instrument.

And/Or

10. *Waiver.* No term or provision of this agreement may be waived or modified unless such waiver or modification is in writing and executed by all the parties hereto. Any waiver by any party hereto of a breach or failure to perform will not constitute a waiver of any subsequent breach or failure.

And/Or

11. *Further Assurances.* The parties agree to take further actions and execute and deliver other documents, certificates, agreements, and other instruments as may be reasonably necessary or desirable to implement transactions contemplated by this agreement.

And/Or

12. *Section Headings.* The headings contained in this agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this agreement.

And/Or

13. *Gender and Number of Words.* When the context requires, the gender of all words used in this agreement includes the masculine, feminine, and neuter, and the number of all words includes the singular and the plural.

Continue with the following.

U. Corporation's Right of Repurchase of Shares

1. *Right of Repurchase.* The Corporation will have the assignable right (the "Repurchase Right") to repurchase from the Optionee all, but not less than all, the Shares purchased from the Corporation under this option on the occurrence of any of the events specified in section U(2) of this agreement (a "Repurchase Event"). The Repurchase Right may be exercised within sixty days following the date the Corporation receives actual knowledge of a Repurchase Event (the "Repurchase Period"). The Repurchase Right may be exercised by the

Corporation or its assignees only by giving the holder of the Shares written notice during the Repurchase Period of its intention to exercise the Repurchase Right and, together with the notice, tendering to the holder an amount (the "Repurchase Price") equal to (a) in the case of an event specified in section U(2)(b) or (c) of this agreement, the greater of the purchase price or the fair market value of the Shares; or (b) in the case of an event specified in section U(2)(a) or (d) of this agreement, the lesser of the purchase price or the fair market value of the Shares. On timely exercise of the Repurchase Right in the manner provided in this section U(1), the holder will deliver to the Corporation or its assignees the stock certificate or certificates representing the Shares being repurchased, duly endorsed, and free and clear of any liens, charges, or encumbrances.

If Shares are not purchased under the Repurchase Right, the Optionee and his successor in interest, if any, will hold any such Shares subject to all the provisions of this agreement.

2. *Right to Exercise Repurchase Right.* The Corporation or its assignees will have the Repurchase Right on the occurrence of any of the following Repurchase Events:

- a. The voluntary termination of the Optionee's Business Relationship with the Corporation for any reason.
- b. The receivership, bankruptcy, or other creditor proceeding involving the Optionee or the taking of any of the Optionee's Shares by legal process, such as a levy of execution.
- c. Distribution or transfer of record title to any of the Shares held by the Optionee to his spouse as the spouse's separate property, under a decree of dissolution, operation of law, divorce, or property settlement agreement or for any other reason, except as may be otherwise permitted by the Corporation, the involuntary termination of the Optionee's employment with the Cor-

poration other than for Cause, or any termination as a result of death or disability.

d. The termination of the Optionee's Business Relationship for Cause.

3. *Determination of Fair Market Value.* For the purpose of this section U, the fair market value of the Shares will be determined by the Board in its sole discretion as of the date of the Repurchase Event. If the Optionee disagrees with the Board's determination of the fair market value (the "Board Determination"), the Optionee will notify the Board in writing (the "Dispute Notification") that the Optionee wishes to dispute the determination. If the dispute is not resolved between the Board and the Optionee within fifteen days of receipt of the Dispute Notification, the Board will appoint a third-party expert in valuing companies that are comparable to the Corporation to conduct a determination of the fair market value (the "Third-Party Determination"). The Third-Party Determination will be conclusive and binding on the Board and the Optionee. If the Third-Party Determination is within [percent] percent of the Board Determination, the Optionee will bear the costs incurred in obtaining the Third-Party Determination. If the Third-Party Determination differs from the Board Determination by [percent] percent or more, the Corporation will bear the costs.

4. *Repurchase Procedure.* Any repurchase of Shares by the Corporation or its assignees will take place at the principal executive offices of the Corporation at the time and date set by the Corporation. The sale will be accomplished by the Optionee's delivery to the Corporation or its assignees of a certificate or certificates evidencing the repurchased Shares, duly endorsed for transfer to the Corporation or its assignees, and payment to the Optionee by the Corporation or its assignees of the Repurchase Price by check for the repurchased Shares or by cancellation of indebtedness owed to the Corporation or its assignees by the Optionee. If payment is by check, the check may be delivered by mail. On [mailing/delivery] of a check in payment of the Repurchase Price or cancellation of indebtedness, the Corporation or its assignees will become the legal and beneficial owner of the Shares being repurchased and all rights and interests therein, and the Corporation will have the right to transfer to its own name or to the name of its assignees the Shares so repurchased.

5. *Expiration of Repurchase Right.* The Repurchase Right will remain in effect until such time, if ever, as (a) the Shares are transferred in accordance with section O of this agreement or (b) as to section U(2)(b) and (c) of this agreement, a distribution to the public of shares of Common Stock is made by the Corporation under an effective registration statement filed under the Securities Act.

Form 12-11

See Tex. Bus. Orgs. Code §§ 21.168–.170 regarding stock rights, options, and convertible indebtedness.

[Name of corporation]
Nonqualified Stock Option Agreement

[Name of corporation], a Texas corporation (the “Corporation”), grants the following stock option under its **[year]** Stock Incentive Plan. The terms and conditions attached to this agreement are incorporated into this option as an integral part of it.

This option and any shares acquired under this option are subject to the Corporation’s right of repurchase. The Optionee should consult with a tax or financial advisor concerning this option on grant and before exercise.

Name of optionee (the “Optionee”): **[name]**

Date of this option grant: **[date]**

Number of shares of the Corporation’s common stock subject to this option (“Shares”): **[number]**

Consult a tax adviser regarding the tax consequences to the corporation and to the individual of a stock option grant.
--

Option exercise price per share: **[\$amount]**

Number, if any, of Shares that may be purchased on or after the grant date: **[number]**

Shares subject to vesting schedule: **[specify]**

Vesting Start Date: **[date]**

Vesting Schedule

One year from Vesting Start Date: [number] Shares

Two years from Vesting Start Date: an additional [number] Shares

Three years from Vesting Start Date: an additional [number] Shares

Four years from Vesting Start Date: all remaining Shares

All vesting is dependent on the continuation of a Business Relationship with the Corporation, as provided herein.

Payment alternatives: [specify any or all of sections G(1)(a) through (d) below, e.g., sections G(1)(a) through (c)]

This option satisfies in full all commitments that the Corporation has to the Optionee with respect to the issuance of stock, stock options, or other equity securities.

[Name of corporation]

[Name of optionee], Optionee

[Name of officer], [title]

Street Address

City/State/Zip Code

[Name of corporation]
Nonqualified Stock Option Agreement—Incorporated
Terms and Conditions

A. Grant under Plan

This option is granted under and governed by the Corporation's [year] Stock Incentive Plan (the "Plan") and, unless otherwise defined herein or as the context otherwise requires, capitalized terms used herein will have the same meanings as in the Plan.

B. Grant as Nonqualified Stock Option

This option is not intended to qualify as an incentive stock option under section 422 of the Internal Revenue Code of 1986, as amended (the "IRC").

C. Vesting of Option

1. *Vesting If Business Relationship Continues.* The Optionee may exercise this option on or after the date of this option for the number of Shares, if any, set forth in this agreement. If the Optionee has continuously maintained a Business Relationship (as defined in section C(2) below) with the Corporation through the dates listed on the vesting schedule set forth on the cover page of this agreement, the Optionee may exercise this option for the additional number of Shares set opposite the applicable vesting date. Notwithstanding the foregoing, the Board may, in its discretion, accelerate the date that any installment of this option becomes exercisable. The foregoing rights are cumulative and may be exercised only before the date that is ten years from the date of this option.

2. *Definitions.* The following definitions will apply:

"Business Relationship" means service to the Corporation or its successor in the capacity of an Employee, officer, director, or consultant.

“Cause” means (a) gross negligence or willful malfeasance in the performance of the Optionee’s work or a breach of fiduciary duty or confidentiality obligations to the Corporation by the Optionee; (b) continued failure to follow the proper directions of the Optionee’s direct or indirect supervisor after written notice of an initial failure; (c) the commission by the Optionee of illegal conduct directly or indirectly involving the Corporation or any of its customers; (d) disregard by the Optionee of the material rules or material policies of the Corporation that is not cured within fifteen days after notice thereof from the Corporation; (e) intentional acts on the part of the Optionee that generate material adverse publicity toward or about the Corporation; or (f) unsatisfactory performance by the Optionee of his work for the Corporation, as determined by the Board in its sole discretion.

“Private Transaction” means any Acquisition in which the consideration received or retained by the holders of the then outstanding capital stock of the Corporation does not consist of (a) cash or cash equivalent consideration, (b) securities registered under the Securities Act (as defined in section H of this agreement), or (c) securities for which the Corporation or any other issuer thereof has agreed, including, without limitation, pursuant to a demand, to file a registration statement within ninety days of completion of the transaction for resale to the public pursuant to the Securities Act.

D. Termination of Business Relationship

1. *Termination.* If the Optionee’s Business Relationship with the Corporation ceases, voluntarily or involuntarily, with or without Cause, no further installments of this option will become exercisable. In that event, this option will expire and may no longer be exercised after the passage of three months from the date of termination, but in no event later than the scheduled expiration date described in section C(1) of this agreement. Any determination under this agreement as to the status of a Business Relationship or other matters referred to above will be made in good faith by the Board.

2. *Employment Status.* For purposes of this agreement, with respect to Employees of the Corporation, employment will not be considered as having been terminated during any leave of absence if the leave of absence has been approved in writing by the Corporation and if the written approval contractually obligates the Corporation to continue the employment of the Optionee after the approved period of absence. During such an approved leave of absence, vesting of this option will be suspended (and the period of the leave of absence will be added to all vesting dates) unless otherwise provided in the Corporation's written approval of the leave of absence. For purposes hereof, a termination of employment followed by another Business Relationship will be deemed a termination of the Business Relationship, ceasing all vesting, unless the Corporation enters into a written agreement related to the other Business Relationship in which it is specifically stated that there is no termination of the Business Relationship under this agreement. This option will not be affected by any change of employment within or among the Corporation and its Subsidiaries as long as the Optionee continuously remains an Employee of the Corporation or any Subsidiary.

3. *Termination for Cause.* If the Business Relationship of the Optionee is terminated for Cause, this option may no longer be exercised after the Optionee's receipt of written notice of the termination. In that event, the repurchase option described in section U of this agreement will also be applicable.

E. Death or Disability

1. *Death.* On the death of the Optionee while the Optionee maintains a Business Relationship with the Corporation, this option may be exercised (to the extent exercisable on the date of the Optionee's death) by the Optionee's estate, personal representative, or beneficiary to whom this option has been transferred pursuant to section J of this agreement any time within twelve months after the date of death, but not later than the scheduled expiration date.

2. *Disability.* If the Optionee ceases to maintain a Business Relationship with the Corporation by reason of disability, this option may be exercised (to the extent otherwise exercisable on the date of cessation of the Business Relationship) any time within twelve months after the cessation of the Business Relationship, but not later than the scheduled expiration date. For purposes hereof, “disability” means “permanent and total disability” as defined in section 22(e)(3) of the IRC.

F. Partial Exercise

This option may be exercised in part at any time and from time to time within the limits described in this agreement, except that this option may not be exercised for a fraction of a share.

G. Payment of Exercise Price

1. *Payment Options.* The exercise price will be paid by one or any combination of the following forms of payment that are applicable to this option, as indicated in this agreement:

- a. By check payable to the order of the Corporation.
- b. If the Common Stock is publicly traded, by delivery of an irrevocable and unconditional undertaking, satisfactory in form and substance to the Corporation, by a creditworthy broker to deliver promptly to the Corporation sufficient funds to pay the exercise price, or delivery by the Optionee to the Corporation of a copy of irrevocable and unconditional instructions, satisfactory in form and substance to the Corporation, to a creditworthy broker to deliver promptly to the Corporation cash or a check sufficient to pay the exercise price.

- c. Subject to section G(2) of this agreement, if the Common Stock is then traded on a national securities exchange or on the NASDAQ stock market (or successor trading system), by delivery of shares of Common Stock having a fair market value equal to the option price as of the date of exercise.
- d. Unless a loan to the Optionee by the Corporation is not permitted under applicable law, by check payable to the order of the Corporation for the par value of the shares being purchased plus delivery of the Optionee's three-year personal full-recourse promissory note for the balance of the exercise price, bearing interest, payable not less than annually, at the then market rate, as determined by the Board.

Notwithstanding tender of the exercise price under this section G, no exercise will be effective unless the Optionee is in full compliance with this agreement, including, without limitation, section N of this agreement (regarding withholding taxes) and the Plan. In the case of section (G)(1)(c), fair market value as of the date of exercise will be determined as of the last business day for which prices or quotes are available before the date of exercise and will mean (a) the last reported sale price (on that date) of the Common Stock on the principal national securities exchange on which the Common Stock is traded, if the Common Stock is then traded on a national securities exchange; or (b) the last reported sale price (on that date) of the Common Stock on the NASDAQ stock market (or successor trading system), if the Common Stock is then traded on the NASDAQ stock market (or successor trading system).

2. *Limitations on Payment by Delivery of Common Stock.* If section G(1)(c) is applicable, and if the Optionee delivers shares of Common Stock held by the Optionee ("Old Stock") to the Corporation in full or partial payment of the exercise price and the Old Stock is subject to restrictions or limitations imposed by agreement between the Optionee and the Corporation, an equivalent number of Shares will be subject to all restrictions and limitations applicable to the Old Stock to the extent that the Optionee paid for the Shares by delivery of

Old Stock, in addition to any restrictions or limitations imposed by this agreement. Notwithstanding the foregoing, the Optionee may not pay any part of the exercise price by transferring shares of Common Stock to the Corporation unless the Common Stock has been owned by the Optionee free of any substantial risk of forfeiture for at least six months plus one day.

H. Securities Laws, Restrictions on Resale, and Additional Agreements

Until registered under the Securities Act of 1933, as amended, or any successor statute (the "Securities Act"), the Shares will be illiquid and will be deemed to be "restricted securities" for purposes of the Securities Act. Accordingly, such Shares must be sold in compliance with the registration requirements of the Securities Act and may need to be held indefinitely. Unless the Shares have been registered under the Securities Act, each certificate evidencing any of the Shares will bear a restrictive legend specified by the Corporation. To the extent that the Optionee will be bound by any agreement with the Corporation under which the Optionee has agreed to subject any Shares to restrictions, including without limitation restrictions on resale, then any actual or attempted transfer, sale, assignment, or hypothecation will be conditioned on and subject to that agreement, and the Corporation will be entitled to require compliance and evidence of compliance with that agreement as a condition to the issuance of any Shares.

I. Method of Exercising Option

Subject to the terms and conditions of this agreement, this option may be exercised by written notice to the Corporation at its principal executive office or to any transfer agent the Corporation designates. The notice must state the election to exercise this option and the number of Shares for which it is being exercised and be signed by the person or persons exercising this option. The notice must be accompanied by payment of the full purchase price of such shares, and the Corporation will deliver a certificate or certificates representing such Shares as soon as practicable after the notice is received. The certificate or certificates will be registered

in the name of the person or persons exercising this option (or in the name of the Optionee and another person jointly, with right of survivorship, if this option is exercised by the Optionee and if the Optionee so requests in the notice). If this option is exercised pursuant to section E of this agreement by any person or persons other than the Optionee, the notice must be accompanied by appropriate proof of the right of the person or persons to exercise this option.

J. Option Not Transferable

This option is not transferable or assignable except by will or by the laws of descent and distribution. During the Optionee's lifetime, only the Optionee may exercise this option.

K. No Obligation to Exercise Option

The grant and acceptance of this option imposes no obligation on the Optionee to exercise it.

L. No Obligation to Continue Business Relationship

Neither the Plan, this agreement, nor the grant of this option imposes any obligation on the Corporation to continue the Optionee in employment or other Business Relationship.

M. Adjustments

Except as expressly provided in the Plan with respect to certain changes in the capitalization of the Corporation, no adjustment will be made for dividends or similar rights with record dates before the date of exercise of this option.

N. Withholding Taxes

If the Corporation in its discretion determines that it is obligated to withhold any tax in connection with the exercise of this option or in connection with the transfer of, or the lapse of restrictions on, any Shares or other property acquired under this option, the Optionee, as a

condition to the exercise of this option or the receipt of property acquired under this option, will pay to or deposit with the Corporation, in cash, the amount of any such withholding obligation. In addition, to the extent that the Corporation will ever become obligated to withhold any tax in connection with the exercise of this option, or in connection with the transfer of, or the lapse of restrictions on, any shares of Common Stock or other property acquired under this option, the Optionee agrees that the Corporation may, in addition to its right to require a deposit of taxes under the preceding sentence, withhold from the Optionee's wages or other remuneration the appropriate amount of tax. At the discretion of the Corporation, the amount required to be withheld may be withheld in cash from wages or other remuneration or in kind from the shares of Common Stock or other property otherwise deliverable to the Optionee on exercise of this option. The Optionee further agrees that, if the Corporation does not withhold an amount from the Optionee's wages or other remuneration sufficient to satisfy the withholding obligation of the Corporation, the Optionee will reimburse the Corporation on demand, in cash, for the amount not withheld.

O. Restrictions on Transfer; Corporation's Right of First Refusal

1. *Exercise of Right.* Shares may not be transferred without the Corporation's written consent except by will, by the laws of descent and distribution, or in accordance with the provisions of this section O. If the Optionee desires to transfer all or any part of the Shares to any person other than the Corporation (an "Offeror"), the Optionee will (a) obtain in writing an irrevocable and unconditional *bona fide* offer (the "Offer") for the purchase thereof from the Offeror and (b) give written notice (the "Option Notice") to the Corporation setting forth the Optionee's desire to transfer the Shares. The Option Notice will be accompanied by a copy of the Offer and will set forth at least the name and address of the Offeror and the price and other material terms of the Offer. On receipt of the Option Notice, the Corporation will have an assignable option to purchase any or all of such Shares (the "Offered Shares") specified in the Option Notice, exercisable by giving a written counter-notice to the Optionee within fif-

teen days after receipt of the Option Notice. If the Corporation or its assignees elects to purchase all Offered Shares, it will be obligated to purchase, and the Optionee will be obligated to sell to the Corporation or its assignees, the Offered Shares at the price and other material terms indicated in the Offer within thirty days from the date of delivery by the Corporation of the counternotice. To the extent that the consideration proposed to be paid by the Offeror for the Shares consists of property other than cash or a promissory note, the consideration required to be paid by the Corporation may consist of cash equal to the fair market value of such property, as determined in good faith by the Board.

2. *Sale of Shares to Offeror.* The Optionee may, for sixty days after the expiration of the thirty-day option period set forth in section O(1) of this agreement, sell to an Offeror, under the terms of the Offer, all Offered Shares not purchased or agreed to be purchased by the Corporation or its assignees, provided, however, that the Optionee will not sell such Shares to an Offeror if that Offeror is a competitor of the Corporation and the Corporation gives written notice to the Optionee, within thirty days of its receipt of the Option Notice, stating that the Optionee must not sell his Shares to that Offeror. Further, before the sale of such Shares to an Offeror, that Offeror must execute an agreement with the Corporation under which the Offeror agrees to be subject to the restrictions set forth in this section O. If any or all of the Shares are not sold pursuant to an Offer within the time permitted in this section, the unsold Shares will remain subject to the terms of this section O.

3. *Failure to Deliver Shares.* If the Optionee (or his legal representative) becomes obligated to sell Shares under this section O but fails to deliver such Shares to the Corporation in accordance with the terms of this agreement, the Corporation may, at its option, in addition to all other remedies it may have, mail or deliver to the Optionee the purchase price for such Shares. The Corporation (a) will cancel on its books the certificate or certificates representing such Shares to be sold and (b) will issue, in lieu thereof, a new certificate or certificates in the

name of the Corporation representing such Shares (or cancel such Shares), and then all of the Optionee's rights in such Shares will terminate.

4. *Expiration of Corporation's Right of First Refusal and Transfer Restrictions.*

The first-refusal rights of the Corporation and the transfer restrictions set forth in this section O will expire as to Shares on the earliest of (a) the tenth anniversary of the date of this agreement, (b) immediately before the closing of the first underwritten public offering of shares of Common Stock by the Corporation pursuant to an effective registration statement filed under the Securities Act, or (c) the occurrence of an Acquisition that is not a Private Transaction.

5. *Conflicting or Concurrent Agreements.* Notwithstanding this section O, as long as the Corporation and the Optionee are parties to an agreement containing first-refusal provisions regarding the Shares similar to the foregoing, including without limitation any agreement under which the Optionee grants first-refusal or similar rights to any third party with the consent of the Corporation or in connection with any financing transaction by the Corporation, such other agreement will control.

P. Early Disposition

The Optionee agrees to notify the Corporation in writing immediately after the Optionee transfers any Shares, if the transfer occurs on or before the later of (1) the date that is two years after the date of this agreement or (2) the date that is one year after the date on which the Optionee acquired the Shares. The Optionee also agrees to provide the Corporation with any information concerning the transfer required by the Corporation for tax purposes. The provisions of this section P will not be deemed to waive any of the provisions of section O of this agreement.

Q. Lockup Agreement

The Optionee agrees that if the Corporation effects an initial underwritten public offering of shares of Common Stock registered under the Securities Act, the Shares may not be sold, offered for sale, or otherwise disposed of, directly or indirectly, by the Optionee without the prior written consent of the managing underwriters of the offering, for the period of time after the execution of an underwriting agreement in connection with the offering that all the Corporation's then directors and executive officers agree to be similarly bound (regarding any of their shares of Common Stock).

R. Arbitration

Except as provided in section U of this agreement regarding any valuation dispute under that section, any dispute, controversy, or claim arising out of, in connection with, or relating to the performance of this agreement or its termination will be settled by arbitration in [county] County, Texas, under the then-effective rules of the American Arbitration Association. Any award will be final, binding, and conclusive on the parties, and judgment rendered on the award may be entered in any court having jurisdiction.

S. Provision of Documentation to Optionee

By signing this agreement, the Optionee acknowledges receipt of a copy of this agreement and a copy of the Plan.

T. Miscellaneous

1. *Notices.* All notices hereunder will be in writing and will be deemed given when sent by mail or delivered in person or by courier, (a) if to the Optionee, to the address set forth above or at the address then shown on the records of the Corporation, and (b) if to the Corporation, to the Corporation's principal executive offices to the attention of the corporate secretary.

2. *Entire Agreement; Modification.* Together with the Plan, this agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supercedes all proposals, written or oral, and all other communications between the parties regarding the subject matter of this agreement. This agreement may be modified, amended, or rescinded only by a written agreement executed by both parties.

3. *Fractional Shares.* If this option becomes exercisable for a fraction of a Share because of the adjustment provisions contained in the Plan, the fraction will be rounded down.

4. *Issuances of Securities; Changes in Capital Structure.* Except as expressly provided in this agreement or in the Plan, no issuance by the Corporation of shares of stock of any class or securities convertible into shares of stock of any class will affect, and no adjustment by reason thereof will be made with respect to, the number or price of Shares subject to this option. No adjustments need be made for dividends paid in cash or in property other than securities of the Corporation. If there is any change in the Common Stock of the Corporation through merger, consolidation, reorganization, recapitalization, stock dividend, stock split, combination or exchange of shares, spin-off, split-up, or other similar change in capitalization or event, the restrictions contained in this agreement will apply with equal force to additional or substitute securities, if any, received by the Optionee in exchange for, or by virtue of his ownership of, Shares, except as otherwise determined by the Board.

5. *Severability.* The unenforceability of any provision of this agreement will in no way affect the enforceability of any other provision.

6. *Successors and Assigns.* Nothing in this agreement, express or implied, is intended to confer on any party, other than the parties hereto and their respective permitted assigns, any rights, remedies, obligations, or liabilities under or by reason of this agreement, and no person who is not a party to this agreement may rely on the terms except as otherwise set out. This agreement will be binding on and inure to the benefit of the parties hereto and

their respective successors and assigns, subject to the limitations set forth in sections J and O of this agreement.

7. *Governing Law.* This agreement will be governed by, enforced under, and interpreted in accordance with the laws of the state of Texas, without regard to any applicable conflict-of-laws principles that would apply the laws of any other jurisdiction.

Include the following boilerplate provisions if applicable.

8. *Assignment.* No party to this agreement may assign its rights or delegate its obligations hereunder without the prior written consent of each party. Any such attempted assignment will be void *ab initio*. Subject to the preceding sentences, this agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

And/Or

9. *Counterparts.* This agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which will constitute one instrument.

And/Or

10. *Waiver.* No term or provision of this agreement may be waived or modified unless such waiver or modification is in writing and executed by all the parties hereto. Any waiver by any party hereto of a breach or failure to perform will not constitute a waiver of any subsequent breach or failure.

And/Or

11. *Further Assurances.* The parties agree to take further actions and execute and deliver other documents, certificates, agreements, and other instruments as may be reasonably necessary or desirable to implement transactions contemplated by this agreement.

And/Or

12. *Section Headings.* The headings contained in this agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this agreement.

And/Or

13. *Gender and Number of Words.* When the context requires, the gender of all words used in this agreement includes the masculine, feminine, and neuter, and the number of all words includes the singular and the plural.

Continue with the following.

U. Corporation's Right of Repurchase of Shares

1. *Right of Repurchase.* The Corporation will have the assignable right (the "Repurchase Right") to repurchase from the Optionee all, but not less than all, the Shares purchased from the Corporation under this option on the occurrence of any of the events specified in section U(2) of this agreement (a "Repurchase Event"). The Repurchase Right may be exercised within sixty days following the date the Corporation receives actual knowledge of a Repurchase Event (the "Repurchase Period"). The Repurchase Right may be exercised by the Corporation or its assignees only by giving the holder of the Shares written notice during the Repurchase Period of its intention to exercise the Repurchase Right and, together with the notice, tendering to the holder an amount (the "Repurchase Price") equal to (a) in the case of an event specified in section U(2)(b) or (c) of this agreement, the greater of the purchase price or the fair market value of the Shares; or (b) in the case of an event specified in section U(2)(a) or (d) of this agreement, the lesser of the purchase price or the fair market value of the Shares. On timely exercise of the Repurchase Right in the manner provided in this section U(1), the holder will deliver to the Corporation or its assignees the stock certificate or certificates representing the Shares being repurchased, duly endorsed, and free and clear of any liens, charges, or encumbrances.

If Shares are not purchased under the Repurchase Right, the Optionee and his successor in interest, if any, will hold any such Shares subject to all the provisions of this agreement.

2. *Right to Exercise Repurchase Right.* The Corporation or its assignees will have the Repurchase Right on the occurrence of any of the following Repurchase Events:

- a. The voluntary termination of the Optionee's Business Relationship with the Corporation for any reason.
- b. The receivership, bankruptcy, or other creditor proceeding involving the Optionee or the taking of any of the Optionee's Shares by legal process, such as a levy of execution.
- c. Distribution or transfer of record title to any of the Shares held by the Optionee to his spouse as the spouse's separate property, under a decree of dissolution, operation of law, divorce, or property settlement agreement or for any other reason, except as may be otherwise permitted by the Corporation, the involuntary termination of the Optionee's employment with the Corporation other than for Cause, or any termination as a result of death or disability.
- d. The termination of the Optionee's Business Relationship for Cause.

3. *Determination of Fair Market Value.* For the purpose of this section U, the fair market value of the Shares will be determined by the Board in its sole discretion as of the date of the Repurchase Event. If the Optionee disagrees with the Board's determination of the fair market value (the "Board Determination"), the Optionee will notify the Board in writing (the "Dispute Notification") that the Optionee wishes to dispute the determination. If the dispute is not resolved between the Board and the Optionee within fifteen days of receipt of the Dispute Notification, the Board will appoint a third-party expert in valuing companies that are compa-

rable to the Corporation to conduct a determination of the fair market value (the “Third-Party Determination”). The Third-Party Determination will be conclusive and binding on the Board and the Optionee. If the Third-Party Determination is within [percent] percent of the Board Determination, the Optionee will bear the costs incurred in obtaining the Third-Party Determination. If the Third-Party Determination differs from the Board Determination by [percent] percent or more, the Corporation will bear the costs.

4. *Repurchase Procedure.* Any repurchase of Shares by the Corporation or its assignees will take place at the principal executive offices of the Corporation at the time and date set by the Corporation. The sale will be accomplished by the Optionee’s delivery to the Corporation or its assignees of a certificate or certificates evidencing the repurchased Shares, duly endorsed for transfer to the Corporation or its assignees, and payment to the Optionee by the Corporation or its assignees of the Repurchase Price by check for the repurchased Shares or by cancellation of indebtedness owed to the Corporation or its assignees by the Optionee. If payment is by check, the check may be delivered by mail. On [mailing/delivery] of a check in payment of the Repurchase Price or cancellation of indebtedness, the Corporation or its assignees will become the legal and beneficial owner of the Shares being repurchased and all rights and interests therein, and the Corporation will have the right to transfer to its own name or to the name of its assignees the Shares so repurchased.

5. *Expiration of Corporation’s Repurchase Right.* The Repurchase Right will remain in effect until such time, if ever, as (a) the Shares are transferred in accordance with section O of this agreement or (b) as to section U(2)(b) and (c) of this agreement, a distribution to the public of shares of Common Stock is made by the Corporation under an effective registration statement filed under the Securities Act.

Form 12-12

Warrant Agreement

NEITHER THIS WARRANT NOR THE SECURITIES REPRESENTED BY THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY APPLICABLE STATE SECURITIES LAWS. NEITHER THIS WARRANT NOR THOSE SECURITIES MAY BE OFFERED FOR SALE, SOLD, TRANSFERRED, OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS OR AN OPINION OF COUNSEL, IN FORM REASONABLY ACCEPTABLE TO THE CORPORATION, THAT REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OR UNDER APPLICABLE STATE SECURITIES LAWS.

[Name of corporation]

Warrant to Purchase Shares of Common Stock

Date of Issuance: [date]

Number of Shares: [number]

[Name of corporation], a Texas corporation (the "Corporation"), hereby certifies that, for ten United States dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, [name of registered holder], the registered holder hereof, or his permitted assigns, is entitled, subject to the terms set forth below, to purchase from the Corporation on surrender of this Warrant, at any time on or after the date of issuance, but not after 5:00 P.M. central time on the Expiration Date, [number] fully paid nonassessable shares of Common Stock (the "Warrant Shares") at the Warrant Exercise Price.

A. Definitions

The following terms used in this Warrant will have the following meanings:

1. “Business Day” means any day that is not (a) a Saturday, (b) a Sunday, [or] (c) a day on which the banks in the state of Texas are required or authorized to be closed [, or (d) a day on which trading does not take place on the principal exchange or automated quotation system on which the Common Stock is traded].

2. “Common Stock” means (a) the Corporation’s common stock, par value \$[amount] per share, and (b) any capital stock into which the Common Stock will have been changed or any capital stock resulting from a reclassification of Common Stock.

3. “Expiration Date” means the date that is [number] years from the date of this Warrant or, if that date falls on day that is not a Business Day, the next Business Day.

4. “Person” means an individual, a limited liability corporation, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, and a government or any department or agency thereof.

5. “Warrant” means this Warrant and all Warrants issued in exchange, transfer, or replacement of any thereof.

Consult a tax adviser regarding the tax consequences to the corporation and to the individual of a stock option grant.

6. “Warrant Exercise Price” will be \$[amount] per Warrant Share.

B. Exercise of Warrant

1. Subject to the terms and conditions of this agreement, this Warrant may be exercised, in whole or in part, by the holder hereof then-registered on the books of the Corporation at any time on any Business Day on or after the date of issuance of this Warrant and before 5:00 P.M. central time on the Expiration Date by (a) delivery of a written notice, in the form of the subscription notice attached hereto as Exhibit A (the “Exercise Notice”), of the holder’s election to exercise this Warrant, specifying the number of Warrant Shares to be pur-

chased; (b) payment to the Corporation of an amount equal to the Warrant Exercise Price multiplied by the number of Warrant Shares for which this Warrant is being exercised (plus any applicable transfer taxes) (the “Aggregate Exercise Price”) in cash, by [certified/cashier’s] check, or by wire transfer to an account designated by the Corporation; and (c) the surrender to the Corporation or a prepaid common carrier for delivery to the Corporation, as soon as practicable following the date of exercise, of this Warrant (or an indemnification undertaking with respect to this Warrant in the case of its loss, theft, or destruction). If the Warrant Shares are to be issued in any name other than that of the registered holder of this Warrant, such issuance will be deemed a transfer and section G (regarding ownership and transfer) of this Warrant will be applicable. On any exercise in compliance with this section B(1), a certificate or certificates for the Warrant Shares purchased, in the denominations requested by the holder hereof and registered in the name of, or as directed by, the holder, will be delivered at the Corporation’s expense to, or as directed by, the holder as soon as practicable, but not later than ten Business Days after the Corporation’s receipt of the Exercise Notice, the Aggregate Exercise Price, and this Warrant (or an indemnification undertaking with respect to this Warrant in the case of its loss, theft, or destruction). On delivery of the Exercise Notice and Aggregate Exercise Price referred to in clause (b) above, the holder of this Warrant will be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of this Warrant as required by clause (c) above or the certificates evidencing such Warrant Shares.

2. Unless the rights represented by this Warrant have expired or have been fully exercised, the Corporation will as soon as practicable, but not later than ten Business Days after any exercise, and at its own expense, issue a new Warrant identical to this Warrant, except it will represent rights to purchase the number of Warrant Shares purchasable immediately before exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant was exercised.

3. No fractional shares of Common Stock are to be issued on the exercise of this Warrant. If necessary, the number of shares of Common Stock issued on exercise of this Warrant will be rounded up or down to the nearest whole number.

C. Representations and Covenants as to Common Stock

The Corporation covenants and agrees as follows:

1. This Warrant is, and any Warrant issued in substitution for or replacement of this Warrant on issuance will be, duly authorized and validly issued.

2. All Warrant Shares issued on the exercise of the rights represented by this Warrant on issuance will be validly issued, fully paid and nonassessable, and free from all taxes, liens, and charges with respect to the issue thereof.

3. While the rights represented by this Warrant may be exercised, the Corporation will have authorized and reserved at least the number of shares of Common Stock issuable on the full exercise of the rights then represented by this Warrant, and the par value of those shares will be less than or equal to the applicable Warrant Exercise Price.

D. Taxes

The Corporation will pay any and all issue taxes (but not any transfer taxes) payable with respect to the issuance and delivery of Warrant Shares on exercise of this Warrant.

E. Warrant Holder Not Deemed a Shareholder

Except as otherwise specifically provided in this Warrant, the holder of this Warrant, as a holder, will not be entitled to vote, receive dividends, or be deemed the holder of shares of the Corporation for any purpose, nor will anything in this Warrant be construed to confer on the holder, as such, any of the rights of a shareholder of the Corporation, including, without limitation, any right to (1) vote, (2) give or withhold consent to any corporate action (whether

any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance, or otherwise), (3) receive notice of meetings, or (4) receive dividends or subscription rights, or otherwise, before the issuance of the Warrant Shares to the holder on the due exercise of this Warrant. In addition, nothing in this Warrant will be construed as imposing any liabilities on the holder to purchase any securities (on exercise of this Warrant or otherwise) or any liabilities as a shareholder of the Corporation, whether such liabilities are asserted by the Corporation or by creditors of the Corporation.

F. Representations of Holder

The holder of this Warrant, by the acceptance hereof, represents that it is acquiring this Warrant and the Warrant Shares for its own account for investment only and not with a view toward, or for resale in connection with, any sale or distribution of this Warrant or the Warrant Shares in violation of the Securities Act. However, by making the representations herein, the holder does not agree to hold this Warrant or any of the Warrant Shares for any minimum or other specific time and reserves the right to dispose of this Warrant and the Warrant Shares at any time in accordance with a registration or an exemption from registration under the Securities Act.

G. Ownership and Transfer

1. The Corporation will maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the holder hereof) a register for this Warrant, in which the Corporation will record the name and address of the Person in whose name this Warrant has been issued, as well as the name and address of each transferee. The Corporation may treat the Person in whose name this Warrant is registered as the owner and holder hereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any transfers made under the terms of this Warrant.

2. This Warrant and the rights granted to the holder hereof are transferable, in whole or in part, on surrender of this Warrant, together with a properly executed warrant power in the form of Exhibit B attached. Any transfer or assignment will be subject to the conditions in section G(3) of this Warrant.

3. The holder of this Warrant understands that this Warrant and the Warrant Shares have not been and are not expected to be registered under the Securities Act or any state securities laws and may not be offered for sale, sold, assigned, or transferred unless (a) the Warrant and the Warrant shares are subsequently registered thereunder or (b) the holder will have delivered to the Corporation an opinion of counsel, in form reasonably acceptable to the effect that the securities to be sold, assigned, or transferred may be sold, assigned, or transferred under an exemption from registration. Neither the Corporation nor any other Person is under any obligation to register the Warrants or any of the Warrant Shares under the Securities Act or any state securities laws.

H. Adjustment to the Shares

The Warrant Exercise Price and the number of Warrant Shares issuable on exercise of this Warrant will be adjusted from time to time as follows:

1. *Adjustment of Warrant Exercise Price on Subdivision or Combination of Common Stock.* If, at any time after the date of issuance of this Warrant, the Corporation subdivides its outstanding shares of Common Stock (by any stock split, stock dividend, recapitulation, or otherwise) into a greater number of shares, the Warrant Exercise Price in effect immediately before the subdivision will be proportionately reduced and the number of Warrant Shares on the exercise of this Warrant will be proportionately increased. If, at any time after the date of issuance of this Warrant, the Corporation combines its outstanding shares of Common Stock (by combination, reverse stock split, or otherwise) into a smaller number of shares, the Warrant Exercise Price in effect immediately before the combination will be proportionately

increased and the number of Warrant Shares issuable on exercise of this Warrant will be proportionately decreased.

2. *Reclassification, Exchange, Combinations, or Substitution.* On any reclassification, exchange, substitution, or other event that results in a change of the number or class of the securities issuable on exercise of this Warrant, the holder of this Warrant will be entitled to receive, on exercise of this Warrant, the number and kind of securities and property that he would have received for the shares of Common Stock if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. The Corporation or its successor will promptly issue to the holder a new Warrant for such new securities or other property. The new Warrant will provide for adjustments that will be as nearly equivalent as may be practicable to the adjustments provided for in this section H including, without limitation, adjustments to the Warrant Exercise Price and to the number of securities or property issuable on exercise of the new Warrant. The provisions of this section H(2) will apply similarly to successive reclassifications, exchanges, substitutions, or other events.

3. *No Impairment.* The Corporation will not, by amendment of its certificate of formation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed by it under this Warrant.

4. *Certificate as to Adjustments.* On each adjustment of the Warrant Exercise Price or the number of Warrant Shares, or both, the Corporation will promptly notify the holder of this Warrant in writing and, at the Corporation's expense, promptly compute the adjustment and furnish the holder a certificate of its chief financial officer setting forth the adjustment, the facts on which the adjustment is based, the computation of the adjustment, the Warrant Exercise Price in effect, and the number of underlying Warrant Shares on the date thereof.

I. Lost, Stolen, Mutilated, or Destroyed Warrant

If this Warrant is lost, stolen, mutilated, or destroyed, the Corporation, on receipt of an indemnification undertaking from the registered holder, will issue a new Warrant of like denomination and having the same terms and conditions as the Warrant lost, stolen, mutilated, or destroyed.

J. Notice

Any notices, consents, waivers, or other communication required or permitted to be given under the terms of this Warrant must be in writing and will be deemed to have been delivered (1) on receipt, when delivered personally, (2) on receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party), or (3) one Business Day after deposit with a nationally recognized courier or delivery service for next-Business-Day (or sooner) delivery, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communication will be—

If to the Corporation:

[Name of corporation]

[Telephone no.]

[Fax no.]

Attention: [name]

Notice to the holder of this Warrant will be addressed as follows until the Corporation receives notice of a change in address:

[Name of registered holder]

[Telephone no.]

[Fax no.]

Attention: [name]

Each party will provide written notice to the other party of any change in address or facsimile number at least five days before the change. Written confirmation of receipt (1) given by the recipient of such notice, consent, waiver, or other communication; (2) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient's facsimile number, and an image of the first page of the transmission; or (3) provided by a nationally recognized courier or delivery service will be rebuttable evidence of service or receipt in accord with this section J.

K. Binding Effect of This Warrant

Nothing in this Warrant, express or implied, is intended to confer on any party, other than the parties hereto and their respective permitted assigns, any rights, remedies, obligations, or liabilities under or by reason of this agreement, and no person who is not a party to this Warrant may rely on the terms except as otherwise set out. This Warrant (1) constitutes the entire agreement between the parties relating to the subject matter hereof and (2) supercedes all previous understandings and agreements between the parties relating to the subject matter hereof, both oral and written. The terms and conditions of this Warrant will be binding on and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

L. Assignment

No party to this Warrant may assign its rights or delegate its obligations hereunder without the prior written consent of each party. Any such attempted assignment will be void *ab initio*. Subject to the preceding sentences, this Warrant will be binding on and inure to the benefit of the parties and their respective successors and assigns.

M. Amendment and Waiver

Except as otherwise provided herein, this Warrant may be amended only in writing, and either party may take an action herein prohibited, or omit to perform an act herein required, only if the Corporation and the holder of this Warrant agree in writing.

N. Counterparts

This Warrant may be executed in two or more counterparts, each of which will be deemed an original and all of which will constitute one instrument.

O. Severability

If any provision of this Warrant is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, the legality, validity, and enforceability of the remaining provisions of this Warrant will not be affected thereby, and in lieu of the illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Warrant a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be legal, valid, and enforceable.

P. Further Assurances

The parties agree to take further actions and execute and deliver other documents, certificates, agreements, and other instruments as may be reasonably necessary or desirable to implement transactions contemplated by this Warrant.

Q. Gender and Number of Words

When the context requires, the gender of all words used in this Warrant includes the masculine, feminine, and neuter, and the number of all words includes the singular and the plural.

R. Descriptive Headings

The descriptive headings of the sections, subsections, or paragraphs of this Warrant are inserted for convenience only and do not constitute a part of this Warrant.

S. Governing Law

This Warrant will be governed by, construed under, and enforced in accordance with the laws of the state of Texas, without giving effect to any choice-of-law or conflict-of-laws provision or rule that would cause the application of the laws of any jurisdiction other than the state of Texas.

Remainder of page intentionally left blank. Separate signature page follows.
--

This Warrant has been duly executed by the Corporation as of **[date]**.

[Name of corporation]

By: _____
[Name of officer], [title]

Exhibit A
Subscription Form

To Be Executed by the Registered Holder to Exercise This Warrant

[Name of corporation]

I, [name of registered holder], hereby exercise the right to purchase from [name of corporation] [number] of the shares under the Warrant dated [date], issued to [name of registered holder] as registered holder (the "Warrant"). Capitalized terms used, and not otherwise defined herein, have the respective meanings set forth in the Warrant.

1. *Payment of Warrant Exercise Price.* To purchase those Warrant Shares, the amount of \$[amount] is being paid to the Corporation in accordance with the terms of the Warrant.

2. *Delivery of Warrant Shares.* The Corporation will deliver to [the registered holder/[name of transferee], as transferee from the registered holder,] [include if applicable: , at the following address: [address, city, state]] certificates representing those Warrant Shares in accordance with the terms of the Warrant.

Date: [date]

[Name of registered holder]

Exhibit B**Form of Warrant Power**

FOR VALUE RECEIVED, I, **[name of transferor]**, hereby assign and transfer to **[name of transferee]** a Warrant to purchase **[number]** shares of the Common Stock of **[name of corporation]**, a Texas corporation (the "Corporation"), dated **[date]**, standing in the name of the undersigned on the books of the Corporation. I hereby irrevocably constitute and appoint **[name of attorney]**, attorney, to transfer the Warrant, with full power of substitution in the premises.

Date: **[date]**

[Name of transferor]

Form 13-1

This shareholders' agreement is based on subchapter C of chapter 21 of the Texas Business Organizations Code. *See* Tex. Bus. Orgs. Code §§ 21.101–.109. These sections provide general guidelines and, as such, parties have significant freedom to structure a shareholders' agreement appropriate to their situation. This form, therefore, can be significantly modified and adapted to address each party's requirements.

Shareholders' Agreement
between [name of corporation] and Its Shareholders

[Date]

Shareholders' Agreement

[name of corporation]

This Shareholders' Agreement ("Agreement") is entered into effective [date], by and between [name of corporation], a Texas corporation ("Corporation"), the shareholders of the Corporation listed on the attached Exhibit A, the spouses of the listed shareholders, and any person who subsequently becomes a party to this Agreement under its terms.

Article 1

Nature and Purposes of Agreement

To secure continuity and stability of the policies and the management of the Corporation, all parties to this Agreement agree to restrict the transfer of Shares under certain circumstances, to preserve the closely held nature of the Shares, and to establish a plan for the purchase of Shares on a Shareholder's bankruptcy, divorce, or death, on the death of a Shareholder's Spouse, or on the imposition of a creditor lien on shares.

Therefore, in consideration of the premises and mutual promises contained in this Agreement, the parties agree as follows:

Article 2

Defined Terms

As used in this Agreement, each parenthetically or otherwise defined capitalized term in other articles or sections of this Agreement will have the meaning ascribed to it, and each of the following terms will have the meaning ascribed to it in Article 2 or will have the meaning assigned to it in other articles or sections as indicated, regardless of whether the term is parenthetically defined in the opening paragraph of this Agreement.

"Agreement" means this Shareholders' Agreement as amended or restated from time to time.

“Board” means the board of directors of the Corporation.

“Commencement Date” means [date], the effective date of this Agreement.

“Common Stock” means the common stock, [\${amount}/no] par value per share, of the Corporation authorized by the Corporation’s certificate of formation, as amended or restated from time to time.

Include the following definition if including section 12.5 of this agreement.

“Confidential Information” is defined in section 12.5 of this Agreement.

Continue with the following.

“Corporation” means [name of corporation].

“Disabled” is defined in section 6.4(a) of this Agreement.

Include the following definition if including section 12.6 of this agreement.

“Dispute” is defined in section 12.6 of this Agreement.

Include the following definition if including section 6.5 of this agreement.

“Employee Shareholder” is defined in section 6.5(a) of this Agreement.

Continue with the following.

“Immediate Family” means parents, siblings, a spouse during marriage and not incident to divorce, lineal descendants (including those by adoption), and spouses of lineal descendants.

“Involuntary Transfer” means, with respect to any Shares, any Transfer of Shares other than a Voluntary Transfer. Examples of an Involuntary Transfer include an attachment, sei-

zure, or sheriff's sale in connection with the perfection of a judgment lien, sequestration, appointment of a guardian for the estate of a mentally incapacitated individual, the filing of a petition or transfer in bankruptcy, an award of property to a Spouse pursuant to a divorce decree, and a Transfer at Death.

Include the following definition if including section 3.6 of this agreement.

"IRC" is defined in section 3.6(a) of this Agreement.

Continue with the following.

"Offer" is defined in section 3.3(a) of this Agreement.

"Offer Notice" means, with respect to a proposed Voluntary Transfer to be made by a Shareholder, a written notice provided by the Shareholder of the terms, conditions, and other information relating to the proposed Voluntary Transfer, including (1) the name and notice address of the Shareholder proposing to make the Voluntary Transfer, (2) the number of Shares that the Shareholder owns, (3) the number of Shares that the Shareholder proposes to Transfer, (4) a conformed copy of the proposed transferee's offer to purchase, (5) the proposed transferee's name and notice address, (6) the price per Share that the proposed transferee will pay, (7) how the proposed transferee determined the purchase price per Share, (8) the terms and conditions of payment to be made by the proposed transferee, and (9) any other agreements, documents, or instruments relating to the proposed Voluntary Transfer. Notwithstanding the date thereof, no Offer Notice will be effective and time periods set forth in this Agreement will not begin to run until that Offer Notice is deemed given in accordance with section 8.2 of this Agreement to all parties entitled to receive that Offer Notice.

"Other Shareholders" means, with respect to any event or transaction, all the Shareholders other than the Shareholder or Shareholders who are the subject of the event or transaction.

“Permitted Transferee” means any of the Persons listed in section 4.1 of this Agreement.

“Person” means an individual, a corporation, a limited liability company, a trust, a partnership, a joint stock association, a business trust, or a government or agency or subdivision thereof.

“Personal Representative” means the executor, administrator, guardian, or conservator of the estate of a Shareholder or a Spouse.

“Pro Rata” means, with respect to any Shareholder, the number of Shares owned by the Shareholder divided by the total number of Shares owned by the Other Shareholders.

“Purchasers” is defined in section 7.2 of this Agreement.

“Recipient” is defined in section 3.2 of this Agreement.

“Securities Act” means the United States Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Shareholder” means any Person who is or becomes, at any time, a party to this Agreement pursuant to its terms and owns Shares at that time.

“Shares” means issued and outstanding shares of the Common Stock, excluding treasury shares. All references to Shares owned by a Shareholder include the community interest, if any, of the Spouse of that Shareholder.

“Spouse” means the spouse of an individual Shareholder.

“Spousal Interest” means any interest in the Shares owned or claimed by a Spouse.

“Successor” means, with respect to any deceased individual who owned any Shares at the time of that individual’s death, (1) that deceased individual’s heirs or legatees then owning

title to that deceased individual's Shares or the deceased individual's Personal Representative, as the case may be; and (2) the deceased individual's surviving Spouse, to the extent that Spouse owns a community interest in the deceased individual's Shares.

"Transfer" when used as a noun means any direct or indirect sale, assignment, gift, devise, pledge, hypothecation, or other encumbrance or any other disposition of Shares (or any interest in or voting power of Shares) either voluntarily or by operation of law. "Transfer" when used as a verb means the act of directly or indirectly selling, assigning, granting by gift, devising, pledging, hypothecating, or otherwise encumbering or disposing of Shares (or any interest in or voting power of Shares) either voluntarily or by operation of law. In connection with the use of the term "Transfer," the following terms will have the meanings indicated below:

"Transfer at Death" means, with respect to any Shares owned by an individual, the Transfer of those Shares to that individual's heirs, devisees, or legatees at the time of the death of the individual, whether the Shares pass by the laws of intestate succession, by the terms of a last will and testament, or pursuant to the marital property laws of any state.

"Transfer by Gift" means, with respect to any Shares, a Voluntary Transfer of all or any portion of the transferor's interest in those Shares to or for the benefit of a charitable organization or a natural object of the transferor's bounty for less than adequate consideration, but specifically excluding any Transfer at Death.

"Voluntary Transfer" means, with respect to any Shares, a Transfer of any interest in those Shares by the free and voluntary act of the transferor (other than a Transfer of Shares resulting from the filing of a petition in bankruptcy), Transfers by Gift, Transfers by sales, and voluntary pledges.

Article 3

Transfer Restrictions Generally

3.1 *Shareholder Agreement.* Each Shareholder and Spouse agrees not to Transfer or permit to be Transferred all or any portion of the Shares now owned or subsequently acquired except in accordance with and subject to the terms and conditions of this Agreement. A counterpart of this Agreement will be maintained by the Corporation at its principal place of business.

3.2 *New Shareholders.* Notwithstanding any other provision of this Agreement, no Shares may be issued or Transferred to any Person who is not a party to this Agreement. As a condition precedent to the acquisition of Shares by any Person (a "Recipient"), whether by new issuance from the Corporation or by Transfer from a Shareholder, each Shareholder authorizes the Corporation, before Transferring or issuing Shares to a Recipient, to sign, on its behalf and as agent for each Shareholder and Spouse, with the Recipient and, if applicable, the Recipient's spouse, an adoption agreement in substantially the same form attached hereto as Exhibit B pursuant to which the Recipient and the Recipient's spouse agree to be bound by this Agreement. By signing the adoption agreement, the Recipient and the Recipient's spouse agree for themselves and for their respective successors, successors in interest, heirs, legatees, devisees, and legal representatives to be bound by the terms and conditions of this Agreement. On execution of the adoption agreement, the Recipient and the Recipient's spouse will become a "Shareholder" and a "Spouse" for all purposes of this Agreement. The Corporation will promptly deliver to each Shareholder a conformed copy of each signed adoption agreement and attach each signed adoption agreement to the Corporation's copy of this Agreement.

3.3 *Voluntary Transfer Restrictions.* Except for a Voluntary Transfer made to the Corporation or under the provisions of Article 4 of this Agreement, any proposed Voluntary Transfer of any Shares by a Shareholder is subject to the following provisions:

- (a) Before the Voluntary Transfer, the Shareholder must send an Offer Notice to the Corporation and the Other Shareholders describing the Voluntary Transfer (the "Offer"). If any term of the proposed Voluntary Transfer changes after the delivery of an Offer Notice, the Shareholder must promptly notify the Corporation of the changes, and the subsequent notice will constitute a new Offer Notice for purposes of this section 3.3(a).
- (b) For a period of sixty days after the date of the delivery of the Offer Notice to the Corporation, the Corporation has the right to elect to purchase all or any portion of the Shares that are the subject of the Offer for a per-Share price equal to the offering price per Share specified in the Offer Notice. The purchase price for the Shares to be redeemed by the Corporation pursuant to acceptance of the Offer is payable in accordance with section 7.2 below.
- (c) If the Voluntary Transfer is for consideration, the Corporation has the right to purchase all of the Shares to be transferred on terms identical to the terms of the Offer Notice (or a sum of money equal in value to the total consideration to be paid). If a portion of the consideration consists of property other than cash, in determining the value of the total consideration, the property's value is its fair market value as of the time the Corporation exercises its right to purchase the Shares subject to the Offer.
- (d) If the Corporation rejects the Offer, the Other Shareholders have the remainder of the Corporation's sixty-day period and ten additional days, or seventy days from the date of the delivery of the Offer Notice to the Corporation and the Other Shareholders, to accept or reject the Offer in writing. Each Other Shareholder's response to the Offer must specify the maximum number of Shares that Other Shareholder would be willing to purchase. If any Other Shareholder accepts the Offer, the acceptance arrangements and purchase price will be as described in section 3.3(b). If more than one Other Shareholder accepts the Offer, each Other Shareholder who accepts the Offer will be entitled to purchase a portion of Shares being sold equal to a percentage determined by dividing the number of Shares owned by the Other Shareholder by the number of Shares owned by all Other Shareholders who accept the Offer.

(e) If the Corporation and the Other Shareholders do not accept the Offer to purchase all the Shares that are the subject of the Offer by the expiration of the time periods described in section 3.3(d) or if before the time periods expire the Corporation and the Other Shareholders reject the Offer in writing, the Shareholder is entitled to sell the remaining Shares strictly in accordance with the terms contained in the Offer Notice.

3.4 *Transfer by Pledge.* No Shares may be pledged or otherwise voluntarily encumbered by any Shareholder unless the Board approves the pledge by a two-thirds vote of its members. The Board has sole discretion to allow Shares to be pledged for any purpose. If, for any reason, any pledged Shares are foreclosed on, the foreclosure will be considered an Involuntary Transfer and the provisions of section 5.1 below will govern.

3.5 *Securities Laws Compliance.* Before any Transfer of Shares, the Corporation may require that the transferring Shareholder provide to the Corporation a legal opinion (in form and substance satisfactory to the Corporation) rendered by counsel with substantial experience in securities regulation matters that the proposed Transfer will not violate federal or state securities laws.

Include the following if applicable.

3.6 *"S" Corporation Restrictions*

(a) The Corporation has elected to be taxed as an "S" corporation under the Internal Revenue Code of 1986, as amended (the "IRC"). Notwithstanding any other provision of this Agreement, unless and until the Corporation effectively terminates its status as an "S" corporation, any attempted Transfer of Shares that would cause the Corporation to lose its status as an "S" corporation under the IRC is prohibited, and any such Transfer is void. Before any Transfer of Shares, the Corporation may require that the transferring Shareholder provide to the Corporation a legal opinion (in form and substance satisfactory to the Corporation) rendered by counsel with substantial experience in federal income taxation, particularly "S" cor-

porations, that the proposed Transfer will not cause the Corporation to lose its status as an "S" corporation under the IRC. Any proposed transferee that is a trust must be a qualified subchapter "S" trust under section 1361(c)(2) of the IRC.

(b) If, notwithstanding the restrictions contained in section 3.6(a), any Shares are effectively made the subject of a Transfer to any Person that would cause the Corporation to lose its status as an "S" corporation or if any change should occur with respect to a Shareholder that would cause the Corporation to lose its status as an "S" corporation, the Corporation has an option exercisable at any time thereafter by providing notice to that Person or that Shareholder to purchase all the Shares owned by that Person or that Shareholder at the purchase price per Share determined pursuant to the provisions of section 7.1 below, to be payable in accordance with section 7.2(b).

Continue with the following.

Article 4

Permitted Transfers by Gift

4.1 *Permitted Transfers by Gift.* Subject to the provisions of section 4.2, the provisions of section 3.3 above do not apply to any Transfer by Gift made by a Shareholder during his life to—

- (a) any member of the Shareholder's Immediate Family;
- (b) a guardian of the estate of the Shareholder; or
- (c) the trustee of an inter vivos trust for the sole benefit of one or more members of the Shareholder's Immediate Family, provided that the Corporation is notified in writing at least thirty days before the proposed Transfer. The notice must (1) specify the exact name of the trust and its federal tax identification number (or indicate that the number has been applied for but not received) and (2) specify the name, address, and relationship to the Shareholder of all

trustees and beneficiaries of the trust or trusts and their respective federal tax identification or Social Security numbers (or indicate that the numbers have been applied for but not received).

Any transfer to a child who is less than twenty-one years old at the time of the transfer must be conditioned on the Shareholder's retaining the right to do any act with respect to the transferred Shares on behalf of the transferee that is permitted, authorized, or required by this Agreement.

4.2 *Permitted Transfer Restrictions.* Before any Transfer of Shares is made under section 4.1, the Permitted Transferee must become a party to this Agreement in accordance with the provisions of section 3.2.

4.3 *Transfers by Permitted Transferees.* The provisions of section 3.3 do not apply to any Voluntary Transfer of Shares made by a Permitted Transferee back to the Shareholder who originally made a Transfer by Gift to the Permitted Transferee in accordance with section 4.1.

Article 5

Notice

5.1 *Involuntary Transfers*

(a) If a Shareholder has any notice or knowledge of any attempted, impending, or completed Involuntary Transfer (other than an Involuntary Transfer subject to Article 6 of this Agreement) of any of his Shares, whether by operation of law or otherwise, he must give immediate written notice to the Corporation specifying the number of Shares that are subject to the Involuntary Transfer and all pertinent information in his possession relating to the Involuntary Transfer. If any Shares are ever subject to an Involuntary Transfer (other than pursuant to Article 6 of this Agreement), the Corporation will, at all times thereafter, have the immediate and continuing option by notice to the owner of the Shares within [six months/

[time period]] after the date the Corporation first learns or has notice of the Involuntary Transfer, to purchase all the Shares for a purchase price per Share determined pursuant to section 7.1 below to be payable in accordance with section 7.2(b).

(b) If the Corporation does not exercise the option during the [six-month/[time period]] period or does not choose to purchase all Shares subject to the Involuntary Transfer, any Shareholder whose Shares are not subject to the Involuntary Transfer has an identical option for thirty days following the [six-month/[time period]] period. If more than one Shareholder exercises the option, each Shareholder is entitled to purchase that portion of the Shares equal to a percentage determined by dividing the number of Shares owned by the Shareholder by the number of Shares owned by all Shareholders who exercise the option. To the extent that the Shares subject to the Involuntary Transfer are not purchased by the Shareholders, the Corporation's option contained in section 5.1(a) will continue with respect to those Shares.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Corporation has no obligation to recognize on its books or for any other purposes any Involuntary Transfer of any Shares unless and until (1) the transferee of the Shares pursuant to the Involuntary Transfer has offered all the Shares for sale to the Corporation and the Other Shareholders, as applicable, at the price per Share determined pursuant to section 7.1 to be payable in accordance with section 7.2(b), and (2) the transferee of the Shares pursuant to the Involuntary Transfer becomes a party to this Agreement in accordance with the provisions of section 3.2 above.

5.2 *Transfers in Bankruptcy*

(a) If a Shareholder or Spouse is the named debtor in bankruptcy or receivership proceedings, the Corporation will, at all times thereafter, have the immediate and continuing option by notice to the bankruptcy or receivership trustee or other applicable party to purchase all the

Shares that are the subject of the bankruptcy or receivership proceedings for a purchase price per Share determined pursuant to section 7.1 to be payable in accordance with section 7.2(b).

(b) If the Corporation's purchase option described in section 5.2(a) should not be exercised by the Corporation for any reason or is not enforceable by the Corporation for any reason and all or any portion of the Shares subject to the bankruptcy or receivership proceedings are proposed to be made the subject of any kind of Transfer, the Transfer will be deemed to be a Voluntary Transfer by a Shareholder and will be subject to the provisions of section 3.3.

Article 6

Buy-Sell Agreement

6.1 *Death of Spouse*

(a) Each Spouse agrees to bequeath his entire Spousal Interest to the Shareholder. This promise is made with the Spouse's full knowledge, is made for good and valuable consideration, and constitutes a covenant binding on the Spouse's estate, Personal Representative, heirs, and beneficiaries.

(b) If a Spouse dies and does not leave a valid will admitted to probate bequeathing the entire Spousal Interest to the Shareholder or if any will contest is filed by any Person challenging the validity of the bequest of the Spousal Interest to the Shareholder, the Shareholder and the Spouse's Personal Representative must each notify the Board. For a period of ninety days following the earliest to occur of (1) the qualification of the Spouse's Personal Representative, (2) the entry of an order of the probate court concluding that the Spouse's will does not bequeath the entire Spousal Interest to the Shareholder, or (3) the filing of a will contest suit, the Shareholder has the exclusive right and option to purchase the Shares at the purchase price per Share determined pursuant to section 7.1 below to be payable in accordance with section 7.2(b).

(c) If the Shareholder does not purchase the entire Spousal Interest in the Shares pursuant to section 6.1(b) within ninety days, for a period beginning on the first day after expiration of the ninety-day period and ending one year after the entry of a final order by the probate court disposing of the Spousal Interest in the Shares, the Corporation has an exclusive option to purchase all or any portion of the Shares not purchased or awarded to the Shareholder at the purchase price per Share determined pursuant to section 7.1 to be payable in accordance with section 7.2(b). To the extent that the Corporation elects not to purchase all of the Spousal Interest in the Shares, the Other Shareholders have the right to purchase all or any portion of the remaining Shares not purchased by the Corporation on a Pro Rata basis or as the Other Shareholders may otherwise agree among themselves.

(d) If and to the extent that the Corporation and the Other Shareholders do not purchase all of those Shares, each Successor of that Spouse is entitled to require the Corporation to transfer the appropriate portion of the Spouse's Shares to that Successor on the provision that (1) the Successor give to the Corporation documentation as requested by the Corporation to evidence the rightful ownership interest of the Successor in the Spouse's Shares and (2) the Successor becomes a party to this Agreement in accordance with the provisions of section 3.2 above.

6.2 *Death of Shareholder*

(a) On the death of a Shareholder, the Corporation and the Other Shareholders have the exclusive right and option to purchase all or any portion of the Shares owned by the Shareholder, and the Shareholder (or his Personal Representative) has the right and option to require the Corporation to purchase all or any portion of the Shares at the purchase price per Share determined pursuant to section 7.1 below to be payable in accordance with section 7.2(a). On exercise of this option, the Shareholder's Personal Representative is obligated to sell the Shares to the Corporation and the Other Shareholders on these terms, and the Corporation is obligated, to the extent it may lawfully do so, to purchase the Shares. Notice of the exercise of the option granted pursuant to this section 6.2 is to be given to or by the Share-

holder (or his Personal Representative) within thirty days after the Corporation receives notice of the qualification of the Shareholder's Personal Representative.

(b) As between the Corporation and the Other Shareholders, the Corporation has the first and prior right to purchase all or any portion of the Shares, and the Other Shareholders have the right to purchase all or any portion of the remaining Shares not purchased by the Corporation on a Pro Rata basis or as the Other Shareholders may otherwise agree among themselves.

(c) If and to the extent that the Corporation and the Other Shareholders do not purchase all the Shares, each Successor of that Shareholder is entitled to require the Corporation to transfer the appropriate portion of the Shareholder's Shares to the Successor on the provision that (1) the Successor give to the Corporation documentation as may be requested by the Corporation to evidence the rightful ownership interest of the Successor in the Shareholder's Shares and (2) the Successor becomes a party to this Agreement in accordance with the provisions of section 3.2 above.

6.3 *Divorce of Shareholder and Spouse.* If any Shares are owned by a Shareholder and Spouse jointly and that Shareholder or Spouse files a petition for divorce or institutes any other legal proceedings to terminate their marriage, the following procedures apply:

(a) The Shareholder's interest in the Shares and the Spouse's Spousal Interest in the Shares will be reflected on their respective inventories of marital and separate assets at a value not in excess of the purchase price determined pursuant to section 7.1 below.

(b) The Shareholder will seek, and the Spouse will agree to accept, an order for the division of marital and separate property under which the Shareholder receives the entire Spousal Interest in the Shares in exchange for awarding to the Spouse other marital and separate assets in which the Shareholder has an interest that have a value approximately equal to the Spousal Interest (as valued pursuant to section 6.3(a)).

(c) If the marriage of the Shareholder and the Spouse is terminated by divorce or annulment and the Shareholder does not obtain all of the Spouse's interest in the Shares incident to the divorce or annulment, the Shareholder and the Spouse will simultaneously give written notice to the Corporation within thirty days after the effective date of the final, nonappealable divorce decree or of the annulment. The written notice will specify the effective date of termination of the marriage and the number of Shares in which the Shareholder's former Spouse retains an interest. For a period of sixty days after the effective date of termination of the marriage, the Shareholder has an exclusive option to purchase all or any portion of the former Spouse's retained interest in the Shares at the purchase price per Share determined pursuant to section 7.1 to be payable in accordance with section 7.2(b). The Shareholder's sixty-day option is exercised by delivering to the former Spouse and the Corporation a written notice specifying the number of Shares as to which the option is being exercised.

(d) If the Shareholder does not purchase all of the former Spouse's Shares, for a period of sixty days after the lapse of the sixty-day option period, the Corporation has an exclusive option exercisable by written notice to the former Spouse to purchase all or any portion of the former Spouse's remaining Shares at the purchase price per Share determined pursuant to section 7.1 to be payable in accordance with section 7.2(b). To the extent that the Corporation elects not to purchase all of the former Spouse's remaining Shares, the Other Shareholders have the right to purchase all or any portion of the remaining Shares not purchased by the Corporation on a Pro Rata basis or as the Other Shareholders may otherwise agree among themselves.

(e) If any option is exercised pursuant to this section 6.3, the former Spouse is obligated to sell the Shares retained incident to divorce or annulment with respect to which the option or options are exercised. If a Shareholder should exercise his option to purchase any number of Shares owned by the former Spouse pursuant to the provisions of this section 6.3, the provisions of sections 7.2, 7.3, 8.1, and 8.2 below will apply with respect to the purchase of the

Shares by the Shareholder in the same manner as if the Corporation were redeeming the Shares from the former Spouse.

(f) The Shareholder and the Spouse each agree that the Corporation may intervene in their divorce or annulment proceeding without their objection for the purpose of enforcing the Corporation's and the Other Shareholders' rights under this section 6.3.

6.4 *Disability of Shareholder*

(a) For purposes of this section 6.4, a Shareholder will be deemed Disabled if the Shareholder is unable to perform substantially all of his duties as an employee or consultant of the Corporation due to injury, illness, or disability (physical or mental) and the disability either (1) remains in effect for any ninety consecutive days or (2) remains in effect for any combination of 180 days (whether consecutive or not) out of any 360-day period. The determination of disability is to be made in good faith by a majority of the Board. The Board's determination is binding on the Shareholder and may be set aside only by a court or arbitrator based on a showing of bad faith of the Board by clear and convincing evidence.

(b) If a Shareholder becomes Disabled as determined under section 6.4(a), the Corporation and the Other Shareholders have the exclusive right and option to purchase all or any portion of the Shares owned by the Disabled Shareholder, and the Disabled Shareholder (or his Personal Representative) has the right and option to require the Corporation to purchase all or any portion of the Shares at the purchase price per Share determined pursuant to section 7.1 below to be payable in accordance with section 7.2(a). On the exercise of the option, the Disabled Shareholder (or his Personal Representative) is obligated and bound to sell his Shares to the Corporation and the Other Shareholders on those terms, and the Corporation is obligated to purchase all the Shares, to the extent it may lawfully do so. Notice of the exercise of the option granted pursuant to this section 6.4 is to be given to or by the Disabled Shareholder (or

his Personal Representative) within 180 days of the date on which the Shareholder is determined Disabled by the Board.

(c) As between the Corporation and the Other Shareholders, the Corporation has the first and prior right to purchase all or any portion of the Shares, and the Other Shareholders have the right to purchase all or any portion of the remaining Shares not purchased by the Corporation on a Pro Rata basis or as the Other Shareholders may otherwise agree among themselves.

Include the following if applicable.

6.5 *Termination of Employment or Competition*

(a) (1) If a Shareholder when employed or under a consulting agreement with the Corporation (an "Employee Shareholder") voluntarily terminates the employment or consulting agreement with the Corporation or if the Board terminates the Employee Shareholder's employment or consulting agreement, with or without cause, or (2) if a Shareholder becomes interested (directly or indirectly), as an employee, officer, director, shareholder, partner, consultant, or advisor, with a competitor of the Corporation (as determined by the Board), the Corporation and the Other Shareholders have the exclusive right and option to purchase all or any portion of the Shares owned by the Shareholder at the purchase price per Share determined pursuant to section 7.1 below to be payable in accordance with section 7.2(b). Notice of the exercise of the option granted pursuant to this section 6.5(a) is to be given to (1) the Employee Shareholder within ninety days of the date on which the Employee Shareholder terminates his employment or consulting with the Corporation or the Employee Shareholder's employment or consulting is terminated by the Corporation or (2) the Shareholder within ninety days of the date on which the Corporation receives notice of the Shareholder's interest with a competitor.

(b) As between the Corporation and the Other Shareholders, the Corporation has the first and prior right to purchase all or any portion of the Shares, and the Other Shareholders have

the right to purchase all or any portion of the remaining Shares not purchased by the Corporation on a Pro Rata basis or as the Other Shareholders may otherwise agree among themselves.

Continue with the following.

Article 7

Purchase Price and Terms

The purchase price in section 7.1 is based on book value, but formula valuations can be based on other financial factors (e.g., cash flow, net income, and revenues). Some alternative methods of determining purchase price are—

1. Agreement of the Parties—The easiest method of establishing the purchase price in a buy-sell agreement is to have the parties agree on the value of the interest in a closely held corporation. This is done by assigning each party's interest a specific price in the agreement. A provision is also included that provides for the periodic recalculation of their interests. This valuation method has its advantages because it does not involve a complicated formula, and it allows the parties to know up front the value of their interest in the corporation. However, there are also difficulties involved in such a valuation method. For one, the parties may fail to periodically recalculate their interests in the business. Additionally, the parties may not be able to agree on a new price.

2. Appraisal of the Interest at the Time of Purchase—Appraisal of the interest at the time of the purchase of the interest, although relatively expensive, is one method that allows for a fair price to be set for the interest that accurately reflects the value of the interest. However, this method works well only if the business is one in which the assets may be accurately and reliably appraised. If this method is used, the shareholders' agreement should include provisions explaining the procedure to be used to establish the purchase price. Included in these provisions should be the name of a competent appraiser or a person specified by the parties; the provisions should explain in detail the formula used to determine the amount of the appraiser's compensation and the parties responsible for that compensation. Lastly, an alternate appraiser should be named in the event the designated appraiser is unavailable. The appraisal method is an expensive and time-consuming process. Additionally, this method fails to consider all the factors that the parties to the agreement may consider if they set the purchase price. Furthermore, the appraisal method allows the appraiser to place great emphasis on existing economic conditions that results in valuations that may be unreasonably depressed or inflated depending on the current economy.

7.1 *Purchase Price.* The parties to this Agreement acknowledge that the Common Stock is closely held, no public market exists for the Common Stock, and, consequently, a fair market value for the Shares is not readily determinable. Therefore, as used throughout this Agreement, the phrase *the purchase price per Share determined pursuant to section 7.1* will be the quotient of the Corporation's accrual basis book value as of the last day of the month immediately preceding the closing of the purchase of the Shares being purchased (determined in accordance with generally accepted accounting principles) divided by the total number of Shares then issued and outstanding (determined in accordance with the Corporation's stock records).

7.2 *Payment of Purchase Price.* Payment of the purchase price for Shares purchased by the Corporation and the Shareholders (the "Purchasers") pursuant to this Agreement is to be made by either one of the two following methods:

As is the common practice, the terms in this shareholders' agreement require an all-cash payment on the death or disability of a shareholder and installment payments on bankruptcy, divorce, or termination of employment of a shareholder, but a corporation may tailor its shareholders' agreements as it deems necessary. Throughout this shareholders' agreement, references to section 7.2(a) refer to the all-cash payment option, and references to section 7.2(b) refer to the installment payment option.

- (a) On the closing date of the purchase, the Purchasers deliver to the selling Shareholder a cash payment equal to 100 percent of the total purchase price; or
- (b) On the closing date of the purchase, the Purchasers deliver to the selling Shareholder a cash down payment equal to [percent] percent of the total purchase price, and the Purchasers pay the balance of the total purchase price in [number] equal [annual/quarterly/monthly] installments.

7.3 *Deliveries at Closing.* At the closing of the purchase of any Shares to be made by the Purchasers under any provision of this Agreement, the selling Shareholder and the Pur-

chasers are obligated to sign and deliver the following instruments, certificates, and agreements:

- (a) The Purchasers deliver to the selling Shareholder—
 - (1) the amount of cash required to be delivered; and
 - (2) a promissory note for the balance of the purchase price if the purchase price is payable in accordance with section 7.2(b).

- (b) The selling Shareholder delivers to the Purchasers—
 - (1) certificates representing the Shares being purchased by the Purchasers endorsed for transfer to the Purchasers, free of all liens, claims, and encumbrances; and
 - (2) other instruments of assignment, certificates of authority, tax releases, consents to transfer, and instruments in evidence of title in compliance with this Agreement as may be reasonably required by the Purchasers.

Article 8

Closing Date and Notices

8.1 *Closing Date.* Whenever the Purchasers agree or become obligated to purchase Shares under the terms of this Agreement, the closing date of the transaction will be a date and time specified by the Corporation (or if the Corporation is not one of the Purchasers, then by the Purchasers) at a designated location. Unless the parties agree to the contrary, the closing date may not be more than ninety days after the event or notice that fixed the obligation of the Purchasers to purchase the Shares. Notice of the details of closing will be furnished by the

Corporation (or if the Corporation is not one of the Purchasers, by the Purchasers) no later than ten days before the closing date.

8.2 *Notices.* All notices, communications, and deliveries made under this Agreement will be made in writing signed by or on behalf of the party, will specify the section of the Agreement under which it is given or made, and will be delivered personally, by facsimile transmission, by registered or certified mail (return receipt requested), or by any courier service, with postage or other fees prepaid, as follows:

If to **[name]**:

[Address]

[Fax no.]

Attention: **[name]**

Repeat as necessary.

Any such notice, communication, or delivery may also be made to any other address or person designated in writing by the party. Such addresses may be changed from time to time by written notice to the other party. Any notice, communication, or delivery will be deemed given or made (a) on the date of delivery if delivered in person or by courier service, (b) on transmission by facsimile if receipt is confirmed by telephone, or (c) on the fifth business day after it is mailed by registered or certified mail.

Article 9

Enforcement

9.1 *Creation of Sufficient Surplus.* If the surplus of the Corporation is determined to be legally insufficient (under then-existing law) to enable the Corporation to purchase any Shares the Board has determined to purchase under the terms of this Agreement, the Board, to the extent legally possible, will take actions, adopt resolutions, and cause certificates and other

documents to be filed as may be necessary to create sufficient surplus to permit the purchase, and the Shareholders agree to perform required acts, sign instruments, and vote their Shares in such a manner as may be reasonably necessary to authorize or ratify any action taken to create sufficient surplus.

9.2 *Endorsements on Stock Certificates.* Each certificate representing Shares now owned or hereafter owned by the Shareholders or any transferee must conspicuously state substantially as follows, in addition to any other legends required by law:

The following legend is one of the options mandated by the Texas Business Organizations Code. See Tex. Bus. Orgs. Code § 3.202(d). See also Tex. Bus. Orgs. Code § 1.005 regarding conspicuous information.

THESE SHARES ARE SUBJECT TO CERTAIN RESTRICTIONS AGAINST TRANSFER PURSUANT TO THE TERMS OF A SHAREHOLDERS' AGREEMENT BETWEEN THIS CORPORATION AND ITS SHAREHOLDERS THAT PROVIDES FOR, AMONG OTHER THINGS, AN OPTION IN FAVOR OF THE CORPORATION TO PURCHASE THESE SHARES IN CERTAIN INSTANCES. THE CORPORATION WILL FURNISH WITHOUT CHARGE A COPY OF THE AGREEMENT TO THE RECORD HOLDER OF THIS CERTIFICATE ON WRITTEN REQUEST TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS.

The following legend is required by the Texas Business Organizations Code. See Tex. Bus. Orgs. Code § 21.103(b). Although section 21.103(b) does not specify that the language must be conspicuous, that is the common practice.

THESE SHARES ARE SUBJECT TO THE PROVISIONS OF A SHAREHOLDERS' AGREEMENT THAT MAY PROVIDE FOR MANAGEMENT OF THE CORPORATION IN A MANNER DIFFERENT THAN IN OTHER CORPORATIONS AND MAY SUBJECT A SHAREHOLDER TO CERTAIN OBLIGATIONS OR LIABILITIES NOT OTHERWISE IMPOSED ON SHAREHOLDERS IN OTHER CORPORATIONS.

Continue with the following.

THESE SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER ANY APPLICABLE STATE SECURITIES LAWS, AND THEY CANNOT BE OFFERED FOR SALE, SOLD, TRANSFERRED, PLEDGED, OR OTHERWISE HYPOTHECATED EXCEPT IN ACCORDANCE WITH THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND STATE SECURITIES LAWS OR ON DELIVERY TO THIS CORPORATION OF AN OPINION OF LEGAL COUNSEL SATISFACTORY TO THE CORPORATION THAT AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

Include the following if applicable.

THIS CORPORATION HAS ELECTED TO BE TAXED AS AN "S" CORPORATION FOR FEDERAL INCOME TAX PURPOSES UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"). ANY SALE, TRANSFER, OR OTHER FORM OF DISPOSITION OF THESE SHARES THAT WOULD CAUSE THIS CORPORATION TO LOSE ITS STATUS AS AN "S" CORPORATION UNDER THE CODE IS VOID.

Continue with the following.

9.3 *Breach and Equitable Relief.* Any purported Transfer in breach of any provision of this Agreement is void, will not operate to Transfer any interest or title in the purported transferee, and will constitute an offer by the breaching Shareholder to sell his Shares to the Corporation at the purchase price per Share determined pursuant to section 7.1 above to be payable in accordance with section 7.2(b). In connection with any attempted Transfer in breach of this Agreement, the Corporation may refuse to transfer any Shares or any stock certificate tendered to it for Transfer, in addition to and without prejudice to any other rights or remedies available to the Corporation. Each party to this Agreement acknowledges that each other party will suffer immediate and irreparable harm if a party hereto breaches, attempts to breach, or threatens to breach this Agreement and that monetary damages will be inadequate to compensate the nonbreaching parties for any actual, attempted, or threatened breach. Accordingly, each party hereto agrees that each of the other parties will, in addition to any other remedies

available to them at law or in equity, be entitled to specific performance or temporary, preliminary, and permanent injunctive relief to enforce the terms and conditions of this Agreement without the necessity of proving inadequacy of legal remedies or irreparable harm, or posting bond, any requirements to equitable and injunctive relief being hereby specifically waived.

9.4 *Governing Law and Severability.* All questions concerning the construction, validity, and interpretation of this Agreement, including the relative rights of the Corporation and the Shareholders, are governed by and construed in accordance with the laws of the state of Texas. If any term, provision, covenant, or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, provisions, covenants, and restrictions will remain in full force and effect and will in no way be affected, impaired, or invalidated. It is hereby stipulated and declared to be the intention of the parties that they would have signed this Agreement had any terms, provisions, covenants, and restrictions that may be hereafter declared invalid, void, or unenforceable not initially been included in this Agreement.

Article 10

Effect

10.1 *Binding Effect.* Nothing in this Agreement, express or implied, is intended to confer on any party, other than the parties hereto and their respective permitted assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, and no person who is not a party to this Agreement may rely on the terms except as otherwise set out. This Agreement (a) constitutes the entire agreement between the parties relating to the subject matter hereof and (b) supersedes all previous understandings and agreements between the parties relating to the subject matter hereof, both oral and written. This Agreement is binding on, inures to the benefit of, and is enforceable by the parties hereto, including the Corporation and

its successors and assigns as well as the Shareholders and Spouses and their respective heirs, legatees, devisees, legal representatives, successors, and permitted assigns.

10.2 *Spouses.* The Spouses are fully aware of, understand, and agree to the provisions of this Agreement and its binding effect on any interest that a Spouse may have by reason of marriage to a Shareholder in any Shares subject to the terms of this Agreement held in the Shareholder's name on the stock records of the Corporation at or after execution of this Agreement. Any obligation of a Shareholder or his legal representative to sell or offer to sell Shares under the terms of this Agreement includes an obligation on the part of the Shareholder's Spouse to sell or offer to sell any interest that the Spouse may have in the Shares in the same manner.

10.3 *Representations and Warranties.* No party to this Agreement is making any representations or warranties concerning the business operations or financial condition of the Corporation, because all the parties are equally familiar with the business operations and financial condition of the Corporation. All parties to this Agreement represent, warrant, and covenant that they have full power, legal capacity, and authority to enter into and perform this Agreement in accordance with its terms and that they will perform all agreements made by them under this Agreement in accordance with its terms.

Article 11

Assignment, Amendment, Waiver, and Termination

11.1 *Assignment.* No party to this Agreement may assign its rights or delegate its obligations hereunder without the prior written consent of each party. Any such attempted assignment will be void *ab initio*. Subject to the preceding sentences, this Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

11.2 *Amendment.* This Agreement may be amended at any time by a written instrument signed by the Corporation (which will require Board approval by a majority of its members) and Shareholders holding at least two-thirds of the Shares then subject to this Agreement, provided that no amendment may adversely affect any rights of any party under this Agreement that have vested before amendment. The Corporation promptly will send a conformed copy of each executed amendment to this Agreement to all parties hereto.

11.3 *Waiver.* Any waiver of the terms or conditions in this Agreement may be made only by a written instrument signed and delivered by the party waiving compliance. Any waiver granted by the Corporation is effective only if signed and delivered by a duly authorized executive officer of the Corporation. The failure of any party at any time to require performance of any provisions of this Agreement in no manner affects the right to enforce. No waiver by any party of any term or condition, nor the breach of any term or condition contained in this Agreement, is deemed to be (a) a further or continuing waiver of the term, condition, or breach or (b) a waiver of any other term, condition, or breach of any other term or condition.

11.4 *Termination.* This Agreement terminates on the occurrence of—

- (a) the written agreement of the Corporation (which will require Board approval by a majority of its members) and Shareholders holding at least two-thirds of the Shares then subject to this Agreement, provided that no termination may affect adversely any rights that have vested before termination;
- (b) the naming of the Corporation as debtor in bankruptcy proceedings for a period of sixty days without dismissal, the execution by the Corporation of an assignment for the benefit of its creditors, the appointment of a receiver for the Corporation, or the voluntary or involuntary liquidation or dissolution of the Corporation; or
- (c) the consummation of an initial public offering by the Corporation.

The Corporation will promptly deliver written notice of any termination of this Agreement to all parties hereto.

Article 12

Miscellaneous

12.1 *Further Assurances.* All parties to this Agreement agree to take further actions and execute and deliver other documents, certificates, agreements, and other instruments as may be reasonably necessary or desirable to implement transactions contemplated by this Agreement.

12.2 *Construction and Certain References.* When the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter, and the number of all words includes the singular and plural. Unless expressly stated otherwise, references to “include” or “including” mean “including, without limitation.” “Hereto,” “herein,” or “hereunder” refer to this Agreement as a whole and not to any particular article or section hereof. All titles and headings to articles and sections in this Agreement are included for convenience and ease of reference only and do not affect the meaning or interpretation of articles or sections of this Agreement. Unless otherwise specified, all references to specific articles, sections, or exhibits are references to articles and sections in and exhibits to this Agreement.

12.3 *Time of Essence.* Time is of the essence in the performance of obligations of this Agreement.

12.4 *Counterparts.* This Agreement may be signed in multiple counterparts, each of which will be considered an original but all of which together will constitute one and the same instrument, and in making proof of this Agreement it is not necessary to produce or account for more than one counterpart.

Include the following if applicable.

12.5 *Confidentiality.* Each Shareholder acknowledges and agrees that—

- (a) his ownership interest in the Corporation affords the Shareholder access to Confidential Information regarding the Corporation and its business;
- (b) the dissemination or use of Confidential Information in any manner inconsistent with protecting and furthering the Corporation, its business, and its prospects would cause the Corporation great loss and irreparable harm; and
- (c) one of the duties of ownership in the Corporation is to prevent the dissemination or use of Confidential Information in any manner inconsistent with protecting and furthering the Corporation, its business, and its prospects.

Therefore, each Shareholder agrees that he will not, for himself or on behalf of any other Person (whether as an individual, agent, servant, employee, employer, officer, director, shareholder, investor, principal, consultant, or in any other capacity), directly or indirectly use or disclose to any Person any Confidential Information, provided, however, that (after reasonable measures have been taken to maintain confidentiality and after giving reasonable notice to the Corporation specifying the information involved and the manner and extent of the proposed disclosure thereof) disclosure of information may be made to the extent required by applicable laws or judicial or regulatory process. “Confidential Information” means information considered confidential by the Corporation and includes the following information relating to the Corporation: customer lists; trade secrets; proprietary information; “know-how”; marketing and advertising plans and techniques; the existence or terms of contracts or potential contracts with or other information identifying or relating to past, existing, or potential customers or vendors; and cost data, pricing policies, and financial and accounting information. “Confidential Information” also includes any information described in the preceding sentence that the Corporation obtains from another Person and that the Corporation treats or has

agreed to treat as confidential. "Confidential Information" does not include information that is or becomes generally available to the public unless resulting from the breach of this section 12.5.

And/Or

12.6 *Mediation and Arbitration.* If a claim, demand, disagreement, controversy, or dispute (collectively, "Dispute") arises in connection with this Agreement or the breach thereof and if the Dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the Dispute in an amicable manner by mediation to be held in [city, county, state], United States of America, administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration. The mediation will be completed within thirty days of receipt of written demand for mediation. Thereafter, any unresolved controversy or claim relating to this Agreement or breach thereof will be settled by binding arbitration initiated by written notice by either party to the other of the intent to arbitrate. The arbitration will be held in [city, county, state], United States of America, and administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered may be entered in any court having jurisdiction. Notwithstanding any other provision of this Agreement or this section 12.6 to the contrary, no party will be precluded from seeking injunctive relief or a temporary restraining order before implementing procedures for mediation or arbitration, provided that such party determines in the good-faith exercise of its reasonable best judgment that it will suffer irreparable harm or injury by any delay caused by mediation or arbitration proceedings.

Continue with the following.

The Corporation has signed this Agreement in the space provided below, and the Shareholders have signed this Agreement on separate joinder pages attached hereto, on [date].

Corporation:

[Name of corporation]

[Name of officer], [title]

Joinder by Shareholder and Spouse

Printed Name: _____
Shareholder Spouse

Address for notice: _____

Number of shares: _____

Shareholder's
Social Security
number or
Federal Tax ID
number: _____

By signing below, the above-named Shareholder and Spouse, if applicable, (1) agree to become parties to and bound by the terms and provisions contained in the Shareholders' Agreement of [name of corporation] dated effective [date] and (2) acknowledge that they have previously received a copy of the Shareholders' Agreement as signed by the Corporation.

[Name of shareholder]

[Name of spouse]

Repeat page as necessary.

Exhibit B**Adoption of Shareholders' Agreement**

This Adoption of Shareholders' Agreement ("Adoption Agreement") is entered into on [date], by and between [name of corporation], a Texas corporation ("Corporation"), the Shareholders and Spouses, and [name of recipient] [include if applicable: and [name of spouse], Spouse].

The Corporation, Shareholders, and Spouses entered into a Shareholders' Agreement dated [date] ("Shareholders' Agreement").

Section 3.2 of the Shareholders' Agreement provides that as a condition precedent to the acquisition of Shares by a Recipient of Shares from the Corporation, each Shareholder and Spouse authorizes and directs the Corporation to sign, on the Corporation's behalf and as agent for each Shareholder and Spouse, an agreement with the Recipient of Shares from the Corporation and Spouse, if applicable, pursuant to which [name of recipient] [include if applicable: and [name of spouse], Spouse], for [himself/themselves] and for [his/their respective] successors, successors in interest, heirs, legatees, devisees, and legal representatives, agree[s] to be bound by the Shareholders' Agreement, as if an original party to the Shareholders' Agreement.

The undersigned [name of recipient] [include if applicable: and [name of spouse], Spouse,] desire[s] to acquire Shares of the Corporation.

Therefore, for and in consideration of the premises and mutual and dependent covenants and agreements contained herein, the Corporation, on its own behalf and as agent for each Shareholder and Spouse, and [name of recipient] [include if applicable: and [name of spouse], Spouse,] agree as follows:

1. A true and correct copy of the Shareholders' Agreement, as amended and together with all adoption agreements entered into pursuant to section 3.2, is attached and incorporated by reference. All undefined capitalized terms used in this Adoption Agreement have the meaning ascribed to them in the Shareholders' Agreement.

2. The undersigned, [**name of recipient**] [**include if applicable:** and [**name of spouse**], Spouse], having acquired [**number**] Shares, take[s] the Shares subject to all the terms, covenants, conditions, limitations, restrictions, and provisions contained in the Shareholders' Agreement. By signing of this Adoption Agreement, the undersigned agree[s] to be bound by the Shareholders' Agreement and agree[s] that the Shareholders' Agreement is binding on and inures to the benefit of the heirs, legatees, devisees, legal representatives, successors, and permitted assigns of the undersigned.

3. [**Name of recipient**] [**include if applicable:** and [**name of spouse**], Spouse,] acknowledge[s] receipt of a true and correct copy of the Shareholders' Agreement and further acknowledge[s] that [he/she/they] [has/have] read the Shareholders' Agreement and understand[s] and agree[s] to abide by all terms, covenants, conditions, limitations, restrictions, and provisions contained in the Shareholders' Agreement.

4. [**Name of recipient**] [**include if applicable:** and [**name of spouse**], Spouse,] hereby become[s] a "Shareholder" [**include if applicable:** and a "Spouse"] for all purposes of the Shareholders' Agreement as if original parties to the Shareholders' Agreement.

The undersigned [has/have] executed this Adoption Agreement on [**date**].

[**Name of corporation**]

By: _____
 President, on behalf of the Corporation
 and as agent for each Shareholder
 and Spouse

 [**Name of recipient**]

Include the following if applicable.

[Name of spouse], Spouse of [name of
recipient]

Form 13-2

Any number of owners of a domestic entity may enter into a written voting trust agreement unless otherwise provided by the Texas Business Organizations Code or by the governing documents. *See* Tex. Bus. Orgs. Code § 6.251(a). Ownership or membership interests subject to a voting trust agreement must be transferred to the named trustee for purposes of the agreement. Tex. Bus. Orgs. Code § 6.251(b). A copy of a voting trust agreement must be deposited at the entity's principal executive office or registered office and may be examined by an owner or holder of a beneficial interest in the voting trust. Tex. Bus. Orgs. Code § 6.251(c).

Voting Trust Agreement

This Voting Trust Agreement (“Agreement”) made as of [date] between the several owners of [name of corporation], a Texas corporation (“Corporation”), whose names are subscribed below and all other owners of the Corporation who become parties to this Agreement as provided below, all of whom are hereinafter collectively called the “Owners,” and [name of trustee] [include if applicable: and [name[s] of additional trustee[s]]], who [is/are] hereinafter [include if applicable: collectively] called the “Trustee[s].”

The Owners are owners of ownership interests in the Corporation (“Ownership Interests”), as set forth opposite their respective signatures below. With a view to the safe and competent management of the Corporation in the interests of all the owners thereof, the Owners desire to create a trust (“Trust”) as set forth in this Agreement.

Therefore, in consideration of the premises and the mutual promises contained in this Agreement, the Owners agree as follows:

1. *Transfer of Ownership Interest to Trustee[s].* Each of the Owners hereby assigns and delivers to the Trustee[s] his, her, or its Ownership Interests [include if applicable: and all certificates representing those Ownership Interests, with corresponding instruments of transfer,] and agrees to do all things necessary for the transfer of Ownership Interests to the Trustee[s] on the books of Corporation.

2. *Other Owners May Join.* Every owner or holder of Ownership Interests may become a party to this Agreement by executing this Agreement and assigning and delivering [include if applicable: the certificate[s] representing] ownership interests in the Corporation to the Trustee[s].

3. *Trustee[s] to Hold Subject to Agreement.* The Trustee[s] will hold the Ownership Interests transferred to [him/her/them] under and subject to this Agreement.

4. *Issuance of Certificates to Trustee[s].* The Trustee[s] will surrender to the [proper managerial official] of the Corporation, for cancellation, all [include if applicable: certificates representing] Ownership Interests that have been assigned and delivered to the Trustee[s] and, in their stead, obtain [include if applicable: new certificates representing] the Ownership Interests issued to them as Trustee[s] under this Agreement.

5. *Voting Trust Certificates.* The Trustee[s] will issue to each of the Owners a Voting Trust Certificate for the Ownership Interests [include if applicable: represented by the certificates] transferred by that Owner to the Trustee[s]. Each Voting Trust Certificate will set forth the nature and proportional amount of the beneficial interest of the Owner to whom it is issued and will be assignable in the manner of certificates of ownership on books to be kept by the Trustee[s]. The Trustee[s] will keep a list of the Ownership Interests transferred to [him/her/them] and will also keep a record of all Voting Trust Certificates issued or transferred on [his/her/their] books. These records will contain the names and addresses of the holders of the Voting Trust Certificates and the Ownership Interests represented by each Voting Trust Certificate. The list and records will be open at all reasonable times to the inspection of any holder of any Voting Trust Certificate and any authorized representative of that holder; and on any transfer in the books of the Trustee[s] of any Voting Trust Certificate, the transferee will succeed to all the rights of the transferor under this Agreement.

Select one of the following.

Each Voting Trust Certificate will be substantially in the form of Exhibit A to this Agreement.

Or

Each Voting Trust Certificate will be substantially in the following form:

[TRUSTEE'S/TRUSTEES'] CERTIFICATE

This is to certify that the undersigned Trustee[s] [has/have] received [a certificate/certificates] issued in the name of [name], representing the ownership interests of [name of corporation], a Texas corporation (the "Corporation"), and that these ownership interests are held subject to all the terms and conditions of the Voting Trust Agreement, dated [date], between [name[s]], as Trustee[s], and certain owners of the Corporation (the "Agreement"). During the term of the Agreement, the Trustee[s], or [his/her/their] successors, will possess and be entitled to exercise the vote and otherwise represent all of such ownership interests in the Corporation for all purposes, as provided in the Agreement, it being agreed that no voting right will pass to the holder of this certificate by virtue of the ownership of this certificate.

On the termination of the voting trust in the Agreement, this certificate will be surrendered to the Trustee[s] by the certificate's holder on delivery to the holder of a certificate representing ownership interests in the Corporation.

The undersigned Trustee[s] [has/have] executed this certificate as of [date].

[Name of trustee]

[Name of trustee]

Continue with the following.

6. *Restriction on Transfer of Voting Trust Certificate.* Each of the Owners agrees that during the term of this Agreement, the Voting Trust Certificates will not be sold or transferred. The Voting Trust Certificates will be regarded as Ownership Interests within the meaning of any provision of the governing documents of the Corporation that imposes conditions and restrictions on the sale or transfer of Ownership Interests.

7. *Trustee[s] to Vote Ownership Interests.* The Trustee[s] will have full power and authority, and the obligation, to represent the holders of the Voting Trust Certificates and to vote and give consent for the Ownership Interests transferred to the Trustee[s], as in the judgment of Trustee[s] [**include if applicable:** (or a majority of them)] may be for the best interest of the Owners, at all meetings or in connection with actions taken by consent of the Owners of the Corporation, in the election of persons authorized to manage the affairs of the Corporation, and on any matters in question that may be brought before such meetings or may be taken by consent, as fully as any Owner might do if personally present.

8. *[Trustee's/Trustees'] Liability.* The Trustee[s] will use [his/her/their] best judgment in voting the Ownership Interests transferred to [him/her/them] but will not be liable for any vote cast or consent given by [him/her/them] in good faith and in the absence of gross negligence or willful misconduct.

9. *Distributions.* The Trustee[s] will collect and receive all distributions that accrue on the Ownership Interests subject to this Trust and, subject to deduction as provided in the following section 10, will divide and distribute cash distributions among the holders of the Voting Trust Certificates in proportion to the Ownership Interests represented by their Voting Trust Certificates. If the distribution consists of additional Ownership Interests, the Trustee[s] will retain those Ownership Interests, which will be deemed to have been deposited hereunder, for the benefit of the Owners under, and subject to, this Agreement.

10. *[Trustee's/Trustees'] Compensation and Indemnity.* The Trustee[s] agree[s] to serve hereunder [without compensation/for compensation consisting of [**describe compensation**]]. The Trustee[s] will be entitled to be indemnified fully out of the distributions coming into [his/her/their] hands against all costs, expenses, and other liabilities properly incurred by [him/her/them] in the exercise of any power or authority conferred on [him/her/them] by this Agreement. The Owners, and each of them, hereby covenant with the Trustee[s] that if the moneys and securities in [his/her/their] hands are insufficient for that purpose, the Owners, and each of them, will, in proportion to the amount of their respective Ownership Interests held by the Trustee[s], hold harmless and indemnify the Trustee[s] from and against all costs, expenses, and other liabilities that [he/she/they] may be responsible for by reason of anything they may lawfully do in the execution of this Trust.

11. *Appointment of Trustee[s] to Fill Vacancies.* In the event of the death, resignation, refusal to act, or inability to act by any Trustee, the surviving or other Trustee or Trustees will appoint a person or persons to fill the vacancy or vacancies, and any person so appointed will thereupon be vested with all the power, authority, rights, and obligations of a Trustee hereunder as if originally named herein.

12. *Continuance and Termination of Trust.* The Trust created by this Agreement will continue until 11:59 P.M. central time on [date], when it will terminate; provided, however, that it will terminate sooner on the consummation of a registered public offering of Ownership Interests for the account of the Corporation under the Securities Act of 1933, as amended, and the rules and regulations thereunder. On termination of the Trust, the Trustee[s] will, on the surrender of the Voting Trust Certificates by the respective holders thereof, assign and transfer to them the Ownership Interests represented by their certificates.

13. *Voting Trust Agreement.* This Agreement is a voting trust agreement under section 6.251 of the Texas Business Organizations Code. Accordingly, a copy of this Agreement will be deposited with the Corporation at its principal executive office or registered office.

Include the following boilerplate provisions if applicable.

14. *Binding Effect of Agreement.* Nothing in this Agreement, express or implied, is intended to confer on any party, other than the parties hereto and their respective permitted assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, and no person who is not a party to this Agreement may rely on the terms except as otherwise set out. This Agreement (a) constitutes the entire agreement between the parties relating to the subject matter hereof and (b) supersedes all previous understandings and agreements between the parties relating to the subject matter hereof, both oral and written. The terms and conditions of this Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

And/Or

15. *Assignment.* No party to this Agreement may assign its rights or delegate its obligations hereunder without the prior written consent of each party. Any such attempted assignment will be void *ab initio*. Subject to the preceding sentences, this Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

And/Or

16. *Amendment of Agreement.* This Agreement may be amended or modified only by written instrument duly executed by each of the parties hereto.

And/Or

17. *Applicable Law.* This Agreement is made pursuant to, will be construed under, will be enforced in accordance with, and will be conclusively deemed for all purposes to have been executed and delivered under the laws of the state of Texas without reference to conflict of laws.

And/Or

18. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which will constitute one instrument.

And/Or

19. *Severability.* If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected thereby, and in lieu of the illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be legal, valid, and enforceable.

And/Or

20. *Notices.* All notices, communications, and deliveries made under this Agreement will be made in writing signed by or on behalf of the delivering party, will specify the section of the Agreement under which it is given or made, and will be delivered personally, by facsimile transmission, by registered or certified mail (return receipt requested), or by any courier service, with postage or other fees prepaid, as follows:

If to [name]:

[Address]

[Fax no.]

Attention: [name]

Repeat as necessary.

Any such notice, communication, or delivery may also be made to any other address or person designated in writing by the receiving party. Such addresses may be changed from time to time by written notice to the other party. Any notice, communication, or delivery will be deemed given or made (a) on the date of delivery if delivered in person or by courier service,

(b) on transmission by facsimile if receipt is confirmed by telephone, or (c) on the fifth business day after it is mailed by registered or certified mail.

And/Or

21. *Waiver.* No term or provision of this Agreement may be waived or modified unless such waiver or modification is in writing and executed by all of the parties hereto. Any waiver by any party hereto of a breach or failure to perform will not constitute a waiver of any subsequent breach or failure.

And/Or

22. *Further Assurances.* The parties agree to take further actions and execute and deliver other documents, certificates, agreements, and other instruments as may be reasonably necessary or desirable to implement transactions contemplated by this Agreement.

And/Or

23. *Section Headings.* The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

And/Or

24. *Gender and Number of Words.* When the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter, and the number of all words includes the singular and the plural.

Continue with the following.

The Owners and the Trustee[s] have executed this Agreement on [date].

 [Name of owner], Owner

Ownership Interests: [[percent]/[number]]

Repeat as necessary.

[Name of trustee]

Repeat as necessary.

Attach form 13-3 as Exhibit A if applicable.

Form 13-3

Information regarding voting trusts can be found at Tex. Bus. Orgs. Code § 6.251. See also section 21.201 regarding registered holders as owners and shares held by nominees.

Voting Trust Certificate

No. [certificate number]

[number] Ownership Interests

This is to certify that [name of owner] (“Holder”) or his assignee has deposited [include if applicable: [a certificate/certificates] representing] [[percent]/[number]] Ownership Interests (“Ownership Interests”) of [name of corporation], a Texas corporation (“Corporation”), and until [date] is entitled to receive payments equal to the amount of \$[amount], if any, received by the Trustee[s] on the Ownership Interests represented by this Voting Trust Certificate, less any taxes the Trustee[s] may be required to pay or to withhold on the Ownership Interests and also less a proportionate share of the expenses of the Trustee[s]. The Ownership Interests deposited hereunder are the only class of ownership interests of the Corporation issued and outstanding at this date, and this Voting Trust Certificate represents any and all ownership interests that, on any increase or reclassification of the Ownership Interests, will be issued in lieu of, or in respect of, the Ownership Interests originally deposited, which will have been received by the Trustee[s] by virtue of ownership as Trustee of the Ownership Interests.

On termination of this Voting Trust Certificate, the Holder or assigns will be entitled to receive [include if applicable: [a certificate/certificates] representing] the Ownership Interests deposited under this Voting Trust Certificate. Until the actual delivery to the Holder of the [include if applicable: certificate[s] representing] Ownership Interests, the Trustee[s] will possess and will be entitled to exercise all rights and powers of absolute owners and holders of record of the Ownership Interests deposited hereunder, including, without limitation, the right

to vote for every purpose and to consent to or waive any act of the Corporation. The parties expressly stipulate that no voting right, or right to give consents or waivers in respect of the Ownership Interests, passes to the Holder or assigns by or under this Voting Trust Certificate or by or under any agreement, express or implied.

On termination of this Voting Trust Certificate, [**include if applicable:** [a certificate/certificates] representing] the Ownership Interests will be delivered by the Trustee[s] at the office of the Corporation, in exchange for Voting Trust Certificates in accordance with its provisions or in accordance with the law.

In the event of the dissolution or the complete or partial liquidation of the Corporation, the money and other property received by the Trustee[s] in respect to the Ownership Interests represented by this Voting Trust Certificate will be paid or delivered to the Holder, but only on (1) surrender of this Voting Trust Certificate in case of dissolution or complete liquidation or (2) the presentation of this Voting Trust Certificate for the notation thereon of the distribution in case of a partial liquidation.

This Voting Trust Certificate and the right, title, and interest in and to the Ownership Interests in respect of which this Voting Trust Certificate is issued are transferable on the books of the Trustee[s] by the registered Holder in person or by attorney duly authorized, according to the rules established for that purpose by the Trustee[s] and on surrender hereof, and until so transferred, the Trustee[s] may treat the registered Holder as the owner for all purposes except that no delivery of [**include if applicable:** any certificate representing] Ownership Interests hereunder will be made without the surrender hereof.

As a condition of making or permitting any transfer or delivery of [**include if applicable:** any certificate representing] Ownership Interests or any Voting Trust Certificate, the Trustee[s] may require the payment of a sum sufficient to pay or reimburse the Trustee[s] for

any tax or other governmental charge due in connection with the transfer and for **[include if applicable: a proportionate part of]** expenses as Trustee[s].

The Trustee[s] have signed this Voting Trust Certificate on **[date]**.

[Name of trustee], Trustee

Repeat as necessary.

Form 13-4

Note that although this voting agreement represents an agreement among three owners of a corporation, any number of owners of a corporation (including the corporation itself) may enter into a voting agreement. *See* Tex. Bus. Orgs. Code § 6.252.

Voting Agreement

This Voting Agreement (“Agreement”) is made as of [date] between [name of owner A], [name of owner B], and [name of owner C], as owners (each, an “Owner,” and collectively, “Owners”) of [name of corporation], a Texas corporation (“Corporation”).

The Owners hold ownership interests in the Corporation (“Ownership Interests”) and desire to enter into an agreement regarding the voting of Ownership Interests.

Therefore, in consideration of the premises and mutual promises contained in this Agreement, the Owners agree as follows:

1. *Proxies.* Any proxy granted by any of the Owners to vote or give a consent regarding [his/her/its] Ownership Interests will be subject to this Agreement.
2. *Nomination and Election of Board Members.* At each annual meeting of the Owners or any special meeting called for the purpose of electing the managerial officials of the Corporation or at any other time as they may agree, [name of owner D], [name of owner E], and [name of owner F], as a group (the “X Owners”) and [name of owner G], [name of owner H], and [name of owner I], as a group (the “Y Owners,” and collectively with the “X Owners,” the “Designating Owners”) each have the right to nominate [number] members of the board of [directors/managers] of the Corporation (the “Board”) (but only as long as at least one member of the nominated group is a holder of Ownership Interests), and each Owner will, and hereby agrees to, vote or give a consent regarding all of [his/her/its] Ownership Interests in favor of the election of all the individuals so nominated by the Designating Owners.

3. *Removal of Board Members.* No Owner may vote or give a consent regarding any of his, her, or its Ownership Interests in favor of the removal of a member of the Board nominated by any Designating Owner, provided, however, that on the request of a Designating Owner to remove a member of the Board nominated by the requesting Designating Owner, each Owner will, and hereby agrees to, vote or give a consent regarding all of his, her, or its Ownership Interests in favor of the removal of that member of the Board.

4. *Vacancies.* If any vacancy occurs on the Board because of the death, disability, resignation, retirement, or removal of a member of the Board nominated and elected in accordance with this Agreement, the Designating Owner who nominated the individual creating the vacancy or, if the vacancy occurs because the Designating Owner having the right to nominate a member of the Board failed to do so, the Designating Owner who has the right to make the nomination will nominate a successor, and each Owner will, and hereby agrees to, vote or give a consent regarding all of his, her, or its Ownership Interests in favor of the election of the nominated successor member of the Board. Any vacancy that occurs is required to be filled as promptly as possible on the request of the Designating Owner having the right to nominate an individual to fill the vacancy.

5. *Actions as Designating Owners.* Each of the X Owners and the Y Owners must take any actions as a group under this Agreement as Designating Owners by the affirmative vote or consent of the holders of a majority of the Ownership Interests of that group.

6. *Size of Board.* The Board will consist of [number] members [include if applicable: and may have up to [number] additional “outside” members who are not affiliated with the Corporation or any of the Owners and who are nominated by the Board]. If the Board or the Corporation (without the involvement of any of the Owners) amends the governing documents of the Corporation or repeals the Corporation’s governing documents and adopts new governing documents and the new governing documents affect the size or composition of the Board in violation of this Agreement, each Owner will use his, her, or its reasonable best

efforts to cause the amendment or new governing documents to be further amended so as to be consistent with this Agreement, and each Owner agrees to vote his, her, or its Ownership Interests accordingly.

7. *Amendment of Governing Documents.* No Owner will vote or give a consent regarding his, her, or its Ownership Interests in favor of an amendment or repeal of the Corporation's governing documents or for the adoption of new governing documents by the Corporation, without the consent of all the other Owners, if the amendment or repeal of the governing documents or the adoption of the new governing documents would affect the size or composition of the Board in violation of this Agreement.

8. *Voting Agreement.* This Agreement is a voting agreement under section 6.252 of the Texas Business Organizations Code. Accordingly, a copy of this Agreement will be deposited with the Corporation at its principal executive office or registered office, and each certificate representing the Owners' Ownership Interests will contain a conspicuous notation or the Corporation will send a notice to each holder of an Ownership Interest not represented by a certificate regarding the existence of this Agreement.

9. *Termination.* This Agreement will be effective until 11:59 P.M. central time on [date], when it will terminate; provided, however, that it will terminate sooner on the consummation of a registered public offering of Ownership Interests for the account of the Corporation under the Securities Act of 1933, as amended, and the rules and regulations thereunder. On termination of this Agreement, each Owner may exchange his, her, or its certificate representing Ownership Interests for a new certificate representing Ownership Interests without any notation regarding this Agreement and the Corporation will send a notice regarding the termination of this Agreement to each holder of an Ownership Interest not represented by a certificate.

Include the following boilerplate provisions if applicable.

10. *Binding Effect of Agreement.* Nothing in this Agreement, express or implied, is intended to confer on any party, other than the parties hereto and their respective permitted assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, and no person who is not a party to this Agreement may rely on the terms except as otherwise set out. This Agreement (a) constitutes the entire agreement between the parties relating to the subject matter hereof and (b) supersedes all previous understandings and agreements between the parties relating to the subject matter hereof, both oral and written. The terms and conditions of this Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

And/Or

11. *Assignment.* No party to this Agreement may assign its rights or delegate its obligations hereunder without the prior written consent of each party. Any such attempted assignment will be void *ab initio*. Subject to the preceding sentences, this Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

And/Or

12. *Amendment of Agreement.* This Agreement may be amended or modified only by written instrument duly executed by each of the parties hereto.

And/Or

13. *Applicable Law.* This Agreement is made pursuant to, will be construed under, will be enforced in accordance with, and will be conclusively deemed for all purposes to have been executed and delivered under the laws of the state of Texas without reference to conflict of laws.

And/Or

14. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which will constitute one instrument.

And/Or

15. *Severability.* If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected thereby, and in lieu of the illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be legal, valid, and enforceable.

And/Or

16. *Notices.* All notices, communications, and deliveries made under this Agreement will be made in writing signed by or on behalf of the delivering party, will specify the section of the Agreement under which it is given or made, and will be delivered personally, by facsimile transmission, by registered or certified mail (return receipt requested), or by any courier service, with postage or other fees prepaid, as follows:

If to [name]:

[Address]

[Fax no.]

Attention: [name]

Repeat as necessary.

Any such notice, communication, or delivery may also be made to any other address or person designated in writing by the receiving party. Such addresses may be changed from time to time by written notice to the other party. Any notice, communication, or delivery will be deemed given or made (a) on the date of delivery if delivered in person or by courier service,

(b) on transmission by facsimile if receipt is confirmed by telephone, or (c) on the fifth business day after it is mailed by registered or certified mail.

And/Or

17. *Waiver.* No term or provision of this Agreement may be waived or modified unless such waiver or modification is in writing and executed by all of the parties hereto. Any waiver by any party hereto of a breach or failure to perform will not constitute a waiver of any subsequent breach or failure.

And/Or

18. *Further Assurances.* The parties agree to take further actions and execute and deliver other documents, certificates, agreements, and other instruments as may be reasonably necessary or desirable to implement transactions contemplated by this Agreement.

And/Or

19. *Section Headings.* The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

And/Or

20. *Gender and Number of Words.* When the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter, and the number of all words includes the singular and the plural.

Continue with the following.

The Owners have executed this Agreement on [date].

[Name of owner A], Owner

[Name of owner B], Owner

[Name of owner C], Owner

Form 13-5

To be irrevocable, a proxy must be (1) set forth in a proxy form that “conspicuously” states that the proxy is irrevocable and (2) “coupled with an interest.” Tex. Bus. Orgs. Code § 21.369. The terms *we* and *our* are used when the irrevocable proxy is signed on behalf of an entity.

Irrevocable Proxy

[I/We], the holder[s] of ownership interests in [name of corporation], a Texas corporation (the “Corporation”), do hereby irrevocably appoint [name of proxy A] [include if applicable: , [name of proxy B], and [name of proxy C], and each of them, jointly and severally,] as [my/our] proxy[ies] [include if applicable: (each with full power of substitution and resubstitution)] and to represent [me/us] and vote all ownership interests in the Corporation that [I/we] now own or subsequently acquire during the term of this Irrevocable Proxy (collectively, “Ownership Interests”), whether at a meeting of ownership interest holders or by any consent to any action taken without a meeting, with respect to any matter presented to holders of ownership interests of the Corporation for vote or action without a meeting. [I/We] hereby revoke all proxies previously given by [me/us] with respect to the Ownership Interests.

During the effectiveness of this Irrevocable Proxy, [name of proxy A] [include if applicable: , [name of proxy B], and [name of proxy C], and each of them, jointly and severally,] [has/have] all the power that [I/we] would possess with respect to the voting of the Ownership Interests or granting of consent as holder of the Ownership Interests. [I/We] hereby ratify and confirm all acts that [my/our] proxy[ies] will do or cause to be done by virtue of and within the limitations set forth in this Irrevocable Proxy.

This Irrevocable Proxy is binding on [my/our] [include if applicable: heirs, estate, executors, personal] representatives, successors, and assigns (including any transferee of any of the Ownership Interests) to the fullest extent permitted under applicable law.

This Irrevocable Proxy terminates and ceases to be effective at 11:59 P.M. central time on [date]. [I/We] hereby waive [my/our] right to cancel this Irrevocable Proxy at any time before that termination.

[I/We] have executed this Irrevocable Proxy on [date].

[Name of owner]

Repeat signature lines as necessary.

Continue with the following.

Class of Ownership Interests Held: _____

Percent or number of
Ownership Interests Held: _____

Form 13-6

For general information regarding indemnification and insurance, see chapter 8 of the Texas Business Organizations Code.

Indemnification Agreement

This Indemnification Agreement (“Agreement”) is made and entered into on [date], by and between [name of corporation], a Texas corporation (the “Corporation”), and [name of indemnitee], an individual resident of the state of [name of state] (the “Indemnitee”).

It is essential to the Corporation and its mission to retain and attract the most capable persons available as directors.

The Indemnitee is a director of the Corporation.

Both the Corporation and the Indemnitee recognize the omnipresent risk of litigation and other claims that are routinely asserted against directors of companies operating today and the attendant costs of defending even wholly frivolous claims.

It has become increasingly difficult to obtain insurance against the risk of personal liability of directors on terms providing reasonable protection to the individual at reasonable cost to the companies.

The bylaws of the Corporation provide certain indemnification rights to the directors of the Corporation, and its directors have relied on this assurance of indemnification, as provided by Texas law.

In recognition of the Indemnitee’s need for substantial protection against personal liability in order to enhance the Indemnitee’s continued service to the Corporation in an effective manner, the increasing difficulty in obtaining and maintaining satisfactory insurance coverage, and the Indemnitee’s reliance on assurance of indemnification, the Corporation wishes to provide in this Agreement for the indemnification of and the advancement of expenses to the

Indemnatee to the fullest extent permitted by Texas law (whether partial or complete) and as set forth in this Agreement, and, to the extent insurance is maintained, for the continued coverage of the Indemnatee under the Corporation's directors' and officers' liability insurance policies.

Therefore, in consideration of the premises and the mutual covenants and agreements contained in this Agreement and Indemnatee's continuing to serve as a director of the Corporation, the parties agree as follows:

1. *Definitions*

"BOC" means the Texas Business Organizations Code, as may be amended from time to time.

"Business Combination" means any merger, share exchange, or conversion of the Corporation with any other entity.

"Business Day" means any day that is not a Saturday, Sunday, or a day on which banks in the state of Texas are required or authorized to be closed.

Even though the 20/80 percentage offered in subsections (a) and (c) of the definition of "Change in Control" below is not statutorily required, it represents a significant shift in the nature of the ownership/management of a corporation and is usually the threshold for a "poison pill" in the public company arena. A corporation, however, has flexibility when determining the percentage needed to represent a change in control in its own organization.

"Change in Control" will be deemed to have occurred if—

(a) any "person" (as used in sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended ("SEA")), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Corporation (or a corporation owned directly or indirectly by the shareholders of the Corporation in substantially the same proportions as their ownership of stock of the Corporation), is or becomes, after the date of this Agreement, a "beneficial owner" (as defined in Rule 13d-3 of the SEA) of securities of the Corporation

representing at least [20/[percent]] percent of the total voting power represented by the Corporation's then outstanding Voting Securities;

(b) during any period of two consecutive years, individuals constituting the board of directors of the Corporation at the beginning of such period (including any new director whose election by the board of directors or nomination for election by the Corporation's shareholders was approved by a vote of at least two-thirds of the directors still in office at that time (1) who were either directors at the beginning of such period or (2) whose election or nomination for election was previously so approved) cease, for any reason, to constitute a majority of the board of directors;

(c) the shareholders of the Corporation approve a Business Combination, other than a Business Combination that would result in the Voting Securities of the Corporation outstanding immediately before such Business Combination, continuing to represent (either by remaining outstanding or by being converted into Voting Securities of the surviving entity) at least [80/[percent]] percent of the total voting power represented by the Voting Securities of the Corporation or the surviving entity; or

(d) the shareholders of the Corporation approve a plan of complete liquidation of the Corporation or an agreement for the sale or disposition of all or substantially all the Corporation's assets by the Corporation in one or more transactions.

"Claim" means any threatened, pending, or completed action, suit, or proceeding (including an alternative dispute resolution proceeding), whether instituted by the Corporation or any other party, or any inquiry or investigation that the Indemnitee in good faith believes might lead to the institution of any action, suit, or proceeding, whether civil (including intentional and unintentional tort claims), criminal, administrative, or investigative, and any appeal thereof.

"Expense Advance" is defined in section 2 of this Agreement.

“Expenses” means attorney’s fees and all other costs, expenses, and obligations paid or incurred in connection with investigating, defending, being a witness or other participant in (including on appeal), or preparing to defend, be a witness in, or participate in any Claim relating to any Indemnifiable Event.

“Indemnifiable Event” means any event or occurrence related to the fact that the Indemnitee is or was a director, officer, employee, agent, or fiduciary of the Corporation, or is or was serving at the request of the Corporation as a director, manager, officer, employee, trustee, agent, or fiduciary of another corporation, partnership, limited liability company, joint venture, employee benefit plan, trust, or other enterprise, or by reason of anything done or not done by the Indemnitee in any such capacity. The Indemnitee’s service to (a) another corporation, partnership, limited liability company, joint venture, or trust of which at least 50 percent of the voting power or economic interest (or residual economic interest) is held directly or indirectly by the Corporation or (b) any employee benefit plan of the Corporation or any entity referred to in clause (a) of this definition, in any capacity, will be deemed “at the request of the Corporation.”

“Independent Legal Counsel” means an attorney or firm of attorneys, selected in accordance with section 3 of this Agreement, [who/that] must not have otherwise performed services (other than with respect to matters concerning the rights of the Indemnitee under this Agreement or of other indemnitees under similar indemnification agreements) for the Corporation or the Indemnitee within five years of [date], the date of this Agreement.

Select one of the following.

“Reviewing Party” means (a) any appropriate person or group of persons consisting of a member or members of the Corporation’s board of directors or any other person or group of persons appointed by the Corporation’s board of directors [who/that] is not a party to the par-

ticular claim for which the Indemnitee is seeking indemnification or (b) Independent Legal Counsel.

Or

“Reviewing Party” means any appropriate person or group of persons described in section 8.103(a) of the BOC, except that the phrase “special legal counsel” in section 8.103 of the BOC means Independent Legal Counsel.

Continue with the following.

“Voting Securities” means any securities of the Corporation that vote generally in the election of directors.

2. *Indemnification Arrangement.* If the Indemnitee was, is, or becomes a party to, witness in, or other participant in or is threatened to be made a party to, witness in, or other participant in a Claim by reason of or arising in whole or in part out of an Indemnifiable Event, the Corporation will indemnify the Indemnitee to the fullest extent permitted by law against any and all Expenses, judgments, fines, excise and similar taxes (including any excise taxes imposed regarding an employee benefit plan), penalties, and amounts paid in settlement (including all interest, assessments, and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties, or amounts paid in settlement) of such Claim as soon as practicable but no later than thirty days after written demand is presented to the Corporation. In addition, if requested by the Indemnitee, the Corporation will advance any and all Expenses to the Indemnitee (an “Expense Advance”) within two Business Days of [his/her] request. The Indemnitee’s request for an Expense Advance must include the Indemnitee’s affirmation of his good-faith belief that he has met the standard of conduct necessary for indemnification under chapter 8 of the BOC. **[Include if applicable:** Nevertheless, (a) the Indemnitee will not be entitled to indemnification under this Agreement if a judgment or other final adjudication adverse to the Indemnitee establishes that (1) the Indemnitee’s acts were

committed in bad faith or were the result of active and deliberate dishonesty and, in either case, were material to the Claim so adjudicated; or (2) the Indemnitee personally gained a financial profit or other advantage to which the Indemnitee was not legally entitled; and (b) before any Change in Control, the Indemnitee will not be entitled to indemnification under this Agreement in connection with any Claim initiated by the Indemnitee against the Corporation or any other director or officer of the Corporation unless the Corporation has joined in or consented to the initiation of that Claim.]

The obligations of the Corporation under this section are subject to the condition that the Reviewing Party must not have determined (in a written opinion in any case in which the Independent Legal Counsel referred to in section 3 (and defined in section 1) is involved) that the Indemnitee would not be permitted to be indemnified under applicable law. The obligation of the Corporation to make an Expense Advance under this section is subject to the condition that, if, when, and to the extent that the Reviewing Party determines that the Indemnitee would not be permitted to be indemnified under applicable law, the Corporation will be entitled to be reimbursed by the Indemnitee (who agrees to reimburse the Corporation to the full extent required by section 8.104(a)(2) of the BOC) for all such amounts paid; provided, that if the Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that the Indemnitee should be indemnified under applicable law, any determination made by the Reviewing Party that the Indemnitee would not be permitted to be indemnified under applicable law will not be binding, and the Indemnitee will not be required to reimburse the Corporation for any Expense Advance until a final judicial determination (as to which all rights of appeal therefrom have been exhausted or lapsed) is made with respect thereto.

If there has not been a Change in Control, the Reviewing Party will be selected by the board of directors; if there has been such a Change in Control (other than a Change in Control that has been approved by a majority of the Corporation's directors immediately before the

Change in Control), the Reviewing Party will be the Independent Legal Counsel referred to in section 3 (and defined in section 1). If there has been no determination by the Reviewing Party or if the Reviewing Party determines that the Indemnitee would not be permitted to be indemnified in whole or in part under applicable law, the Indemnitee will have the right to commence litigation (in any court in Texas having subject-matter jurisdiction thereof and in which venue is proper) to seek an initial determination by the court or to challenge any such determination by the Reviewing Party or any aspect thereof, including the legal or factual bases therefor, and the Corporation consents to service of process and agrees to appear in any such proceeding. Any determination by the Reviewing Party otherwise will be conclusive and binding on the Corporation and the Indemnitee.

3. *Change in Control.* If there is a Change in Control of the Corporation (other than a Change in Control that has been approved by a majority of the Corporation's directors immediately before such Change in Control) then, with respect to all matters thereafter arising concerning the rights of the Indemnitee to indemnity payments and Expense Advances under this Agreement or any other agreement or the Corporation's bylaws relating to Claims for Indemnifiable Events, now or hereafter in effect, the Corporation will seek legal advice only from Independent Legal Counsel selected by the Indemnitee and approved by the Corporation, approval for which will not be unreasonably withheld. Such counsel, among other things, will render its written opinion to the Corporation and the Indemnitee about whether and to what extent the Indemnitee would be permitted to be indemnified under applicable law. The Corporation agrees to pay the reasonable fees of the Independent Legal Counsel referred to in this section (and defined in section 1) and to fully indemnify such counsel against any and all expenses (including attorney's fees), claims, liabilities, and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

4. *Indemnification for Additional Expenses.* The Corporation will indemnify the Indemnitee against any and all expenses (including attorney's fees) and, if requested by the

Indemnitee, will within two Business Days of the request advance funds to the Indemnitee for expenses incurred by the Indemnitee in connection with any action brought by the Indemnitee (whether pursuant to section 17 of this Agreement or otherwise) for (a) indemnification or advance payment of Expenses by the Corporation under this Agreement, any other agreement, or the Corporation's bylaws relating to Claims for Indemnifiable Events, now or hereafter in effect or (b) recovery under any directors' and officers' liability insurance policies maintained by the Corporation, regardless of whether the Indemnitee is determined to be entitled to such indemnification, advance payment of Expenses, or insurance recovery.

5. *Partial Indemnity.* If the Indemnitee is entitled under any provision of this Agreement to indemnification by the Corporation for a portion of Expenses, judgments, fines, penalties, and amounts paid in settlement of a Claim, but not for the total amount, the Corporation will indemnify the Indemnitee for the portion to which the Indemnitee is entitled. Notwithstanding any other provision of this Agreement, to the extent that the Indemnitee has been successful on the merits or otherwise in defense of any Claims relating in whole or in part to an Indemnifiable Event or in defense of any issue or matter therein (including dismissal without prejudice), the Indemnitee will be indemnified against all Expenses incurred in connection therewith.

6. *Burden of Proof.* In connection with any determination by the Reviewing Party or otherwise as to whether the Indemnitee is entitled to be indemnified hereunder, the burden of proof is on the Corporation to establish that the Indemnitee is not so entitled.

7. *No Presumptions.* For purposes of this Agreement (except as provided in section 2), the termination of any Claim by judgment, order, settlement (with or without court approval) or conviction, or on a plea of *nolo contendere* or its equivalent, will not create a presumption that the Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification is not permitted by applicable law. Before any commencement of legal proceedings by the Indemnitee to secure a judicial

determination that the Indemnitee should be indemnified under applicable law, neither (a) the failure of the Reviewing Party to have made a determination as to whether the Indemnitee has met any particular standard of conduct or had any particular belief, nor (b) an actual determination by the Reviewing Party that the Indemnitee has not met such standard of conduct or did not have such belief, will be a defense to the Indemnitee's Claim nor will it create a presumption that the Indemnitee has met any particular standard of conduct or has any particular belief.

8. *Nonexclusivity; Subsequent Change in Law.* The rights of the Indemnitee hereunder will be in addition to any other rights the Indemnitee may have under the Corporation's bylaws, the BOC, any other applicable Texas law, or otherwise. To the extent that a change in Texas law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under the Corporation's bylaws and this Agreement, it is the intent of the parties hereto that the Indemnitee will enjoy the greater benefits afforded by such change.

9. *Liability Insurance.* To the extent the Corporation maintains an insurance policy providing directors' and officers' liability insurance, the Indemnitee will be covered by such policy in accordance with its terms, to the maximum extent of the coverage available for any other director or any officer of the Corporation.

10. *Amendments; Waiver.* No supplement, modification, or amendment of this Agreement will be binding unless signed by both of the parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions of this Agreement (whether or not similar), nor will such waiver constitute a continuing waiver.

11. *Subrogation.* In the event of payment under this Agreement, the Corporation will be subrogated to the extent of such payment to all of the rights of recovery of the Indem-

nitee, who will sign all papers required and will do everything necessary to secure such rights, including signing such documents necessary to enable the Corporation to bring suit effectively to enforce such rights.

12. *No Duplication of Payments.* The Corporation will not be liable under this Agreement to make any payment in connection with any Claim made against the Indemnitee to the extent the Indemnitee has received payment otherwise (for example, under any insurance policy or the Corporation's bylaws) of the amounts otherwise indemnifiable hereunder.

13. *Binding Effect.* Nothing in this Agreement, express or implied, is intended to confer on any party, other than the parties hereto and their respective permitted assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, and no person who is not a party to this Agreement may rely on the terms except as otherwise set out. This Agreement (a) constitutes the entire agreement between the parties relating to the subject matter hereof and (b) supersedes all previous understandings and agreements between the parties relating to the subject matter hereof, both oral and written. This Agreement is binding on, inures to the benefit of, and is enforceable by the parties hereto and their respective successors (including any direct or indirect successor, by purchase, merger, consolidation, or otherwise, to all or substantially all of the business or assets of the Corporation), assigns, spouses, heirs, executors, and personal and legal representatives. This Agreement will continue in effect regardless of whether the Indemnitee continues to serve as a director of the Corporation or of any other enterprise at the Corporation's request.

14. *Assignment.* No party to this Agreement may assign its rights or delegate its obligations hereunder without the prior written consent of each party. Any such attempted assignment will be void *ab initio*. Subject to the preceding sentences, this Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

15. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which will constitute one instrument.

16. *Severability.* The provisions of this Agreement will be severable if any of the provisions (including any provision within a single section, paragraph, or sentence) is held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable in any respect. The validity and enforceability of any such provision in every other respect and of the remaining provisions in this Agreement will not be impaired and will remain enforceable to the fullest extent permitted by law.

17. *Notices.* All notices, communications, and deliveries made under this Agreement will be made in writing signed by or on behalf of the delivering party, will specify the section of the Agreement under which it is given or made, and will be delivered personally, by facsimile transmission, by registered or certified mail (return receipt requested), or by any courier service, with postage or other fees prepaid, as follows:

If to **[name]**:

[Address]

[Fax no.]

Attention: **[name]**

Repeat as necessary.

Any such notice, communication, or delivery may also be made to any other address or person designated in writing by the receiving party. Such addresses may be changed from time to time by written notice to the other party. Any notice, communication, or delivery will be deemed given or made (a) on the date of delivery if delivered in person or by courier service, (b) on transmission by facsimile if receipt is confirmed by telephone, or (c) on the fifth business day after it is mailed by registered or certified mail.

18. *Further Assurances.* The parties agree to take further actions and execute and deliver other documents, certificates, agreements, and other instruments as may be reasonably necessary or desirable to implement transactions contemplated by this Agreement.

19. *Certain Terms.* In this Agreement, “section” refers to a section of this Agreement, unless otherwise identified, and “including” and “include” do not denote or imply any limitation.

20. *Section Headings.* The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

21. *Gender and Number of Words.* When the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter, and the number of all words includes the singular and the plural.

22. *Governing Laws.* This Agreement will be governed by, construed under, and enforced in accordance with the laws of the state of Texas.

23. *Injunctive Relief.* The Indemnitee may enforce this Agreement by seeking specific performance hereof, without showing irreparable harm or posting a bond, requirements for which are waived. By seeking specific performance, the Indemnitee will not be precluded from seeking or obtaining any other relief to which the Indemnitee may be entitled.

24. *Effective Date.* This Agreement is effective as of [date] and will apply to any claim for indemnification and any request for an Expense Advance by the Indemnitee on or after such date.

The parties hereto have executed this Agreement as of [date].

[Name of corporation]

By: _____
[Name of officer], [title]

By: _____
[Name of indemnitee], Indemnitee

Form 14-1

This notice must be modified to comply with the corporation's governing documents and must be given in the manner determined by its board of directors. The notice is not required to specify the business to be transacted or the purpose of the meeting unless required by the corporation's bylaws. *See* Tex. Bus. Orgs. Code § 21.411.

If applicable, note the use of conference telephone or other communications equipment, including videoconferencing, the Internet, or any combination. The telephone or other equipment or system must allow each person participating to adequately communicate with all other persons participating in the meeting. Tex. Bus. Orgs. Code § 6.002.

For general notice requirements, see Tex. Bus. Orgs. Code § 6.051.

[Name of corporation]
[Address, city, state]

**Notice of Meeting
of Board of Directors
to Be Held [date]**

To: _____ The Directors of **[name of corporation]**

Notice is hereby given that a meeting of the board of directors of **[name of corporation]** will be held at **[location]** on **[meeting date]** at **[time]**, for the following purposes:

1. To approve **[describe item to be considered]**.

Repeat for each item under consideration.

2. To review reports of management.
3. To transact such other business as may properly come before the board of directors.

Very truly yours,

[Name of person calling the meeting]
[include if applicable: , [title]]

Form 14-2

Unanimous Consent of Directors in Lieu of Annual Meeting of Board of Directors of [name of corporation]

The undersigned, being all of the directors of [name of corporation], a Texas corporation (the "Corporation"), do hereby consent to the waiver of all notices required for an annual meeting of the board of directors and, pursuant to the provisions of section 6.201(b) of the Texas Business Organizations Code, take the following actions and adopt the following resolutions in lieu of an annual meeting of the board of directors:

Election of Officers

RESOLVED, that the following persons are elected to the offices set forth beside each person's name to serve for the ensuing corporate year or until their successors have been duly elected and qualified:

<u>Name</u>	<u>Office</u>
[Name]	[Office]

Repeat as necessary for all officers.

Ratification of Past Acts

RESOLVED, that the acts and transactions that have been validly taken or made by the officers of the Corporation since the date of the last annual meeting of the board of directors, or the consent in lieu of annual meeting, and before the date of this consent, are hereby ratified in all respects.

Further Instructions to Officers

RESOLVED, that the secretary of the Corporation is directed to file this consent in the minute book of the Corporation, and, further, that the officers of the Corporation are hereby authorized and directed to execute and deliver all documents, to waive all conditions, and to do all things necessary or helpful to carry out the purposes of the foregoing resolutions. All acts of the officers of the Corporation that are consistent with the intent of the above resolutions are hereby ratified and adopted in all respects as the acts of the Corporation.

IN WITNESS WHEREOF, the undersigned have executed this consent of Directors effective as of the ____ day of _____, 20____.

Directors:

[Name of director]

Repeat signature block as necessary.

Form 14-3

**Waiver of Notice of Meeting of Board of Directors
of [name of corporation]****[Date]**

Pursuant to the provisions of section 21.412 of the Texas Business Organizations Code and section [number] of the bylaws of [name of corporation], a Texas corporation, the undersigned director hereby waives notice of the [annual/special] meeting of the board of directors of [name of corporation] held on [date] at [time] at [location].

[Name of director]

Form 14-4

For general notice requirements, see Tex. Bus. Orgs. Code § 6.051.

Information regarding notice for shareholders' meetings can be found at Tex. Bus. Orgs. Code §§ 21.353–.3531. It is important to note that at a special meeting of shareholders, only business that is within the purposes described in the notice may be conducted. Tex. Bus. Orgs. Code § 21.353(b).

Alternative forms of meetings include the use of conference telephone or similar communications equipment, videoconferencing, and the Internet. Tex. Bus. Orgs. Code § 6.002.

For special notice requirements for the submission of a fundamental business transaction, see Tex. Bus. Orgs. Code § 21.456.

**[Name of corporation]
 [Address, city, state]
 [Telephone]
 [Notice date]**

**Notice of [Annual/Special] Meeting of Shareholders
 to Be Held [meeting date]**

The [annual/special] meeting of shareholders of [name of corporation], a Texas [corporation/public benefits corporation governed by chapter 21, subchapter S, of the Texas Business Organizations Code], will be held at [location], [address, city, state], on [meeting date] at [time]. If you are planning to attend the meeting in person, please check the appropriate space on the enclosed proxy form. [Include if applicable: A map is included on the back of the proxy form.] The meeting will be held for the following purposes:

1. To elect [number] individual[s] to serve as director[s] until the [year] annual meeting of the shareholders and until [a] successor[s] [is/are] elected.
2. To consider and act on a proposal to [brief description of item to be considered].

Repeat items for consideration as necessary.
--

3. To transact such other business as may properly come before the shareholders at the meeting or any adjournments of the meeting.

Only shareholders of record on [record date] are entitled to notice of and to vote at the meeting or any adjournments of the meeting.

You are cordially invited to attend the [annual/special] meeting. Whether or not you plan to attend the meeting in person, you are urged to fill out, sign, and promptly mail the enclosed proxy form in the accompanying envelope. No postage is required if mailed in the United States. Proxies forwarded by or for brokers or fiduciaries should be returned as requested by them. The prompt return of proxies will save the expense involved in further communication.

By Order of the Board of Directors,

[Name of officer], [title]

Enc.

Enclose proxy form. See form 14-8 for a sample proxy form.

Form 14-5

**Written Consent of Shareholders in Lieu of [Annual/Special] Meeting
of Shareholders of [name of corporation]**

The undersigned shareholders of [name of corporation], a Texas corporation (the "Corporation"), having at least the minimum number of votes that would be necessary to take the following actions at a meeting at which each shareholder entitled to vote is present and votes, hereby consent pursuant to section 6.202 of the Texas Business Organizations Code to take the following actions and adopt the following resolutions, to have the same effect as if taken and adopted at [the annual/a special] meeting of shareholders:

Include the following for annual meeting only.

Election of Directors

RESOLVED, that the following persons hereby are elected as directors of the Corporation to serve until the next annual meeting of shareholders of the Corporation, until written consent in lieu of the annual meeting, or until their successors have been duly elected and qualified:

<u>Name</u>	<u>Office</u>
[Name]	Director

Repeat as necessary for all directors.

Continue with the following.

Ratification of Past Actions

RESOLVED, that the actions taken or caused to be taken by or on behalf of the Corporation by the directors or the officers of the Corporation (other than any actions that may

have been illegal, tortious, or *ultra vires*) since the date of the last [annual/special] meeting of the shareholders or by written consent in lieu of a meeting hereby are ratified in all respects as the actions of the Corporation.

Further Instructions to Officers

RESOLVED, that the officers of the Corporation hereby are authorized and directed on behalf of the Corporation to execute and deliver all documents, to waive all conditions, and to do all things necessary or helpful to carry out the purposes of the foregoing resolutions. All actions of the officers of the Corporation that are consistent with the purposes and intent of the foregoing resolutions hereby are in all respects ratified and adopted as the actions of the Corporation; and

RESOLVED FURTHER, that the secretary of the Corporation hereby is directed to file this consent in the minute book of the Corporation and to notify each shareholder who did not sign this consent of each action that is the subject of this consent. This consent may be signed in counterparts.

IN WITNESS WHEREOF, this consent has been signed to be effective as of the _____ day of _____, 20_____.

Shareholders:

[Name of shareholder]

Date of Signature

Repeat signature block as necessary.

Form 14-6

The purpose of or business to be transacted at a meeting of shareholders is not required to be specified in a written waiver of notice unless it is required by the certificate of formation. *See* Tex. Bus. Orgs. Code § 6.052.

**Waiver of Notice of Meeting of Shareholders
of [name of corporation]**

Pursuant to the provisions of section 6.052 of the Texas Business Organizations Code, the undersigned shareholder of [name of corporation], a Texas corporation, hereby waives notice of the meeting of the shareholders of [name of corporation] held on [date] at [time] at [location].

[Name of shareholder]

Form 14-7

Notice of Action Taken by Less-Than-Unanimous Consent

[Date]

Owners of [name of corporation]

Re: Notice of Action by Written Consent

Ladies and Gentlemen:

In accordance with section 6.202(d) of the Texas Business Organizations Code, please be advised that the written consent of the owners of [name of corporation] dated [date] (the "Owners' Consent"), [as sent to you by letter dated [date]/a copy of which is enclosed], has become effective, and the proposed [describe action[s]] of [name of corporation] described in the Owners' Consent [have/has] been approved and adopted, as set forth in the Owners' Consent.

The Owners' Consent has been signed and delivered to [name of corporation] by the holders of at least [a majority/two-thirds] of the outstanding ownership interests in [name of corporation].

Please feel free to call [name] of [name of corporation] at [phone number] if you have any questions concerning this matter.

[Name of corporation]

[Name of officer], [title]

Form 14-8

A shareholder may vote by means of a proxy executed in writing by the shareholder. A telegram, telex, cablegram, or other form of electronic transmission, including telephonic transmission, by the shareholder or a photographic, photostatic, facsimile, or similar reproduction of a writing executed by the shareholder is considered an execution in writing. Any electronic transmission must contain or be accompanied by information from which it can be determined that the transmission was authorized by the shareholder. Tex. Bus. Orgs. Code § 21.367. A proxy is not valid after eleven months after the date the proxy is executed unless otherwise provided in the proxy. Tex. Bus. Orgs. Code § 21.368.

Proxy
[Name of corporation]
[Year] Annual Meeting of Shareholders

This Proxy is Solicited on Behalf of the Board of Directors
of [name of corporation]

The undersigned hereby appoints _____, jointly and severally if more than one person is named, as proxy[ies], with full power of substitution, to vote all of the undersigned's shares of common stock, \$ _____ par value per share, of [name of corporation] held of record by the undersigned on _____ at the [year] Annual Meeting of Shareholders of [name of corporation] or at any postponements or adjournments thereof.

This proxy, when properly executed, will be voted in accordance with the directions made below. **If no direction is made, this proxy will be voted (1) for the election of the nominees for directors listed below and (2) for each other proposal specifically described below.**

1. Election of Directors.

FOR all nominees listed below (except as marked below to the contrary)

WITHHOLD AUTHORITY to vote for all nominees listed below

- [name of nominee]

Repeat for each nominee.

Instructions: To withhold authority to vote for any individual nominee, strike a line through that nominee's name.

2. [Describe separately each other action to be voted on at the meeting.]

FOR AGAINST ABSTAIN

Repeat as necessary.

3. To the extent permitted by applicable law, the proxies are authorized to vote on (1) any motion to adjourn the annual meeting of shareholders to a later time to establish a quorum and (2) other matters incident to the conduct of the meeting.

Instructions: Please sign your name exactly as it appears on your stock certificate. When shares are held in more than one name, all parties should sign. When signing as attorney, executor, administrator, trustee, or guardian, please give full title. If a partnership, please sign in partnership name by an authorized person. If a corporation or other entity, please sign in the full name of the entity by an authorized officer.

Dated: _____

Signature

Printed Name

Include the following if applicable.

Signature [if shares held in more
than one name]

Printed Name [if shares held in more
than one name]

Continue with the following.

Please mark, sign, and date this proxy and return it in the enclosed envelope.

Enc.

Form 14-9

Certificate of Mailing of [name of corporation]

I am the duly elected, qualified, and acting secretary of [name of corporation], and I sent to [number] shareholders of [name of corporation] materials relative to the annual meeting scheduled for [date], including the Notice of Annual Meeting, attached as Exhibit A.

These materials were addressed to the shareholders as their names and addresses appeared on [the shareholder records of [name of corporation]/the records supplied by [transfer agent] to [name of corporation]]. [Number] were mailed by first-class mail, and [number] were mailed by priority mail and deposited with the United States Post Office in [city, state] beginning on [date] and ending on [date].

Dated: [date].

[Name of secretary], Secretary

Attach notice as Exhibit A. See form 14-4 for a sample notice form.

Form 14-10

The authority for and required terms of this document are stated in Tex. Bus. Orgs. Code § 21.155. This document is appropriate only if the corporation's certificate of formation expressly authorizes the board of directors to create series of a class of the corporation's capital stock, in accordance with section 3.007(b)(5)(D) of the Texas Business Organizations Code, and if the board of directors has exercised that authority by adopting a resolution to create and designate a series.

The terms of the series of preferred stock in this document are somewhat typical, but are not legally required. A corporation has significant flexibility in determining the terms of such a series of preferred stock, as indicated by Tex. Bus. Orgs. Code §§ 21.152-.154. The terms are most often determined through negotiation between the corporation and the purchasers of the shares.

**Statement of Resolution
Establishing
the Series "A" Preferred Stock
of [name of corporation]**

TO THE SECRETARY OF STATE

OF THE STATE OF TEXAS:

Under section 21.155 of the Texas Business Organizations Code, the undersigned corporation submits the following statements for the purpose of establishing and designating a series of Preferred Stock and setting and determining the designations, preferences, limitations, and relative rights of that series:

The name of the Corporation is [name of corporation] (the "Corporation").

The following resolution establishing and designating a series of shares of Preferred Stock of the Corporation, and fixing and determining the designations, preferences, limitations, and relative rights of that series, was duly adopted by the Board of Directors of the Corporation (the "Board") as of [date]:

RESOLVED, that under the authority expressly granted to and vested in the Board, in accordance with the provisions of the certificate of formation of the Corporation, a series of

Preferred Stock, par value \$[amount] per share, of the Corporation ("Preferred Stock") be, and it hereby is, established and given the distinctive designation of Series "A" Preferred Stock (the "Series "A" Preferred Stock"), with the following designations, preferences, limitations, and relative rights:

Section 1

Designation; Rank

The series of Preferred Stock designated and known as "Series "A" Preferred Stock" consists of [number spelled out] ([number in figures]) shares. As long as any Series "A" Preferred Stock is outstanding, the Series "A" Preferred Stock will rank senior to any and all other Preferred Stock or equity securities of the Corporation with respect to the right to receive dividends or distributions, upon liquidation, dissolution, or winding-up of the affairs of the Corporation or otherwise. Except as otherwise permitted in this resolution, as long as any Series "A" Preferred Stock is outstanding, no other series of Preferred Stock or other class of equity securities of the Corporation ranking senior to or on parity with Series "A" Preferred Stock, whether with respect to dividends or other distributions, upon liquidation, dissolution, or winding-up or otherwise, may be created.

Section 2

Definitions

For purposes of this resolution the following definitions apply:

"Affiliate" means any Person who directly or indirectly controls, is controlled by, or is under common control with the indicated Person.

Include the following definition if you choose to include optional section 7(h) of this resolution.

"Additional Shares of Common Stock" has the meaning assigned to it in section 7(h)(7) of this resolution.

Include the following if applicable.

"Approved Plan" means a compensatory plan approved or adopted by the Board for the sale, grant, award, or issuance of shares of Common Stock, or options to purchase shares of Common Stock, to management, directors, or employees of or consultants to the Corporation, the provisions of which require that any such sale, grant, award, or issuance be authorized or approved by the Board or any committee of the Board authorized by the Board to do so.

Continue with the following.

"Board" means the Board of Directors of the Corporation.

"Common Stock" means the Common Stock, \$[amount] par value per share, of the Corporation.

"Conversion Price" means the initial Conversion Price of \$[amount] per share of Common Stock, as may be adjusted from time to time as provided by section 7 of this resolution.

"Conversion Stock" means the Common Stock into which the Series "A" Preferred Stock is convertible and issued on conversion.

Include the following definition if you choose to include optional section 7(h) of this resolution.

"Convertible Securities" has the meaning assigned to it in section 7(h)(4) of this resolution.

Continue with the following.

"Corporation" means [name of corporation].

Include the following definition if you choose to include the optional part of section 3(a) of this resolution.

"Dividend Payment Date" has the meaning assigned to it in section 3(a) of this resolution.

Include the following definition if you choose to include optional section 7(h) of this resolution.

"Effective Price" has the meaning assigned to it in section 7(h)(8) of this resolution.

Continue with the following.

"Equity Security" means (1) any stock or similar security, including, without limitation, securities containing equity features and securities containing profit participation features; (2) any security convertible or exchangeable, with or without consideration, into any stock or similar security; (3) any security carrying any option, warrant, or right to subscribe to or purchase any stock or similar security; or (4) any such option, warrant, or right.

"Initial Public Offering" means the first underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offering and sale of Common Stock for the account of the Corporation on a firm commitment basis in which the aggregate gross proceeds at the public offering price equal or exceed \$[amount] and the public offering price equals or exceeds \$[amount] per share of Common Stock (each such amount to be appropriately adjusted for subdivisions and combinations of shares of Common Stock and dividends on Common Stock payable in shares of Common Stock).

"Liquidation Value" means the Liquidation Value set forth in section 4(a) of this resolution.

"Majority of the Series "A" Preferred Stock" means more than 50 percent of the outstanding shares of Preferred Stock.

“Mandatory Conversion Date” has the meaning assigned to it in section 7(k) of this resolution.

“Person” means all natural persons, corporations, business trusts, associations, limited liability companies, partnerships, joint ventures and other entities, and governments, agencies, and political subdivisions.

“Preferred Dividend” means a dividend [at the annual rate of \$[amount] per share/at a simple rate of [percent] percent ([percent]%) per year on the Series “A” Original Issue Price on each share] of the Series “A” Preferred Stock accruing from the date of issuance until the date of redemption and cumulative to the extent not paid in any year.

“Preferred Stock” means the Preferred Stock, \$[amount] par value per share, of the Corporation.

“Redemption Date” has the meaning assigned to it in section 5(a) of this resolution.

“Redemption Notice” has the meaning assigned to it in section 5(c) of this resolution.

“Redemption Price” has the meaning assigned to it in section 5(b) of this resolution.

“Required Series “A” Preferred Stock” means [percent] percent or more of the outstanding shares of Series “A” Preferred Stock.

“Series “A” Original Issue Price” means \$[amount] per share of Series “A” Preferred Stock, subject to appropriate adjustment in the event of any stock dividend, stock split, combination, or other similar recapitalization affecting the shares of Series “A” Preferred Stock.

“Subsidiary” means any corporation, limited liability company, partnership, joint venture, association, or other business entity of which at least 50 percent of the outstanding voting stock or voting interests is owned at the time directly or indirectly by the Corporation, by one or more subsidiary entities, or both.

Definitions apply to both the singular and plural forms of the defined terms.

Section 3

Dividends

In section 3(a), please note the option regarding the corporation's payment obligation (if any).

(a) Preferred Dividends will accrue on each share of Series "A" Preferred Stock from and after the date of issuance of that share. The Preferred Dividends will be subject to appropriate adjustment in the event of any stock dividend, stock split, combination, or other similar recapitalization affecting the shares of Series "A" Preferred Stock. The Preferred Dividends will accrue from day to day, whether or not earned or declared by the Board, and will be cumulative. [The Corporation will have no obligation to pay any Preferred Dividends except as provided below in this section 3 or as provided in sections 4(a) and 5(b) of this resolution./The Preferred Dividends will be payable, out of legally available funds of the Corporation, on or before [the [specify] day of each month/[date]] (a "Dividend Payment Date"). To the extent that any Preferred Dividend is not paid on the Dividend Payment Date, that Preferred Dividend will accumulate and compound at the rate of [percent] percent ([percent]%) per year from such Dividend Payment Date until such Preferred Dividend is paid in full.]

(b) No dividend or distribution in cash or other property (other than shares of Common Stock) will be declared, paid, or set apart for payment on or with respect to the Common Stock unless all Preferred Dividends accrued through the date of any distribution have been paid in full before or at the time of the declaration, distribution, or setting apart with respect to the Common Stock.

(c) No dividend or distribution in cash or other property (other than shares of Common Stock) will be declared, paid, or set apart for payment on or with respect to the Common Stock unless, at the same time, an equivalent dividend or distribution in cash or other property

is declared, paid, or set apart, on the outstanding shares of Series "A" Preferred Stock payable on the same day, at the rate per share of Series "A" Preferred Stock that the holders of shares of Series "A" Preferred Stock would be entitled to receive if they had converted the shares of Series "A" Preferred Stock to shares of Common Stock on the same date as the dividend or distribution on Common Stock.

Section 4

Liquidation Rights

- (a) **Preference.** In the event of any liquidation, dissolution, or winding-up of the Corporation, whether voluntary or involuntary, the holders of the shares of Series "A" Preferred Stock then outstanding will be entitled to be paid out of the assets of the Corporation available for distribution to its shareholders, whether such assets are capital, surplus, or earnings, before any payment or declaration and setting apart for payment of any amount is made in respect of the Common Stock. The holders of shares of Series "A" Preferred Stock will be paid an amount per share (the "Liquidation Value") equal to the sum of the Series "A" Original Issue Price plus an amount equal to all accrued and unpaid Preferred Dividends payable up to and including the date full payment is tendered to the holders of shares of Series "A" Preferred Stock with respect to the liquidation, dissolution, or winding-up, and no more. If, upon any liquidation, dissolution, or winding-up of the Corporation, whether voluntary or involuntary, the assets distributed to the holders of shares of Series "A" Preferred Stock are insufficient to permit the payment of the full Liquidation Value thereof, all of the assets of the Corporation will be distributed ratably to each holder of shares of Series "A" Preferred Stock on the basis of the Liquidation Value of the shares of Series "A" Preferred Stock held by each such holder.
- (b) **Remaining Assets.** After the payment or distribution of the full Liquidation Value of the Series "A" Preferred Stock to the holders of the Series "A" Preferred Stock, the holders of the Common Stock then outstanding will be entitled to receive ratably all remaining assets of the Corporation to be distributed.

(c) Reorganization. A merger (including a consolidation) or an exchange of shares of the Corporation with any other entity or a sale of all or substantially all of the assets of the Corporation (within the meaning of section 21.455 of the Texas Business Organizations Code) will be deemed a liquidation, dissolution, or winding-up of the Corporation under this section 4. However, any such transaction with a wholly owned Subsidiary and any such transaction that, in accordance with section 21.459 of the Texas Business Organizations Code, is not required to be approved by the Corporation's shareholders will not be deemed a liquidation, dissolution, or winding-up of the Corporation under this section 4.

Section 5

Redemptions

Aspects of redeemable shares are addressed in Tex. Bus. Orgs. Code §§ 21.304–.307.
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(a) Redemption. The Corporation will redeem shares of Series "A" Preferred Stock, out of funds legally available for that purpose [in [number] equal installments on the [specify] day of [month], [year A], [year B], and [year C]/in [number] equal annual installments beginning [number] days after the Corporation receives a written notice of demand for redemption of all shares of Series "A" Preferred Stock by the holders of [a Majority of the/the Required] Series "A" Preferred Stock. That demand for redemption may not be made before [date]]. Each date on which shares of Series "A" Preferred Stock are to be redeemed is a "Redemption Date." On each Redemption Date, the Corporation will redeem, on a pro rata basis in accordance with the number of shares of Series "A" Preferred Stock owned by each holder, that number of outstanding shares of Series "A" Preferred Stock determined by dividing the total number of shares of Series "A" Preferred Stock outstanding immediately before the Redemption Date by the number of remaining Redemption Dates, including the Redemption Date to which this calculation applies. If the Corporation does not have sufficient funds legally available to redeem all shares of Series "A" Preferred Stock to be redeemed on that Redemption Date, the Corpo-

ration will redeem a pro rata portion of each holder’s shares of Series “A” Preferred Stock out of funds legally available for that purpose, based on the respective amounts that would otherwise be payable in respect of the shares to be redeemed if the Corporation had legally available funds sufficient to redeem all of those shares. The Corporation will redeem the remaining shares as soon as practicable after the Corporation has funds legally available to permit the redemption.

(b) **Price.** The “Redemption Price” of each share of Series “A” Preferred Stock will be an amount per share equal to the Series “A” Original Issue Price plus the amount of accrued and unpaid Preferred Dividends on that share (plus all other dividends declared but unpaid on that share, if any) up to and including the date on which the Redemption Price on the shares being redeemed has been paid in full. Partial payments on any share will be applied first to Preferred Dividends (and any other dividends declared but unpaid) and then to the Series “A” Original Issue Price.

(c) **Redemption Notice.** Not later than the twenty-first day before each Redemption Date or earlier than the sixtieth day before each Redemption Date, the Corporation will mail or cause to be mailed written notice (the “Redemption Notice”), postage prepaid, to each holder of record of shares of Series “A” Preferred Stock to be redeemed at the holder’s mailing address last shown on the share transfer records of the Corporation. The Redemption Notice will state—

(1) the total number of shares of Series “A” Preferred Stock that the Corporation will redeem on the Redemption Date;

(2) the number of shares of Series “A” Preferred Stock held by the holder that the Corporation will redeem on the Redemption Date;

(3) the Redemption Date and the Redemption Price;

(4) that the holder's right to convert the shares of Series "A" Preferred Stock to be redeemed will terminate on the last business day before the Redemption Date; and

(5) the time, place, and manner in which the holder is to surrender to the Corporation the certificate or certificates representing shares of Series "A" Preferred Stock to be redeemed.

(d) **Surrender of Stock.** On or before a Redemption Date, each holder of shares of Series "A" Preferred Stock to be redeemed will surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Redemption Notice, unless the holder has exercised the right to convert the shares as provided in section 7 of this resolution. On surrender of the certificate or certificates, the Redemption Price for the shares will be payable to the order of the person whose name appears on the certificate or certificates as the owner, and each surrendered certificate will be canceled and retired. If less than all of the shares represented by a certificate are redeemed, a new certificate will be issued representing the unredeemed shares.

(e) **Termination of Rights.** If the Redemption Notice is duly given and if, on or before the Redemption Date, the Redemption Price is either paid or made available for payment on or for the shares of Series "A" Preferred Stock called for redemption, then all rights with respect to such shares will terminate immediately after the Redemption Date, except the right of the holders of such shares to receive the Redemption Price (without interest) on surrender of their certificates. This termination of rights will not be affected by any failure to surrender, on or

before the Redemption Date, any of the certificates representing the shares of Series “A” Preferred Stock called for redemption.

Section 6

Voting Rights

(a) Each holder of shares of Series “A” Preferred Stock is entitled to vote (including, without limitation, executing a consent) on all matters presented to the shareholders of the Corporation and, except as otherwise expressly provided herein, is entitled to a number of votes equal to the largest number of full shares of Common Stock into which all shares of Series “A” Preferred Stock held by such holder could be converted (under section 7 of this resolution) at the record date for the determination of the shareholders entitled to vote on such matters or, if no record date is established, at the date the vote is taken or any written consent of shareholders is first executed. This determination of the number of votes to which each holder of Series “A” Preferred Stock is entitled also applies in all cases in which the holders of shares of Series “A” Preferred Stock have the right to vote separately as a class.

(b) Except as otherwise expressly provided in this resolution or as required by law, the holders of Series “A” Preferred Stock and the holders of Common Stock will vote together and not as separate classes.

Section 7

Conversion

The holders of Series “A” Preferred Stock have the following conversion rights:

(a) **Right to Convert.** Each share of Series “A” Preferred Stock is convertible at the option of the holder at any time on or before the last business day before the Redemption Date for such share of Series “A” Preferred Stock into the number of fully paid and nonassessable

shares of Common Stock that is equal to the quotient of the Series "A" Original Issue Price of such share divided by the Conversion Price then in effect.

(b) Conversion Price. The initial Conversion Price is \$[amount], so that each share of Series "A" Preferred Stock is initially convertible into [number] share[s] of Common Stock. The Conversion Price is subject to adjustment from time to time as provided below.

(c) Mechanics of Conversion. Each holder of shares of Series "A" Preferred Stock who desires to convert any of those shares into shares of Common Stock must surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series "A" Preferred Stock or the Common Stock. The holder of shares of Series "A" Preferred Stock must give written notice to the Corporation that the holder elects to convert and state in the notice the number of shares of Series "A" Preferred Stock being converted. The conversion will be deemed to have been made immediately before the close of business on the date of the surrender of the certificate or certificates representing the shares of Series "A" Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable on conversion will be treated for all purposes as the record holder of the shares of Common Stock on that date. The Corporation will as soon as practicable thereafter issue and deliver at that office to the holder a certificate or certificates for the number of shares of Common Stock to which the holder is entitled and a certificate or certificates for the number of shares of Series "A" Preferred Stock, if any, represented by the surrendered certificate or certificates that the holder elected not to convert.

(d) Adjustment for Stock Splits and Combinations. If the Corporation at any time effects a subdivision of the outstanding shares of Common Stock, the Conversion Price in effect immediately before the subdivision will be proportionately decreased. Conversely, if the Corporation at any time combines the outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately before the combination will be propor-

tionately increased. Any adjustment under this section 7(d) will become effective at the close of business on the date the subdivision or combination becomes effective.

(e) **Adjustment for Certain Dividends and Distributions.** If the Corporation at any time makes or issues a dividend or other distribution on the outstanding shares of Common Stock payable in additional shares of Common Stock or fixes a record date for the determination of holders of shares of Common Stock entitled to receive such a dividend or other distribution, the Conversion Price then in effect will be decreased as of the time of such issuance or, if a record date is fixed, as of the close of business on the record date. The new Conversion Price will be calculated by multiplying the Conversion Price then in effect by a fraction, the numerator of which is the total number of shares of Common Stock issued and outstanding immediately before the issuance or the close of business on that record date and the denominator of which is the sum of (1) the total number of shares of Common Stock issued and outstanding immediately before the issuance or the close of business on the record date and (2) the number of shares of Common Stock issuable in payment of the dividend or distribution. However, if a record date is fixed and the dividend is not fully paid or if the distribution is not fully made on the date fixed for that distribution, the Conversion Price will be recomputed accordingly as of the close of business on that record date, and thereafter the Conversion Price then in effect will be adjusted pursuant to this section 7(e) as of the time of actual payment of that dividend or distribution.

(f) **Adjustment for Reclassification, Exchange, and Substitution.** If at any time the Common Stock issuable on the conversion of the Series "A" Preferred Stock is changed into any other stock, securities, or other property, whether by recapitalization, reclassification, or otherwise (other than a subdivision or combination of shares, stock dividend or distribution, or reorganization, merger, or sale of assets provided for elsewhere in this section 7), each holder of shares of Series "A" Preferred Stock will have the right to convert each share of Series "A" Preferred Stock into the kind and amount of stock, securities, or other property receivable on

recapitalization, reclassification, or other change by holders of the number of shares of Common Stock into which such share of Series "A" Preferred Stock was convertible immediately before the recapitalization, reclassification, or change, all subject to further adjustments as provided herein.

(g) **Reorganizations, Mergers, or Sales of Assets.** Subject to section 4 of this resolution, if at any time there is (1) a capital reorganization of the Common Stock (other than a recapitalization, subdivision, combination, reclassification, or exchange of shares provided for elsewhere in this section 7), (2) a merger (including, without limitation, a consolidation) of the Corporation with another entity, or (3) the sale of all or substantially all of the Corporation's assets to any other Person, then, as a part of that reorganization, merger, or sale, provision will be made for the holders of the shares of Series "A" Preferred Stock to be entitled to receive (on conversion of the shares of Series "A" Preferred Stock) the number of shares of stock, securities, or other property which a holder of the number of shares of Common Stock deliverable on conversion of the shares of Series "A" Preferred Stock is or will be entitled to because of the reorganization, merger, or sale. In such case, appropriate adjustments will be made when applying the provisions of this section 7 so that these provisions (including the adjustment of the Conversion Price and the number of shares issuable on conversion of the Series "A" Preferred Stock) will apply after that event and be as nearly equivalent as practicable.

Include the following if applicable.

(h) **Issuance of Shares Below Conversion Price.**

(1) If at any time the Corporation issues, sells, or is deemed by the provisions of this section 7(h) to have issued or sold Additional Shares of Common Stock (other than as a dividend or other distribution on any class of stock as provided in section 7(e) of this resolution and other than as a subdivision of shares of Common Stock as provided in section 7(d) of this resolu-

tion) for an Effective Price less than the Conversion Price then in effect, the Conversion Price will be reduced as of the opening of business on the date of the issue or sale. The new adjusted Conversion Price will be determined by multiplying the Conversion Price then in effect by a fraction the numerator of which is the sum of (A) the number of shares of Common Stock outstanding immediately before the issue or sale and (B) the number of shares of Common Stock that the aggregate consideration received (or deemed to have been received by the provisions hereof) by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Conversion Price and the denominator of which is the number of shares of Common Stock outstanding immediately after the issue or sale, after giving the effect to that issue or sale of Additional Shares of Common Stock.

(2) For the purpose of the calculation described in this section 7(h), the "number of shares of Common Stock outstanding" (whether immediately before or immediately after the issue or sale of Additional Shares of Common Stock) will include the number of shares of Common Stock into which the then-outstanding shares of Series "A" Preferred Stock and all other Convertible Securities are convertible or exchangeable immediately before the issue or sale of Additional Shares of Common Stock.

(3) For the purpose of making any adjustment required under this section 7(h), the consideration received by the Corporation for any issue or sale of securities will, to the extent it consists of cash, be computed as the gross amount of cash received by the Corporation before deduction of any usual and reasonable expenses payable by the Corporation and any usual and reasonable underwriting or similar commissions, compensation, or concessions paid or allowed by the Corporation in connection with that issue or sale. To

the extent the consideration consists of property other than cash, the value will be computed at the fair value of that property as determined in good faith by the Board. If (A) Additional Shares of Common Stock, Convertible Securities, or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with (B) other stock, securities, or other assets of the Corporation for a consideration that covers both (A) and (B), the value will be computed as the portion of the consideration received that is determined in good faith by the Board to be allocable to those Additional Shares of Common Stock, Convertible Securities, or rights or options.

(4) For the purpose of the adjustment required under this section 7(h), if the Corporation issues or sells any rights or options for the purchase of stock, or issues or sells stock or other securities convertible or exchangeable, with or without consideration, into Additional Shares of Common Stock (such convertible or exchangeable stock or securities being "Convertible Securities"), and if the Effective Price of the Additional Shares of Common Stock is less than the Conversion Price then in effect, the Corporation will be deemed (A) to have issued at that time the maximum number of Additional Shares of Common Stock issuable on exercise or conversion of such rights, options, or Convertible Securities and (B) to have received as consideration for the issuance of such Additional Shares of Common Stock an amount equal to the total amount of the consideration (if any) received by the Corporation for the issuance of such rights, options, or Convertible Securities, plus, in the case of such rights or options, the minimum amount of consideration (if any) payable to the Corporation on the exercise of such rights or options, or plus, in the case of Convertible Securities, the minimum amount of consideration (if any) payable to the Corporation (other than by cancellation of liabil-

ities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities. No further adjustment of the Conversion Price, adjusted on the issuance of such rights, options, or Convertible Securities, will be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities.

(5) If any rights or options, or the conversion or exchange rights of any Convertible Securities, expire without having been exercised, the Conversion Price adjusted on the issuance of the rights, options, or Convertible Securities will be readjusted to the Conversion Price that would have been in effect had an adjustment been made on the basis that (A) the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock actually issued or sold on the exercise of the rights or options or on the conversion or exchange of the Convertible Securities, and (B) the Additional Shares of Common Stock were issued or sold for the consideration actually received by the Corporation on that exercise, plus the consideration (if any) actually received by the Corporation for the granting of the rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted or exchanged, plus the consideration (if any) actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by the Convertible Securities) on the conversion or exchange of those Convertible Securities.

(6) For the purpose of the adjustment required under this section 7(h), if the Corporation issues or sells any rights or options for the purchase of Convertible Securities and if the Effective Price of the Additional Shares of Common Stock underlying such Convertible Securities is less than the Con-

version Price then in effect, the Corporation will be deemed (A) to have issued, at the time of the issuance of the rights or options, the maximum number of Additional Shares of Common Stock issuable on conversion or exchange of the maximum number or amount of the Convertible Securities covered by the rights or options and (B) to have received as consideration for the issuance of such Additional Shares of Common Stock an amount equal to the amount of consideration (if any) received by the Corporation for the issuance of the rights or options, plus the minimum amount of consideration (if any) payable to the Corporation on the exercise of such rights or options, plus the minimum amount of consideration (if any) payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by the Convertible Securities) on the conversion or exchange of the Convertible Securities. No further adjustment of the Conversion Price, adjusted on the issuance of the rights or options, will be made as a result of the actual issuance of the Convertible Securities on the exercise of the rights or options or on the actual issuance of Additional Shares of Common Stock on the conversion or exchange of the Convertible Securities. The provisions of section 7(h)(5) of this resolution regarding the readjustment of the Conversion Price on the expiration of rights or options or the rights of conversion or exchange of Convertible Securities will apply *mutatis mutandis* to the rights, options, and Convertible Securities referred to in this section 7(h)(6).

Exceptions (A) and (B) below are typical but subject to negotiation. Other exceptions may be negotiated.
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(7) "Additional Shares of Common Stock" means all shares of Common Stock (including treasury shares) issued after the initial issuance of Series "A" Preferred Stock by the Corporation, whether or not subsequently reacquired or retired by the Corporation, (A) other than shares of Common

Stock issued on conversion or exchange of the Series “A” Preferred Stock and (B) up to the number of shares of Common Stock as is approved by holders of a Majority of the Series “A” Preferred Stock issued, directly or by grant of rights or options, pursuant to Approved Plans (with the number of shares appropriately adjusted for subdivisions and combinations of shares of Common Stock and dividends on Common Stock payable in shares of Common Stock subsequent to the most recent approval by a Majority of the Series “A” Preferred Stock).

(8) The “Effective Price” of Additional Shares of Common Stock means the quotient determined by dividing (A) the total number of Additional Shares of Common Stock issued, sold, or deemed to have been issued or sold by the Corporation under this section 7(h) into (B) the aggregate consideration received or deemed to have been received by the Corporation for the issuance or sale, or deemed issuance or sale, under this section 7(h) for those Additional Shares of Common Stock.

Continue with the following.

(i) Certificate of Adjustment. For each adjustment of the Conversion Price or the number of shares of Common Stock or other securities issuable on conversion of the Series “A” Preferred Stock, the Corporation, at its expense, will [**include if applicable:** cause independent public accountants of recognized standing selected by the Corporation (who may be the independent public accountants then auditing the books of the Corporation) to] compute such adjustment in accordance with the provisions of this section 7, prepare a certificate showing how the adjustment was completed, and mail that certificate, by first-class mail, postage prepaid, to each registered holder of the Series “A” Preferred Stock at the holder’s address as shown in the Corporation’s shareholder records. The certificate will set forth the adjustment, showing in detail the facts on which the adjustment is based, including a statement of (1) the

consideration received or deemed received by the Corporation for any Additional Shares of Common Stock issued, sold, or deemed to have been issued or sold; (2) the Conversion Price in effect at the time for the Series "A" Preferred Stock; (3) the number of Additional Shares of Common Stock issued or sold, or deemed to be issued or sold; and (4) the type and amount, if any, of other property that at the time would be received on conversion of the Series "A" Preferred Stock.

(j) **Notices of Record Date.** In the event of (1) the Corporation's taking a record of the holders of any class of securities for the purpose of determining the holders entitled to receive any dividend or other distribution or (2) any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger (including, without limitation, a consolidation) or share exchange of the Corporation with any other entity, any sale of all or substantially all of the assets of the Corporation to any other Person, or any voluntary or involuntary dissolution, liquidation, or winding-up of the Corporation, the Corporation will send, or cause to be sent, to each holder of shares of Series "A" Preferred Stock, at least [number] days before the record date, a notice specifying the record date for that dividend or distribution and a description of that dividend or distribution; the date on which that reorganization, reclassification, merger, share exchange, sale, dissolution, liquidation, or winding-up is proposed to become effective; and the date (if any is to be fixed) when the holders of record of Common Stock or other securities will be entitled to exchange their shares of Common Stock or other securities for securities or other property deliverable on that reorganization, reclassification, merger, share exchange, sale, dissolution, liquidation, or winding-up.

(k) **Automatic Conversion.** On the closing of the Initial Public Offering or, if earlier, on a date specified by the vote or consent of the holders of the Required Preferred Stock (the "Mandatory Conversion Date"), each outstanding share of Series "A" Preferred Stock will automatically be converted into shares of Common Stock based on the Conversion Price then

in effect, and the outstanding shares of Series "A" Preferred Stock will be converted without any further action by the holders of those shares, whether or not the certificates representing the shares are surrendered to the Corporation or its transfer agent, provided, however, that the Corporation will not be obligated to issue certificates evidencing the shares of Common Stock issued on the conversion unless the certificates evidencing such shares of Series "A" Preferred Stock are delivered to the Corporation or its transfer agent as provided below or the holder notifies the Corporation or its transfer agent that the certificates have been lost, stolen, or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by the Corporation in connection with those certificates. The Corporation will give written notice of mandatory conversion under this section 7(k) to each holder of record of shares of Series "A" Preferred Stock. The notice, which need not be given in advance of the Mandatory Conversion Date, will indicate the Mandatory Conversion Date and the place and other procedures for conversion. On receipt of that notice, the holders of shares of Series "A" Preferred Stock will surrender the certificates representing the shares at the office of the Corporation or any transfer agent for the Series "A" Preferred Stock or the Common Stock, or such other place as the notice may specify. Thereupon, each holder will be issued promptly, at that office and in the holder's name as shown on the surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series "A" Preferred Stock were converted. On the Mandatory Conversion Date, all rights with respect to shares of Series "A" Preferred Stock will terminate, and all shares of Series "A" Preferred Stock will be deemed converted into shares of Common Stock for all purposes. This termination of rights and conversion will not be affected by any failure to surrender any of the certificates representing the shares of Series "A" Preferred Stock.

(l) **Fractional Shares.** No fractional shares of Common Stock will be issued on conversion of shares of Series "A" Preferred Stock. If more than one share of Series "A" Preferred Stock is surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock to be issued on conversion will be computed on the basis of the

aggregate number of shares of Series "A" Preferred Stock surrendered. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation will pay cash equal to the product of the fraction multiplied by the fair market value of one share of the Common Stock on the date of conversion as determined in good faith by the Board.

(m) **Reservation of Stock Issuable on Conversion.** The Corporation will at all times reserve and keep available out of its authorized but unissued shares of Common Stock (solely for the purpose of effecting the conversion of the shares of Series "A" Preferred Stock) a number of its shares of Common Stock sufficient to effect the conversion of all outstanding shares of Series "A" Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock is not sufficient to effect the conversion of all outstanding shares of Series "A" Preferred Stock, the Corporation will take any corporate action that may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to a number of shares sufficient for that purpose.

(n) **Notices.** All notices and other communications required by this section 7 will be in writing and will be deemed to have been duly given if delivered personally, mailed by certified mail (postage prepaid with return receipt requested), sent by local or overnight delivery service, or transmitted by facsimile or electronic message (as permitted by section 6.051 of the Texas Business Organizations Code) to each holder of record at the address of that holder appearing on the share transfer records of the Corporation.

(o) **Payment of Taxes.** The Corporation will pay all taxes (other than taxes based on income) and other governmental charges imposed with respect to the issue or delivery of shares of Common Stock on conversion of shares of Series "A" Preferred Stock, excluding any tax or other charge imposed in connection with the issue and delivery of shares of Common Stock in a name other than that in which the converted shares of Series "A" Preferred Stock were registered.

(p) **No Dilution or Impairment.** The Corporation will not amend its certificate of formation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, for the purpose of avoiding the observance or performance of any of the terms of this resolution, but will at all times in good faith assist in carrying out all actions reasonably necessary or appropriate to protect the conversion rights of the holders of the Series "A" Preferred Stock against dilution or other impairment.

(q) **Rounding of Calculations; Minimum Adjustment.** All calculations under this section 7 will be made to the nearest one thousandth of a dollar or to the nearest one thousandth of a share, as the case may be. Any provision of this section 7 to the contrary notwithstanding, no adjustment in the Conversion Price will be made if the amount of the adjustment would be less than \$0.001, but any such amount will be carried forward, and an adjustment will be made when any subsequent adjustment, together with that amount and any other amount carried forward, will aggregate \$0.001 or more.

Section 8

Restrictions and Limitations

(a) As long as any shares of Series "A" Preferred Stock are outstanding, the Corporation will not, and will not permit any Subsidiary to, directly or indirectly, without the vote or written consent of the holders of the Required Series "A" Preferred Stock as a separate class—

(1) liquidate or dissolve the Corporation or wind up its business and affairs, effect any transaction of any of the kinds described in section 4(c) of this resolution (subject to the exception), or agree or obligate itself to do any of the foregoing;

(2) amend, alter, or repeal any provision of the certificate of formation or the bylaws of the Corporation in a manner adverse to the Series "A" Preferred Stock;

(3) redeem, purchase, or otherwise acquire for value any share or shares of Series "A" Preferred Stock other than by redemption or conversion in accordance with section 5 or section 7 of this resolution;

(4) purchase, redeem, or otherwise acquire for value (or pay into or set aside as a sinking fund for that purpose) any shares of Common Stock, except for any repurchase of shares of Common Stock from directors, employees, consultants, or advisers to the Corporation or any Subsidiary under agreements under which the Corporation or Subsidiary may repurchase shares on the occurrence of certain events, including upon the termination of employment or service to the Corporation or Subsidiary;

(5) create, authorize, issue, or obligate itself to issue any other Equity Security senior to or on a parity with the Series "A" Preferred Stock as to dividend or redemption rights, liquidation preferences, conversion rights, voting rights, or otherwise;

(6) declare or pay any dividends on or declare or make any other distribution, direct or indirect (other than a dividend or distribution payable solely in additional shares of Common Stock), on account of the Common Stock or set apart any sum for that purpose;

(7) increase or decrease (other than by redemption or conversion) the total number of outstanding shares of Series "A" Preferred Stock; or

(8) enter into any agreement, contract, or understanding, or otherwise incur any obligation, that would violate, be in conflict with, restrict, or bur-

den the rights of the holders of Series "A" Preferred Stock or the Corporation's performance of the terms of its certificate of formation.

Section 9

No Reissuance of Series "A" Preferred Stock

No shares of Series "A" Preferred Stock acquired by the Corporation by reason of redemption, purchase, or conversion or otherwise will be reissued, and all such shares will be canceled, retired, and eliminated from the shares that the Corporation is authorized to issue. The Corporation may, after any acquisition of shares of Series "A" Preferred Stock, take such appropriate action (without the need of shareholder consent or approval) as may be necessary to reduce the authorized number of shares of Series "A" Preferred Stock accordingly.

Section 10

Waivers; Amendments

Without the written consent of the holders of the Required Series "A" Preferred Stock, the obligations of the Corporation and the rights of the holders of Series "A" Preferred Stock under this resolution may not be waived or amended. If any waiver or amendment is effected, the Corporation will promptly give written notice of the waiver to any holders of Series "A" Preferred Stock who or which have not previously consented thereto in writing.

The foregoing resolution was adopted by all necessary action on the part of the Corporation.

IN WITNESS WHEREOF, the Corporation has caused this statement to be signed by its duly authorized officer as of **[date]**.

[Name of corporation]

[Name of officer], [title]

Form 16-1

Corporation B is a newly formed corporation formed solely for the purpose of the spin-off and the postclosing operation of Business B.

**Type D Reorganization—Agreement and Plan of
Corporate Separation
(Spin-Off)**

This Agreement and Plan of Corporate Separation and Reorganization (this “Agreement”) dated [date] is made by and between [name of corporation A], a Texas corporation (“Corporation A”), and [name of corporation B], a Texas corporation (“Corporation B”).

Recitals

To have this reorganization qualify as a tax-free transaction under the Internal Revenue Code, the business must have been in active operation for at least five years. 26 U.S.C. § 355(b).

In describing the business, use a brief description, e.g., an oil-field equipment business.

- A. For five or more years, Corporation A has conducted two separate lines of business: [describe business A] (“Business A”) and [describe business B] (“Business B”).
- B. The board of directors of Corporation A has determined that a separation of Business A from Business B is desirable and in the best interests of Corporation A and its shareholders.
- C. Corporation A desires to transfer all the assets of Business B, subject to all liabilities related thereto, to Corporation B in exchange for all of Corporation B’s capital stock.
- D. Immediately after, and as an integral part of the transfer of Business B to Corporation B, Corporation A desires to distribute all the capital stock of Corporation B to the shareholders of Corporation A pro rata to their ownership of Corporation A’s capital stock in a transac-

tion that will qualify as a reorganization and tax-free distribution under sections 368(a)(1)(D) and 355 of the Internal Revenue Code of 1986, as amended (the “IRC”).

Agreement

THEREFORE, in consideration of the foregoing and of the representations, warranties, covenants, and agreements contained in this Agreement, the parties agree as follows:

Article 1

Separation Transaction

1.1 *Transfer of Business B.* Subject to the terms and conditions set forth in this Agreement, as of the Effective Time (as defined in section 1.4 below), Corporation A will transfer Business B to Corporation B, and Corporation B will accept and assume Business B, as follows:

- (a) Corporation A will transfer and deliver to Corporation B, for the consideration set forth in section 1.2 below, all the assets of Business B, more particularly described in Schedule 1.1(a) attached hereto (the “Transferred Assets”).
- (b) Corporation B will expressly assume all the liabilities of and allocable to Business B, more particularly described in Schedule 1.1(b) attached hereto (the “Assumed Liabilities”).

In section 1.2 below, the number of shares should equal all the authorized capital stock of Corporation B.

1.2 *Consideration.* In consideration for the transfers described in section 1.1 of this Agreement, Corporation B will issue to Corporation A [number] shares of its common stock, par value \$[amount] per share, which will be all the issued and outstanding capital stock of Corporation B (the “Corporation B Stock”).

1.3 *Distribution of Corporation B Stock.* Immediately after the transfers described in sections 1.1 and 1.2 of this Agreement, Corporation A will distribute the Corporation B Stock to Corporation A's shareholders in proportion to their ownership of Corporation A's issued and outstanding capital stock.

1.4 *Closing; Effective Time.* Subject to the terms and conditions of this Agreement, the closing of the transactions contemplated by this Agreement (the "Closing") will take place at the time, date, and place the parties select. The date on which the Closing occurs is hereinafter referred to as the "Closing Date." If all the conditions of the Closing set forth in this Agreement have been fulfilled or waived and this Agreement has not been terminated, Corporation A and Corporation B will, on the Closing Date, make the transfers and distributions contemplated by this Article 1 (these transfers and distributions being collectively referred to in this Agreement as the "Separation Transaction"). The Separation Transaction will become effective at the time the transfers and distributions contemplated by this Article 1 have been fully consummated or at such later time as the parties agree (the "Effective Time").

1.5 *Closing Deliveries.* At the Closing—

(a) Corporation A will deliver to Corporation B the following:

1. The transfer documents and all deeds, bills of sale, lease assignments, other contract assignments, and other documents and instruments of sale, transfer, assignment, conveyance, and deliverance necessary or appropriate to effect the transfers of the Transferred Assets contemplated by this Article 1.
2. All other documents and instruments necessary or reasonably appropriate to implement the Separation Transaction.

(b) Corporation B will deliver to Corporation A the following:

1. An assumption agreement, as agreed to by the parties, pursuant to which Corporation B accepts the Transferred Assets and covenants and agrees to assume, pay, and discharge the Assumed Liabilities.
2. Transfer documents and all other documents and instruments necessary or reasonably appropriate to effect the transfers of the Transferred Assets and the assumption of the Assumed Liabilities contemplated by section 1.1.
3. One or more stock certificates representing the Corporation B Stock.

(c) Corporation A will deliver to its shareholders stock certificates representing the shares of Corporation B Stock to which the shareholders are entitled under section 1.3 of this Agreement.

Article 2

Representations and Warranties of Corporation A

Corporation A represents and warrants to Corporation B the following:

2.1 *Existence; Good Standing; Corporate Authority.* Corporation A is a corporation duly organized, validly existing, and in good standing under the laws of the state of Texas and has all requisite corporate power and authority to own, operate, and lease its properties and to carry on its business as now conducted.

2.2 *Authorization, Validity, and Effect of Agreements.* Corporation A has the requisite corporate power and authority to execute and deliver this Agreement and all other agreements and documents to which it is a party contemplated by this Agreement. This Agreement and the consummation by Corporation A of the Separation Transaction have been duly authorized by all requisite corporate action on the part of Corporation A. This Agreement constitutes the valid and legally binding obligation of Corporation A and is enforceable against Corporation

A in accordance with its terms, subject to applicable bankruptcy, insolvency, or other similar laws relating to creditors' rights, and general principles of equity.

2.3 *No Conflict*

(a) Neither the execution by Corporation A of this Agreement nor the consummation by Corporation A of the Separation Transaction in accordance with the terms hereof will—

1. conflict with or result in a breach of any provision of the certificate of formation or the bylaws of Corporation A;
2. violate, conflict with, or result in a breach of any provision of any instrument or obligation to which Corporation A is a party or by which Corporation A or any of its properties is bound or affected; or
3. contravene, conflict with, or constitute a violation of any provision of any law, regulation, order, or decree binding on or applicable to Corporation A.

(b) Neither the execution by Corporation A of this Agreement nor the consummation by Corporation A of the Separation Transaction in accordance with the terms hereof will require any consent, approval, or authorization of, or filing or registration with, any governmental or regulatory authority.

Financial statements should be for the most recent fiscal year. The parties also may want to require financial statements for the most recent fiscal quarter or other interim period.

2.4 *Corporation A Financial Statements.* The balance sheets included in the audited annual financial statements prepared by Corporation A (including the related notes and schedules) fairly present, in all material respects, the financial position of Corporation A as of the date of each balance sheet, and the consolidated statements of income, shareholders' equity, and cash flows included in the audited annual financial statements of Corporation A (includ-

ing any related notes and schedules) (together with such balance sheets referred to as the “Financial Statements”) fairly present, in all material respects, the results of consolidated operations, shareholders’ equity, and cash flows of Corporation A for the periods set forth therein, in each case in accordance with generally accepted accounting principles consistently applied during the periods involved, except as may be noted therein. Attached hereto as Schedule 2.4 are the Financial Statements as of [date], along with separate pro forma balance sheets for Business A and for Business B.

2.5 *Litigation and Liabilities.* There are no civil, criminal, or administrative actions, claims, hearings, investigations, or other proceedings pending or threatened against Corporation A or any current or former director or officer of Corporation A. There are no obligations or liabilities, whether or not accrued, contingent or otherwise, that would prevent or impair the ability of Corporation A to consummate the Separation Transaction. There are no outstanding orders, awards, or decrees of any governmental entity against Corporation A, any of its properties, assets, or business, or any of its current or former directors or officers in their capacities as directors or officers of Corporation A.

2.6 *Compliance with Laws; Permits.* The businesses of Corporation A are being conducted in compliance with all applicable laws. Corporation A has all permits, licenses, franchises, variances, orders, and other governmental authorizations, consents, and approvals necessary to own, lease, and operate its properties and conduct its businesses as currently conducted. Corporation A has complied and is in compliance with all laws respecting international trade applicable to its businesses (including any recordkeeping requirements).

2.7 *Environmental Matters.* Corporation A is in compliance with all applicable federal, state, and local laws, ordinances, regulations, licenses, permits, and orders relating to the environment (including air, water, soil, and natural resources) or regulating the use, storage, han-

ding, release, or disposal of any substance regulated or classified as hazardous, toxic, or radioactive under any applicable law.

2.8 *Tax Matters*

(a) Corporation A has prepared in good faith and timely filed (or had filed on its behalf) with the appropriate tax authorities all Tax Returns (as defined below) required to be filed by it on or before the filing date, and all Tax Returns are true, complete, and correct in all material respects. Corporation A has paid in full all Taxes (as defined below) shown as due on all filed Tax Returns.

(b) “Taxes” means all federal, state, local, and foreign taxes, whether imposed directly or through withholding, including all types of (1) taxes on gross or net income or real or personal property; (2) franchise, occupation, or license taxes; (3) withholding, payroll, or employment taxes such as Social Security, unemployment, disability, or similar taxes; (4) excise and stamp taxes and customs duties or other assessments of a similar nature; and (5) any estimated taxes, interest, additions to tax, or penalties imposed by any taxing authority.

(c) “Tax Returns” means all federal, state, local, and foreign tax returns or statements, however titled, with all attachments and schedules, including information returns.

2.9 *Business B Assets and Liabilities.* The Transferred Assets and the Assumed Liabilities reflected on Schedules 1.1(a) and 1.1(b) constitute all the assets and the liabilities of Corporation A used solely in the operations of Business B. Corporation A owns all rights, title, and interest in the Transferred Assets, and those Transferred Assets are subject to no liabilities other than the Assumed Liabilities.

2.10 *Contracts.* All material contracts and arrangements relating to Business B to which Corporation A is a party are valid and binding agreements and are in full force and effect as to Corporation A.

2.11 *Accounts Receivable.* All notes receivable and accounts receivable of Corporation A relating to Business B are properly reflected on the appropriate books and records.

2.12 *Undisclosed Liabilities.* Neither this Agreement nor any information or documents delivered or made available to Corporation B or its officers, attorneys, accountants, or representatives pursuant to this Agreement contain any untrue statements of material fact or omit any material fact necessary to make the statements not misleading.

2.13 *Insurance.* Corporation A maintains in force insurance policies relating to Business B in amounts and against liabilities and hazards consistent with industry practice. There are no claims pending with respect to insurance policies maintained by Corporation A to which the insurer has denied liability or is reserving its rights, and all claims have been timely and properly filed.

Article 3

Representations and Warranties of Corporation B

Corporation B represents and warrants to Corporation A the following:

3.1 *Existence; Good Standing; Corporate Authority.* Corporation B is a corporation duly organized, validly existing, and in good standing under the laws of the state of Texas and has all requisite corporate power and authority to own, operate, and lease its properties and to carry on its business as now conducted.

3.2 *Authorization, Validity, and Effect of Agreements.* Corporation B has the requisite corporate power and authority to execute and deliver this Agreement and all other agreements and documents to which it is a party contemplated by this Agreement. This Agreement and the consummation by Corporation B of the Separation Transaction have been duly authorized by all requisite corporate action on the part of Corporation B. This Agreement constitutes the valid and legally binding obligation of Corporation B and is enforceable against Corporation

B in accordance with its terms, subject to applicable bankruptcy, insolvency, or other similar laws relating to creditors' rights, and general principles of equity.

3.3 *No Conflict*

(a) Neither the execution by Corporation B of this Agreement nor the consummation by Corporation B of the Separation Transaction in accordance with the terms hereof will—

1. conflict with or result in a breach of any provision of the certificate of formation or the bylaws of Corporation B;
2. violate, conflict with, or result in a breach of any provision of any instrument or obligation to which Corporation B is a party or by which Corporation B or any of its properties is bound or affected; or
3. contravene, conflict with, or constitute a violation of any provision of any law, regulation, order, or decree binding on or applicable to Corporation B.

(b) Neither the execution by Corporation B of this Agreement nor the consummation by Corporation B of the Separation Transaction in accordance with the terms of this Agreement will require any consent, approval, or authorization of, or filing or registration with, any governmental or regulatory authority.

3.4 *No Operations.* Since the date of its formation, Corporation B has not carried on any business or conducted any operations other than the negotiation and execution of this Agreement, the performance of its obligations under this Agreement, and matters ancillary to those obligations.

3.5 *Status of Corporation B Stock.* On issuance in accordance with the terms of this Agreement, the Corporation B Stock will be duly authorized, validly issued, and fully paid and nonassessable.

Article 4

Covenants

4.1 *Conduct of Businesses.* Before the Effective Time, except as expressly contemplated by any other provision of this Agreement or as required by applicable law, unless Corporation B has consented in writing, Corporation A—

- (a) will conduct its operations according to its usual and ordinary course in substantially the same manner as conducted before this Agreement;
- (b) will use commercially reasonable efforts to preserve its business organization and goodwill, keep available the services of its officers and employees, and maintain satisfactory relationships with those persons having business relationships with it;
- (c) will not amend its certificate of formation or bylaws;
- (d) will not (1) issue any shares of its capital stock, effect any stock split, or otherwise change its capitalization as it existed on the date of this Agreement; (2) grant, confer, or award any option, warrant, conversion right, or other right not existing on the date of this Agreement to acquire any shares of its capital stock; (3) increase any compensation or benefits, except in the ordinary course of business consistent with past practice, or enter into or amend any employment agreement with any present or future officers or directors, or enter into any agreement with new employees that is inconsistent with past practice; or (4) adopt any new employee benefit plan (including any stock option, stock benefit, or stock purchase plan) or amend (except as required by law) any existing employee benefit plan in any material respect, except for changes less favorable to participants in those plans;
- (e) will not (1) declare, set aside, or pay any dividend, or make any other distribution or payment with respect to any shares of its capital stock or (2) redeem, purchase, or otherwise

acquire any shares of its capital stock or the capital stock of any of its subsidiaries, or make any commitment for any such action;

(f) will not sell, lease, or otherwise dispose of any of its assets that are material to Corporation A, individually or in the aggregate, except in the ordinary course of business;

(g) will not take any action that is likely to materially delay or adversely affect the ability of either party (1) to obtain any consent, authorization, order, or approval of any governmental commission or other regulatory body or (2) to consummate the Separation Transaction;

(h) will not make or rescind any express or deemed election relating to Taxes or settle or compromise any material tax liability;

(i) will not make any material change to its accounting methods, principles, or practices; and

(j) will not agree, in writing or otherwise, to take any of the foregoing actions.

4.2 *Cooperation.* Corporation A and Corporation B each will cooperate and use commercially reasonable efforts to make all filings and obtain all licenses, permits, consents, approvals, and authorizations necessary for it to consummate the Separation Transaction.

Article 5

Closing Conditions

The obligation of each party to effect the Separation Transaction will be subject to the fulfillment of the following conditions at or before the Closing Date:

(a) Neither of the parties is subject to any decree, order, or injunction of a court of competent jurisdiction, U.S. or foreign, that prohibits the consummation of the Separation Transaction, provided, however, that before invoking this condition, each party agrees to use its

commercially reasonable efforts to have any such decree, order, or injunction lifted or vacated.

(b) No statute, rule, or regulation has been enacted by any governmental authority that prohibits or makes unlawful the consummation of the Separation Transaction.

(c) Each of the parties has performed in all material respects the covenants and agreements in this Agreement required to be performed by it on or before the Closing Date; the representations and warranties of each of the parties contained in this Agreement and in any document delivered in connection with this Agreement are true and correct in all material respects as of the date of this Agreement and as of the Closing Date (except for representations and warranties made as of a specified date, which need be true and correct in all material respects only as of the specified date); and each of the parties has received a certificate from the other party, executed on its behalf by an authorized officer of that party and dated the Closing Date, certifying to that effect.

Include the following if applicable. Obtaining an IRS private letter ruling can be costly and time consuming. The parties should weigh the benefits of obtaining an IRS ruling against the costs (both time and financial). The parties may also consider whether an opinion of legal counsel will suffice or whether to dispense with obtaining any ruling or opinion.

(d) Corporation A has received a private letter ruling from the Internal Revenue Service concluding that the Separation Transaction will qualify as a reorganization under section 368(a)(1)(D) of the IRC and that the distribution of the Corporation B Stock will be tax-free under section 355 of the IRC.

Continue with the following.

Article 6

Termination

6.1 *Termination by Mutual Consent.* This Agreement may be terminated at any time before the Effective Time by the mutual written consent of the parties.

6.2 *Termination by Legal Action.* This Agreement will terminate if a court of competent jurisdiction (U.S. or foreign) or a U.S. or foreign governmental, regulatory, or administrative agency or commission issues an order, decree, or ruling or takes any other action permanently restraining, enjoining, or otherwise prohibiting the Separation Transaction and that order, decree, ruling, or other action becomes final and nonappealable.

Article 7

General Provisions

7.1 *Nonsurvival of Representations and Warranties.* The representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement will not survive the Closing.

7.2 *Notices.* All notices, communications, and deliveries made under this Agreement will be made in writing signed by or on behalf of the party sending it, will specify the section of this Agreement under which it is given or made, and will be delivered personally, by facsimile transmission, by registered or certified mail (return receipt requested), or by any courier service, with postage or other fees prepaid, as follows:

If to Corporation A:

[Name of corporation A]

[Address]

[Fax no.]

Attention: [name]

If to Corporation B:

[Name of corporation B]

[Address]

[Fax no.]

Attention: [name]

Any such notice, communication, or delivery may also be made to any other address or representative designated in writing by the party. Any notice, communication, or delivery will be deemed given or made (a) on the date of delivery if delivered in person or by a courier service, (b) on transmission by facsimile if receipt is confirmed by telephone, or (c) on the fifth business day after it is mailed by registered or certified mail.

7.3 *Assignment; Binding Effect; Benefit.* Neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned by any of the parties (whether by operation of law or otherwise) without the prior written consent of the other parties. Nothing in this Agreement, express or implied, is intended to confer on any party, other than the parties hereto and their respective permitted assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, and no person who is not a party to this Agreement may rely on the terms except as otherwise set out. Subject to the preceding sentences, this Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

7.4 *Entire Agreement; Amendments.* This Agreement and any documents delivered by the parties in connection with it constitute the entire agreement between the parties with respect to the subject matter of the Agreement and supersede all prior agreements and understandings between the parties with respect to the Agreement. No addition, amendment to, or

modification of any provision of this Agreement will be binding on either party unless made in writing and signed by all parties to this Agreement.

7.5 *Governing Law.* This Agreement is governed by, enforced under, and construed in accordance with the laws of the state of Texas without regard to any of its rules of conflict of laws that might cause the application of any other state's laws.

7.6 *Counterparts.* This Agreement may be executed by the parties in separate counterparts, each of which constitutes an original, but all counterparts together constitute one and the same instrument.

7.7 *Severability.* If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected thereby, and in lieu of the illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be legal, valid, and enforceable.

7.8 *Waiver.* No term or provision of this Agreement may be waived or modified unless such waiver or modification is in writing and executed by all the parties hereto. Any waiver by any party hereto of a breach or failure to perform will not constitute a waiver of any subsequent breach or failure.

7.9 *Section Headings.* The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

7.10 *Interpretation.* Unless the context otherwise requires, words describing the singular number include the plural, and vice versa; words denoting any gender include all genders; words denoting natural persons include entities, and vice versa; and “include” and “including” do not denote or imply any limitation.

7.11 *Further Acts.* Each party will perform all further acts and execute all documents reasonably required to effect the transactions contemplated by this Agreement.

Remainder of page intentionally left blank. Separate signature page follows.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement on the day and year written in the first paragraph of this Agreement.

Corporation A:

[Name of corporation A]

[Name of officer], [title]

Corporation B:

[Name of corporation B]

[Name of officer], [title]

Attach schedules 1.1(a), 1.1(b), and 2.4.

Form 16-2

Corporation B is a newly formed corporation formed solely for the purpose of the split-off and the postclosing operation of Business X.

**Type D Reorganization—Agreement and Plan of
Corporate Separation
(Split-Off)**

This Agreement and Plan of Corporate Separation and Reorganization (this “Agreement”) dated [date] is made by and among [name of corporation A], a Texas corporation (“Corporation A”), [name of corporation B], a Texas corporation (“Corporation B”), [name of owner 1] (“Owner 1”), and [name of owner 2] (“Owner 2”).

Recitals

To have this reorganization qualify as a tax-free transaction under the Internal Revenue Code, the business must have been in active operation for at least five years. 26 U.S.C. § 355(b).

In describing the business, use a brief description, e.g., an oil-field equipment business.

- A. For five or more years, Corporation A has conducted two separate lines of business: [describe business X] (“Business X”) and [describe business Y] (“Business Y”).
- B. Owner 1 and Owner 2 each owns [number] shares of Corporation A common stock, which constitutes all the issued and outstanding capital stock of Corporation A (“Corporation A Stock”).
- C. The board of directors of Corporation A has determined that a separation of Business X from Business Y is desirable and in the best interests of Corporation A and its shareholders.
- D. Corporation A desires to transfer all the assets of Business X, subject to all liabilities related thereto, to Corporation B in exchange for all of Corporation B’s capital stock. Immedi-

ately after, and as an integral part of the transfer of Business X to Corporation B, Corporation A desires to distribute the capital stock of Corporation B to Owner 1 in exchange for all of Owner 1's shares of Corporation A Stock in a transaction that the parties intend to qualify as a reorganization and tax-free distribution under sections 368(a)(1)(D) and 355 of the Internal Revenue Code of 1986, as amended (the "IRC").

Agreement

THEREFORE, in consideration of the foregoing and of the representations, warranties, covenants, and agreements contained in this Agreement, the parties agree as follows:

Article 1

Separation Transaction

1.1 *Transfer of Business X.* Subject to the terms and conditions set forth in this Agreement, as of the Effective Time (as defined in section 1.5 below), Corporation A will transfer Business X to Corporation B, and Corporation B will accept and assume Business X, as follows:

- (a) Corporation A will transfer and deliver to Corporation B, for the consideration set forth in section 1.2 below, all the assets of Business X, more particularly described in Schedule 1.1(a) attached hereto (collectively, the "Business X Assets").
- (b) Corporation B will expressly assume all the liabilities of and allocable to Business X, more particularly described in Schedule 1.1(b) attached hereto (collectively, the "Business X Liabilities").

In section 1.2 below, the number of shares should equal all the authorized capital stock of Corporation B.
--

1.2 *Consideration.* In consideration for the transfer described in section 1.1 of this Agreement, Corporation B will issue to Corporation A [number] shares of its common stock,

par value \$[amount] per share, which will be all the issued and outstanding capital stock of Corporation B (the “Corporation B Stock”).

1.3 *Value of Businesses and Shares.* The parties agree and acknowledge that Business X and Business Y are of equivalent net fair market value.

1.4 *Distribution of Corporation B Stock to Owner 1.* Immediately after the transfers described in sections 1.1 and 1.2 of this Agreement, Corporation A will distribute the Corporation B Stock to Owner 1 in exchange for all of Owner 1’s Corporation A Stock.

1.5 *Closing; Effective Time.* Subject to the terms and conditions of this Agreement, the closing of the transactions contemplated by this Agreement (the “Closing”) will take place at the time, date, and place the parties select. The date on which the Closing occurs is hereinafter referred to as the “Closing Date.” If all the conditions of the Closing set forth in this Agreement have been fulfilled or waived and this Agreement has not been terminated, Corporation A, Corporation B, and Owner 1 will, on the Closing Date, make the transfers and distributions contemplated by this Article 1 (these transfers and distributions being collectively referred to in this Agreement as the “Separation Transaction”). The Separation Transaction will become effective at the time the transfers and distributions contemplated by this Article 1 have been fully consummated or at such later time as the parties agree (the “Effective Time”).

1.6 *Closing Deliveries.* At the Closing—

(a) Corporation A will deliver to Corporation B the following:

1. The transfer documents and all deeds, bills of sale, lease assignments, other contract assignments, and other documents and instruments of sale, transfer, assignment, conveyance, and deliverance necessary or appropriate to effect the transfers of the Business X Assets contemplated by this Article 1.

2. All other documents and instruments necessary or reasonably appropriate to implement the Separation Transaction.
- (b) Corporation B will deliver to Corporation A the following:
1. An assumption agreement, as agreed to by the parties, pursuant to which Corporation B accepts the Business X Assets and covenants and agrees to assume, pay, and discharge the Business X Liabilities.
 2. Transfer documents and all other documents and instruments necessary or reasonably appropriate to effect the transfers of the Business X Assets and the assumption of the Business X Liabilities contemplated by section 1.1.
 3. One or more stock certificates representing the Corporation B Stock.
- (c) Owner 1 will deliver to Corporation A one or more stock certificates representing all the shares of Corporation A Stock owned by Owner 1, together with proper instruments of assignment and transfer.
- (d) Corporation A will deliver to Owner 1 one or more stock certificates representing the Corporation B Stock, together with proper instruments of assignment and transfer.

Article 2

Representations and Warranties of Corporation A

Corporation A represents and warrants to Corporation B and Owner 1 the following:

2.1 *Existence; Good Standing; Corporate Authority.* Corporation A is a corporation duly organized, validly existing, and in good standing under the laws of the state of Texas and has all requisite corporate power and authority to own, operate, and lease its properties and to carry on its business as now conducted.

2.2 *Authorization, Validity, and Effect of Agreements.* Corporation A has the requisite corporate power and authority to execute and deliver this Agreement and all other agreements and documents to which it is a party contemplated by this Agreement. This Agreement and the consummation by Corporation A of the Separation Transaction have been duly authorized by all requisite corporate action on the part of Corporation A. This Agreement constitutes the valid and legally binding obligation of Corporation A and is enforceable against Corporation A in accordance with its terms, subject to applicable bankruptcy, insolvency, or other similar laws relating to creditors' rights, and general principles of equity.

2.3 *No Conflict*

(a) Neither the execution by Corporation A of this Agreement nor the consummation by Corporation A of the Separation Transaction in accordance with the terms hereof will—

1. conflict with or result in a breach of any provision of the certificate of formation or the bylaws of Corporation A;
2. violate, conflict with, or result in a breach of any provision of any instrument or obligation to which Corporation A is a party or by which Corporation A or any of its properties is bound or affected; or
3. contravene, conflict with, or constitute a violation of any provision of any law, regulation, order, or decree binding on or applicable to Corporation A.

(b) Neither the execution by Corporation A of this Agreement nor the consummation by Corporation A of the Separation Transaction in accordance with the terms hereof will require any consent, approval, or authorization of, or filing or registration with, any governmental or regulatory authority.

Financial statements should be for the most recent fiscal year. The parties also may want to require financial statements for the most recent fiscal quarter or other interim period.

2.4 *Corporation A Financial Statements.* The balance sheets included in the audited annual financial statements prepared by Corporation A (including the related notes and schedules) fairly present, in all material respects, the financial position of Corporation A as of the date of each balance sheet, and the consolidated statements of income, shareholders' equity, and cash flows included in the audited annual financial statements of Corporation A (including any related notes and schedules) (together with such balance sheets referred to as the "Financial Statements") fairly present, in all material respects, the results of consolidated operations, shareholders' equity, and cash flows of Corporation A for the periods set forth therein, in each case in accordance with generally accepted accounting principles consistently applied during the periods involved, except as may be noted therein. Attached hereto as Schedule 2.4 are the Financial Statements as of [date], along with separate pro forma balance sheets for Business X and for Business Y.

2.5 *Litigation and Liabilities.* There are no civil, criminal, or administrative actions, claims, hearings, investigations, or other proceedings pending or threatened against Corporation A or any current or former director or officer of Corporation A. There are no obligations or liabilities, whether or not accrued, contingent or otherwise, that would prevent or impair the ability of Corporation A to consummate the Separation Transaction. There are no outstanding orders, awards, or decrees of any governmental entity against Corporation A, any of its properties, assets, or business, or any of its current or former directors or officers in their capacities as directors or officers of Corporation A.

2.6 *Compliance with Laws; Permits.* The businesses of Corporation A are being conducted in compliance with all applicable laws. Corporation A has all permits, licenses, franchises, variances, orders, and other governmental authorizations, consents, and approvals necessary to own, lease, and operate its properties and conduct its businesses as currently con-

ducted. Corporation A has complied and is in compliance with all laws respecting international trade applicable to its businesses (including any record-keeping requirements).

2.7 *Environmental Matters.* Corporation A is in compliance with all applicable federal, state, and local laws, ordinances, regulations, licenses, permits, and orders relating to the environment (including air, water, soil, and natural resources) or regulating the use, storage, handling, release, or disposal of any substance regulated or classified as hazardous, toxic, or radioactive under any applicable law.

2.8 *Tax Matters*

(a) Corporation A has prepared in good faith and timely filed (or had filed on its behalf) with the appropriate tax authorities all Tax Returns (as defined below) required to be filed by it on or before the filing date, and all Tax Returns are true, complete, and correct in all material respects. Corporation A has paid in full all Taxes (as defined below) shown as due on all filed Tax Returns.

(b) “Taxes” means all federal, state, local, and foreign taxes, whether imposed directly or through withholding, including all types of (1) taxes on gross or net income or real or personal property; (2) franchise, occupation, or license taxes; (3) withholding, payroll, or employment taxes such as Social Security, unemployment, disability, or similar taxes; (4) excise and stamp taxes and customs duties or other assessments of a similar nature; and (5) any estimated taxes, interest, additions to tax, or penalties imposed by any taxing authority.

(c) “Tax Returns” means all federal, state, local, and foreign tax returns or statements, however titled, with all attachments and schedules, including information returns.

2.9 *Business X Assets and Liabilities.* The Business X Assets and Business X Liabilities reflected on Schedules 1.1(a) and 1.1(b) constitute all the assets and liabilities of Corporation A used solely in the operations of Business X. Corporation A owns all rights, title, and

interest in the Business X Assets, and the Business X Assets are subject to no liabilities other than the Business X Liabilities.

2.10 *Contracts.* All material contracts and arrangements relating to Business X to which Corporation A is a party are valid and binding agreements and are in full force and effect as to Corporation A.

2.11 *Accounts Receivable.* All notes receivable and accounts receivable of Corporation A relating to Business X are properly reflected on the appropriate books and records.

2.12 *Undisclosed Liabilities.* Neither this Agreement nor any information or documents delivered or made available to Corporation B or its officers, attorneys, accountants, or representatives pursuant to this Agreement contain any untrue statements of material fact or omit any material fact necessary to make the statements not misleading.

2.13 *Insurance.* Corporation A maintains in force insurance policies relating to Business X in amounts and against liabilities and hazards consistent with industry practice. There are no claims pending with respect to insurance policies maintained by Corporation A to which the insurer has denied liability or is reserving its rights, and all claims have been timely and properly filed.

Article 3

Representations and Warranties of Corporation B

Corporation B represents and warrants to Corporation A and Owner 1 the following:

3.1 *Existence; Good Standing; Corporate Authority.* Corporation B is a corporation duly organized, validly existing, and in good standing under the laws of the state of Texas and has all requisite corporate power and authority to own, operate, and lease its properties and to carry on its business as now conducted.

3.2 *Authorization, Validity, and Effect of Agreements.* Corporation B has the requisite corporate power and authority to execute and deliver this Agreement and all other agreements and documents to which it is a party contemplated by this Agreement. This Agreement and the consummation by Corporation B of the Separation Transaction have been duly authorized by all requisite corporate action on the part of Corporation B. This Agreement constitutes the valid and legally binding obligation of Corporation B and is enforceable against Corporation B in accordance with its terms, subject to applicable bankruptcy, insolvency, or other similar laws relating to creditors' rights, and general principles of equity.

3.3 *No Conflict*

(a) Neither the execution by Corporation B of this Agreement nor the consummation by Corporation B of the Separation Transaction in accordance with the terms hereof will—

1. conflict with or result in a breach of any provision of the certificate of formation or the bylaws of Corporation B;
2. violate, conflict with, or result in a breach of any provision of any instrument or obligation to which Corporation B is a party or by which Corporation B or any of its properties is bound or affected; or
3. contravene, conflict with, or constitute a violation of any provision of any law, regulation, order, or decree binding on or applicable to Corporation B.

(b) Neither the execution by Corporation B of this Agreement nor the consummation by Corporation B of the Separation Transaction in accordance with the terms of this Agreement will require any consent, approval, or authorization of, or filing or registration with, any governmental or regulatory authority.

3.4 *No Operations.* Since the date of its formation, Corporation B has not carried on any business or conducted any operations other than the negotiation and execution of this

Agreement, the performance of its obligations under this Agreement, and matters ancillary to those obligations.

3.5 *Status of Corporation B Stock.* On issuance in accordance with the terms of this Agreement, the Corporation B Stock will be duly authorized, validly issued, and fully paid and nonassessable.

Article 4

Representations and Warranties of Owner 1 and Owner 2

4.1 *Representations as to Agreement.* Owner 1 and Owner 2 each represents and warrants, as to himself only, to each of the other parties to this Agreement that—

- (a) he has the requisite legal capacity to execute and deliver this Agreement and all other agreements and documents contemplated by this Agreement to which he is a party;
- (b) this Agreement constitutes his valid and legally binding obligation and is enforceable against him in accordance with its terms, subject to applicable bankruptcy, insolvency, or other similar laws relating to creditors' rights, and general principles of equity;
- (c) neither his execution of this Agreement nor his consummation of the Separation Transaction in accordance with the terms hereof will—
 - 1. violate, conflict with, or result in a breach of any provision of any instrument or obligation to which he is a party or by which any of his properties is bound or affected; or
 - 2. contravene, conflict with, or constitute a violation of any provision of any law, regulation, order, or decree binding on or applicable to him; and

(d) neither his execution of this Agreement nor his consummation of the Separation Transaction in accordance with the terms of this Agreement will require any consent, approval, or authorization of, or filing or registration with, any governmental or regulatory authority.

4.2 *Additional Representation of Owner 1.* Owner 1 represents and warrants to each of the other parties hereto that he is the sole record and beneficial owner of [number] shares of Corporation A Stock, free and clear of all liens, claims, and encumbrances, and that the shares of Corporation A Stock transferred to Corporation A in exchange for the Corporation B Stock will be free and clear of all liens, claims, and encumbrances.

Article 5

Covenants

5.1 *Conduct of Businesses.* Before the Effective Time, except as expressly contemplated by any other provision of this Agreement or as required by applicable law, unless each of Corporation B and Owner 1 has consented in writing, Corporation A—

- (a) will conduct its operations according to its usual and ordinary course in substantially the same manner as conducted before this Agreement;
- (b) will use commercially reasonable efforts to preserve its business organization and goodwill, keep available the services of its officers and employees, and maintain satisfactory relationships with those persons having business relationships with it;
- (c) will not amend its certificate of formation or bylaws;
- (d) will not (1) issue any shares of its capital stock, effect any stock split, or otherwise change its capitalization as it existed on the date of this Agreement; (2) grant, confer, or award any option, warrant, conversion right, or other right not existing on the date of this Agreement to acquire any shares of its capital stock; (3) increase any compensation or benefits, except in

the ordinary course of business consistent with past practice, or enter into or amend any employment agreement with any present or future officers or directors, or enter into any new agreement with new employees that is inconsistent with past practice; or (4) adopt any new employee benefit plan (including any stock option, stock benefit, or stock purchase plan) or amend (except as required by law) any existing employee benefit plan in any material respect, except for changes less favorable to participants in these plans;

(e) will not (1) declare, set aside, or pay any dividend, or make any other distribution or payment with respect to any shares of its capital stock or (2) redeem, purchase, or otherwise acquire any shares of its capital stock or the capital stock of any of its subsidiaries, or make any commitment for any such action;

(f) will not sell, lease, or otherwise dispose of any of its assets that are material to Corporation A, individually or in the aggregate, except in the ordinary course of business;

(g) will not take any action that is likely to materially delay or adversely affect the ability of any party (1) to obtain any consent, authorization, order, or approval of any governmental commission or other regulatory body or (2) to consummate the Separation Transaction;

(h) will not make or rescind any express or deemed election relating to Taxes or settle or compromise any material tax liability;

(i) will not make any material change to its accounting methods, principles, or practices; and

(j) will not agree, in writing or otherwise, to take any of the foregoing actions.

5.2 *Cooperation.* Corporation A and Corporation B each will cooperate and use commercially reasonable efforts to make all filings and obtain all licenses, permits, consents, approvals, and authorizations necessary for them to consummate the Separation Transaction.

Article 6

Closing Conditions

The obligation of each party to effect the Separation Transaction will be subject to the fulfillment of the following conditions at or before the Closing Date:

- (a) None of the parties is subject to any decree, order, or injunction of a court of competent jurisdiction, U.S. or foreign, that prohibits the consummation of the Separation Transaction, provided, however, that before invoking this condition, each party agrees to use its commercially reasonable efforts to have any such decree, order, or injunction lifted or vacated.
- (b) No statute, rule, or regulation has been enacted by any governmental authority that prohibits or makes unlawful the consummation of the Separation Transaction.
- (c) Each of the parties has performed in all material respects the covenants and agreements in this Agreement required to be performed by it on or before the Closing Date; the representations and warranties of each of the parties contained in this Agreement and in any document delivered in connection with this Agreement are true and correct in all material respects as of the date of this Agreement and as of the Closing Date (except for representations and warranties made as of a specified date, which need be true and correct in all material respects only as of the specified date); and each of the parties has received a certificate from each of the others, executed and dated the Closing Date, certifying to that effect.

Include the following if applicable. Obtaining an IRS private letter ruling can be costly and time consuming. The parties should weigh the benefits of obtaining an IRS ruling against the costs (both time and financial). The parties may also consider whether an opinion of legal counsel will suffice or whether to dispense with obtaining any ruling or opinion.

- (d) Corporation A has received a private letter ruling from the Internal Revenue Service concluding that the Separation Transaction will qualify as a reorganization under section

368(a)(1)(D) of the IRC and that the distribution of the Corporation B stock will be tax-free under section 355 of the IRC.

Continue with the following.

Article 7

Termination

7.1 *Termination by Mutual Consent.* This Agreement may be terminated at any time before the Effective Time by the mutual written consent of all the parties.

7.2 *Termination by Legal Action.* This Agreement will terminate if a court of competent jurisdiction (U.S. or foreign) or a U.S. or foreign governmental, regulatory, or administrative agency or commission issues an order, decree, or ruling or takes any other action permanently restraining, enjoining, or otherwise prohibiting the Separation Transaction and that order, decree, ruling, or other action becomes final and nonappealable.

Article 8

General Provisions

8.1 *Nonsurvival of Representations and Warranties.* The representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement will not survive the Closing.

8.2 *Notices.* All notices, communications, and deliveries made under this Agreement will be made in writing signed by or on behalf of the party sending it, will specify the section of this Agreement under which it is given or made, and will be delivered personally, by facsimile transmission, by registered or certified mail (return receipt requested), or by any courier service, with postage or other fees prepaid as follows:

If to Corporation A:

[Name of corporation A]

[Address]

[Fax no.]

Attention: [name]

If to Corporation B:

[Name of corporation B]

[Address]

[Fax no.]

Attention: [name]

If to Owner 1:

[Name of owner 1]

[Address]

[Include if applicable: [fax no.]]

If to Owner 2:

[Name of owner 2]

[Address]

[Include if applicable: [fax no.]]

Any such notice, communication, or delivery may also be made to any other address or representative designated in writing by the party. Any notice, communication, or delivery will be deemed given or made (a) on the date of delivery if delivered in person or by courier service, (b) on transmission by facsimile if receipt is confirmed by telephone, or (c) on the fifth business day after it is mailed by registered or certified mail.

8.3 *Assignment; Binding Effect; Benefit.* Neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned by any of the parties (whether by operation of law or otherwise) without the prior written consent of the other parties. Nothing in this Agreement, express or implied, is intended to confer on any party, other than the parties hereto and their respective permitted assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, and no person who is not a party to this Agreement may rely on the terms except as otherwise set out. Subject to the preceding sentences, this Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

8.4 *Entire Agreement; Amendments.* This Agreement and any documents delivered by the parties in connection with it constitute the entire agreement among the parties with respect to the subject matter of the Agreement and supersede all prior agreements and understandings among the parties with respect to the Agreement. No addition, amendment to, or modification of any provision of this Agreement will be binding on any party hereto unless made in writing and signed by all parties to this Agreement.

8.5 *Governing Law.* This Agreement is governed by, enforced under, and construed in accordance with the laws of the state of Texas without regard to any of its rules of conflict of laws that might cause the application of any other state's laws.

8.6 *Counterparts.* This Agreement may be executed by the parties in separate counterparts, each of which constitutes an original, but all counterparts together constitute one and the same instrument.

8.7 *Severability.* If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected thereby, and in lieu of the illegal, invalid, or unenforceable provision, there will be added

automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be legal, valid, and enforceable.

8.8 *Waiver.* No term or provision of this Agreement may be waived or modified unless such waiver or modification is in writing and executed by all the parties hereto. Any waiver by any party hereto of a breach or failure to perform will not constitute a waiver of any subsequent breach or failure.

8.9 *Section Headings.* The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

8.10 *Interpretation.* Unless the context otherwise requires, words describing the singular number include the plural, and vice versa; words denoting any gender include all genders; words denoting natural persons include entities, and vice versa; and “include” and “including” do not denote or imply any limitation.

8.11 *Further Acts.* Each party will perform all further acts and execute all documents reasonably required to effect the transactions contemplated by this Agreement.

Remainder of page intentionally left blank. Separate signature page follows.
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IN WITNESS WHEREOF, the parties have executed and delivered this Agreement on the day and year written in the first paragraph of this Agreement.

Corporation A:

[Name of corporation A]

[Name of officer], [title]

Corporation B:

[Name of corporation B]

[Name of officer], [title]

Owner 1:

[Name of owner 1]

Owner 2:

[Name of owner 2]

Attach schedules 1.1(a), 1.1(b), and 2.4.

Form 16-3

Corporation B and Corporation C are newly formed corporations, formed solely for the purpose of the split-up and the postclosing operation of Business X and Business Y, respectively.

**Type D Reorganization—Agreement and Plan of
Corporate Separation
(Split-Up)**

This Agreement and Plan of Corporate Separation and Reorganization (this “Agreement”) dated [date] is made by and among [name of corporation A], a Texas corporation (“Corporation A”), [name of corporation B], a Texas corporation (“Corporation B”), [name of corporation C], a Texas corporation (“Corporation C”), [name of owner 1] (“Owner 1”), and [name of owner 2] (“Owner 2”).

Recitals

To have this reorganization qualify as a tax-free transaction under the Internal Revenue Code, the business must have been in active operation for at least five years. 26 U.S.C. § 355(b).

In describing the business, use a brief description, e.g., an oil-field equipment business.

- A. For five or more years, Corporation A has conducted two separate lines of business: [describe business X] (“Business X”) and [describe business Y] (“Business Y”).
- B. Owner 1 and Owner 2 each owns [number] shares of Corporation A common stock, which constitutes all the issued and outstanding capital stock of Corporation A (“Corporation A Stock”).
- C. The board of directors of Corporation A has determined that a separation of Business X from Business Y is desirable and in the best interests of Corporation A and its shareholders.

D. Corporation A desires to transfer all the assets of Business X, subject to all liabilities related thereto, to Corporation B in exchange for all of Corporation B's capital stock and to transfer all the assets of Business Y, subject to all liabilities related thereto, to Corporation C in exchange for all of Corporation C's capital stock. Immediately after, and as an integral part of the transaction, Corporation A desires to distribute the capital stock of Corporation B and Corporation C to the shareholders of Corporation A in complete liquidation in a transaction that will qualify as a reorganization and tax-free distribution under sections 368(a)(1)(D) and 355 of the Internal Revenue Code of 1986, as amended (the "IRC").

Agreement

THEREFORE, in consideration of the foregoing and of the representations, warranties, covenants, and agreements contained in this Agreement, the parties agree as follows:

Article 1

Separation Transaction

1.1 *Transfer of Business X.* Subject to the terms and conditions set forth in this Agreement, as of the Effective Time (as defined in section 1.5 below), Corporation A will transfer Business X to Corporation B, and Corporation B will accept and assume Business X, as follows:

(a) Corporation A will transfer and deliver to Corporation B, for the consideration set forth in section 1.1(c) below, all the assets of Business X, more particularly described in Schedule 1.1(a) attached hereto (collectively, the "Business X Assets").

(b) Corporation B will expressly assume all the liabilities of and allocable to Business X, more particularly described in Schedule 1.1(b) attached hereto (collectively, the "Business X Liabilities").

In section 1.1(c) below, the number of shares should equal all the authorized capital stock of Corporation B.

(c) In consideration for the transfer described in section 1.1 of this Agreement, Corporation B will issue to Corporation A [number] shares of its common stock, par value \$[amount] per share, which will be all the issued and outstanding capital stock of Corporation B (the “Corporation B Stock”).

1.2 *Transfer of Business Y.* Subject to the terms and conditions set forth in this Agreement, as of the Effective Time (as defined in section 1.5 below), Corporation A will transfer Business Y to Corporation C, and Corporation C will accept and assume Business Y, as follows:

(a) Corporation A will transfer and deliver to Corporation C, for the consideration set forth in section 1.2(c) below, all the assets of Business Y, more particularly described in Schedule 1.2(a) attached hereto (collectively, the “Business Y Assets”).

(b) Corporation C will expressly assume all the liabilities of and allocable to Business Y, more particularly described in Schedule 1.2(b) attached hereto (collectively, the “Business Y Liabilities”).

In section 1.2(c) below, the number of shares should equal all the authorized capital stock of Corporation C.

(c) In consideration for the transfer described in section 1.2 of this Agreement, Corporation C will issue to Corporation A [number] shares of its common stock, par value \$[amount] per share, which will be all the issued and outstanding capital stock of Corporation C (the “Corporation C Stock”).

1.3 *Value of Businesses and Shares.* The parties agree and acknowledge that Business X and Business Y are of equivalent net fair market value.

1.4 *Distribution of Corporation B and Corporation C Stock.* Immediately after the transfers described in sections 1.1 and 1.2 of this Agreement, Corporation A will distribute the Corporation B Stock to Owner 1 and the Corporation C Stock to Owner 2 in complete liquidation of Corporation A.

1.5 *Closing; Effective Time.* Subject to the terms and conditions of this Agreement, the closing of the transactions contemplated by this Agreement (the “Closing”) will take place at the time, date, and place the parties select. The date on which the Closing occurs is hereinafter referred to as the “Closing Date.” If all the conditions of the Closing set forth in this Agreement have been fulfilled or waived and this Agreement has not been terminated, Corporation A, Corporation B, and Corporation C will, on the Closing Date, make the transfers and distributions contemplated by this Article 1 (these transfers and distributions being collectively referred to in this Agreement as the “Separation Transaction”). The Separation Transaction will become effective at the time the transfers and distributions contemplated by this Article 1 have been fully consummated or at such later time as the parties agree to (the “Effective Time”).

1.6 *Closing Deliveries.* At the Closing—

(a) Corporation A will deliver to Corporation B the following:

1. The transfer documents and all deeds, bills of sale, lease assignments, other contract assignments, and other documents and instruments of sale, transfer, assignment, conveyance, and deliverance necessary or appropriate to effect the transfers of the Business X Assets contemplated by this Article 1.
2. All other documents and instruments necessary or reasonably appropriate to implement the Separation Transaction.

(b) Corporation B will deliver to Corporation A the following:

1. An assumption agreement, as agreed to by the parties, pursuant to which Corporation B accepts the Business X Assets and covenants and agrees to assume, pay, and discharge the Business X Liabilities.
2. Transfer documents and all other documents and instruments necessary or reasonably appropriate to effect the transfers of the Business X Assets and the assumption of the Business X Liabilities contemplated by section 1.1.
3. One or more stock certificates representing the Corporation B Stock.

(c) Corporation A will deliver to Corporation C the following:

1. The transfer documents and all deeds, bills of sale, lease assignments, other contract assignments, and other documents and instruments of sale, transfer, assignment, conveyance, and deliverance necessary or appropriate to effect the transfers of the Business Y Assets contemplated by this Article 1.
2. All other documents and instruments necessary or reasonably appropriate to implement the Separation Transaction.

(d) Corporation C will deliver to Corporation A the following:

1. An assumption agreement, as agreed to by the parties, pursuant to which Corporation C accepts the Business Y Assets and covenants and agrees to assume, pay, and discharge the Business Y Liabilities.
2. Transfer documents and all other documents and instruments necessary or reasonably appropriate to effect the transfers of the Business Y Assets and the assumption of the Business Y Liabilities contemplated by section 1.2.
3. One or more stock certificates representing the Corporation C Stock.

(e) Corporation A will deliver to Owner 1 one or more stock certificates representing the Corporation B Stock and to Owner 2 one or more stock certificates representing the Corporation C Stock, together with proper instruments of assignment and transfer, in accordance with section 1.4 of this Agreement.

Article 2

Representations and Warranties of Corporation A

Corporation A represents and warrants to the other parties to this Agreement the following:

2.1 *Existence; Good Standing; Corporate Authority.* Corporation A is a corporation duly organized, validly existing, and in good standing under the laws of the state of Texas and has all requisite corporate power and authority to own, operate, and lease its properties and to carry on its business as now conducted.

2.2 *Authorization, Validity, and Effect of Agreements.* Corporation A has the requisite corporate power and authority to execute and deliver this Agreement and all other agreements and documents to which it is a party contemplated by this Agreement. This Agreement and the consummation by Corporation A of the Separation Transaction have been duly authorized by all requisite corporate action on the part of Corporation A. This Agreement constitutes the valid and legally binding obligation of Corporation A and is enforceable against Corporation A in accordance with its terms, subject to applicable bankruptcy, insolvency, or other similar laws relating to creditors' rights, and general principles of equity.

2.3 *No Conflict*

(a) Neither the execution by Corporation A of this Agreement nor the consummation by Corporation A of the Separation Transaction in accordance with the terms hereof will—

1. conflict with or result in a breach of any provision of the certificate of formation or the bylaws of Corporation A;
2. violate, conflict with, or result in a breach of any provision of any instrument or obligation to which Corporation A is a party or by which Corporation A or any of its properties is bound or affected; or
3. contravene, conflict with, or constitute a violation of any provision of any law, regulation, order, or decree binding on or applicable to Corporation A.

(b) Neither the execution by Corporation A of this Agreement nor the consummation by Corporation A of the Separation Transaction in accordance with the terms of this Agreement will require any consent, approval, or authorization of, or filing or registration with, any governmental or regulatory authority.

Financial statements should be for the most recent fiscal year. The parties also may want to require financial statements for the most recent fiscal quarter or other interim period.

2.4 *Corporation A Financial Statements.* The balance sheets included in the audited annual financial statements prepared by Corporation A (including the related notes and schedules) fairly present, in all material respects, the financial position of Corporation A as of the date of each balance sheet, and the consolidated statements of income, shareholders' equity, and cash flows included in the audited annual financial statements of Corporation A (including any related notes and schedules) (together with such balance sheets referred to as the "Financial Statements") fairly present, in all material respects, the results of consolidated operations, shareholders' equity, and cash flows of Corporation A for the periods set forth therein, in each case in accordance with generally accepted accounting principles consistently applied during the periods involved, except as may be noted therein. Attached hereto as Schedule 2.4 are Financial Statements as of [date], along with separate pro forma balance sheets for Business X and for Business Y.

2.5 *Litigation and Liabilities.* There are no civil, criminal, or administrative actions, claims, hearings, investigations, or other proceedings pending or threatened against Corporation A or any current or former director or officer of Corporation A. There are no obligations or liabilities, whether or not accrued, contingent or otherwise, that would prevent or impair the ability of Corporation A to consummate the Separation Transaction. There are no outstanding orders, awards, or decrees of any governmental entity against Corporation A, any of its properties, assets, or business, or any of its current or former directors or officers in their capacities as directors or officers of Corporation A.

2.6 *Compliance with Laws; Permits.* The businesses of Corporation A are being conducted in compliance with all applicable laws. Corporation A has all permits, licenses, franchises, variances, orders, and other governmental authorizations, consents, and approvals necessary to own, lease, and operate its properties and conduct its businesses as currently conducted. Corporation A has complied and is in compliance with all laws respecting international trade applicable to its businesses (including any recordkeeping requirements).

2.7 *Environmental Matters.* Corporation A is in compliance with all applicable federal, state, and local laws, ordinances, regulations, licenses, permits, and orders relating to the environment (including air, water, soil, and natural resources) or regulating the use, storage, handling, release, or disposal of any substance regulated or classified as hazardous, toxic, or radioactive under any applicable law.

2.8 *Tax Matters*

(a) Corporation A has prepared in good faith and timely filed (or had filed on its behalf) with the appropriate tax authorities all Tax Returns (as defined below) required to be filed by it on or before the filing date, and all Tax Returns are true, complete, and correct in all material respects. Corporation A has paid in full all Taxes (as defined below) shown as due on all filed Tax Returns.

(b) “Taxes” means all federal, state, local, and foreign taxes, whether imposed directly or through withholding, including all types of (1) taxes on gross or net income or real or personal property; (2) franchise, occupation, or license taxes; (3) withholding, payroll, or employment taxes such as Social Security, unemployment, disability, or similar taxes; (4) excise and stamp taxes and customs duties or other assessments of a similar nature; and (5) any estimated taxes, interest, additions to tax, or penalties imposed by any taxing authority.

(c) “Tax Returns” means all federal, state, local, and foreign tax returns or statements, however titled, with all attachments and schedules, including information returns.

2.9 *Assets and Liabilities*

(a) The Business X Assets and Business X Liabilities reflected on Schedules 1.1(a) and 1.1(b) are assets and liabilities of Corporation A. Corporation A owns all rights, title, and interest in the Business X Assets, and the Business X Assets are subject to no liabilities other than the Business X Liabilities.

(b) The Business Y Assets and Business Y Liabilities reflected on Schedules 1.2(a) and 1.2(b) are assets and liabilities of Corporation A. Corporation A owns all rights, title, and interest in the Business Y Assets, and the Business Y Assets are subject to no liabilities other than Business Y Liabilities.

(c) The Business X Assets and the Business Y Assets and the Business X Liabilities and the Business Y Liabilities constitute all the assets and liabilities of Corporation A.

2.10 *Contracts.* All material contracts and arrangements to which Corporation A is a party are valid and binding agreements and are in full force and effect as to Corporation A.

2.11 *Accounts Receivable.* All notes receivable and accounts receivable of Corporation A are properly reflected on the appropriate books and records.

2.12 *Undisclosed Liabilities.* Neither this Agreement nor any information or documents delivered or made available to Corporation B, Corporation C, or their respective officers, attorneys, accountants, or representatives pursuant to this Agreement contain any untrue statements of material fact or omit any material fact necessary to make the statements not misleading.

2.13 *Insurance.* Corporation A maintains in force insurance policies in amounts and against liabilities and hazards consistent with industry practice. There are no claims pending with respect to insurance policies maintained by Corporation A to which the insurer has denied liability or is reserving its rights, and all claims have been timely and properly filed.

Article 3

Representations and Warranties of Corporation B

Corporation B represents and warrants to the other parties to this Agreement the following:

3.1 *Existence; Good Standing; Corporate Authority.* Corporation B is a corporation duly organized, validly existing, and in good standing under the laws of the state of Texas and has all requisite corporate power and authority to own, operate, and lease its properties and to carry on its business as now conducted.

3.2 *Authorization, Validity, and Effect of Agreements.* Corporation B has the requisite corporate power and authority to execute and deliver this Agreement and all other agreements and documents to which it is a party contemplated by this Agreement. This Agreement and the consummation by Corporation B of the Separation Transaction have been duly authorized by all requisite corporate action on the part of Corporation B. This Agreement constitutes the valid and legally binding obligation of Corporation B and is enforceable against Corporation

B in accordance with its terms, subject to applicable bankruptcy, insolvency, or other similar laws relating to creditors' rights, and general principles of equity.

3.3 *No Conflict*

(a) Neither the execution by Corporation B of this Agreement nor the consummation by Corporation B of the Separation Transaction in accordance with the terms hereof will—

1. conflict with or result in a breach of any provision of the certificate of formation or the bylaws of Corporation B;
2. violate, conflict with, or result in a breach of any provision of any instrument or obligation to which Corporation B is a party or by which Corporation B or any of its properties is bound or affected; or
3. contravene, conflict with, or constitute a violation of any provision of any law, regulation, order, or decree binding on or applicable to Corporation B.

(b) Neither the execution by Corporation B of this Agreement nor the consummation by Corporation B of the Separation Transaction in accordance with the terms of this Agreement will require any consent, approval, or authorization of, or filing or registration with, any governmental or regulatory authority.

3.4 *No Operations.* Since the date of its formation, Corporation B has not carried on any business or conducted any operations other than the negotiation and execution of this Agreement, the performance of its obligations under this Agreement, and matters ancillary to those obligations.

3.5 *Status of Corporation B Stock.* On issuance in accordance with the terms of this Agreement, the Corporation B Stock will be duly authorized, validly issued, and fully paid and nonassessable.

Article 4

Representations and Warranties of Corporation C

Corporation C represents and warrants to the other parties to this Agreement the following:

4.1 *Existence; Good Standing; Corporate Authority.* Corporation C is a corporation duly organized, validly existing, and in good standing under the laws of the state of Texas and has all requisite corporate power and authority to own, operate, and lease its properties and to carry on its business as now conducted.

4.2 *Authorization, Validity, and Effect of Agreements.* Corporation C has the requisite corporate power and authority to execute and deliver this Agreement and all other agreements and documents to which it is a party contemplated by this Agreement. This Agreement and the consummation by Corporation C of the Separation Transaction have been duly authorized by all requisite corporate action on the part of Corporation C. This Agreement constitutes the valid and legally binding obligation of Corporation C and is enforceable against Corporation C in accordance with its terms, subject to applicable bankruptcy, insolvency, or other similar laws relating to creditors' rights, and general principles of equity.

4.3 *No Conflict*

(a) Neither the execution by Corporation C of this Agreement nor the consummation by Corporation C of the Separation Transaction in accordance with the terms hereof will—

1. conflict with or result in a breach of any provision of the certificate of formation or the bylaws of Corporation C;

2. violate, conflict with, or result in a breach of any provision of any instrument or obligation to which Corporation C is a party or by which Corporation C or any of its properties is bound or affected; or
3. contravene, conflict with, or constitute a violation of any provision of any law, regulation, order, or decree binding on or applicable to Corporation C.

(b) Neither the execution by Corporation C of this Agreement nor the consummation by Corporation C of the Separation Transaction in accordance with the terms of this Agreement will require any consent, approval, or authorization of, or filing or registration with, any governmental or regulatory authority.

4.4 *No Operations.* Since the date of its formation, Corporation C has not carried on any business or conducted any operations other than the negotiation and execution of this Agreement, the performance of its obligations under this Agreement, and matters ancillary to those obligations.

4.5 *Status of Corporation C Stock.* On issuance in accordance with the terms of this Agreement, the Corporation C Stock will be duly authorized, validly issued, and fully paid and nonassessable.

Article 5

Representations and Warranties of Owner 1 and Owner 2

5.1 *Representations as to Agreement.* Owner 1 and Owner 2 each represents and warrants, as to himself only, to each of the other parties to this Agreement that—

(a) he has the requisite legal capacity to execute and deliver this Agreement and all other agreements and documents contemplated by this Agreement to which he is a party;

(b) this Agreement constitutes his valid and legally binding obligation and is enforceable against him in accordance with its terms, subject to applicable bankruptcy, insolvency, or other similar laws relating to creditors' rights, and general principles of equity;

(c) neither his execution of this Agreement nor his consummation of the Separation Transaction in accordance with the terms hereof will—

1. violate, conflict with, or result in a breach of any provision of any instrument or obligation to which he is a party or by which any of his properties is bound or affected; or
2. contravene, conflict with, or constitute a violation of any provision of any law, regulation, order, or decree binding on or applicable to him; and

(d) neither his execution of this Agreement nor his consummation of the Separation Transaction in accordance with the terms of this Agreement will require any consent, approval, or authorization of, or filing or registration with, any governmental or regulatory authority.

5.2 *Additional Representation of Owner 1.* Owner 1 represents and warrants to each of the other parties hereto that he is the sole record and beneficial owner of [number] shares of Corporation A Stock, free and clear of all liens, claims, and encumbrances.

5.3 *Additional Representation of Owner 2.* Owner 2 represents and warrants to each of the other parties hereto that he is the sole record and beneficial owner of [number] shares of Corporation A Stock, free and clear of all liens, claims, and encumbrances.

Article 6

Covenants

6.1 *Conduct of Businesses.* Before the Effective Time, except as expressly contemplated by any other provision of this Agreement or as required by applicable law, unless each of the other parties has consented in writing, Corporation A—

- (a) will conduct its operations according to its usual and ordinary course in substantially the same manner as conducted before this Agreement;
- (b) will use commercially reasonable efforts to preserve its business organization and goodwill, keep available the services of its officers and employees, and maintain satisfactory relationships with those persons having business relationships with it;
- (c) will not amend its certificate of formation or bylaws;
- (d) will not (1) issue any shares of its capital stock, effect any stock split, or otherwise change its capitalization as it existed on the date of this Agreement; (2) grant, confer, or award any option, warrant, conversion right, or other right not existing on the date of this Agreement to acquire any shares of its capital stock; (3) increase any compensation or benefits, except in the ordinary course of business consistent with past practice, or enter into or amend any employment agreement with any present or future officers or directors, or enter into any new agreement with new employees that is inconsistent with past practice; or (4) adopt any new employee benefit plan (including any stock option, stock benefit, or stock purchase plan) or amend (except as required by law) any existing employee benefit plan in any material respect, except for changes less favorable to participants in such plans;
- (e) will not (1) declare, set aside, or pay any dividend, or make any other distribution or payment with respect to any shares of its capital stock or (2) redeem, purchase, or otherwise

acquire any shares of its capital stock or the capital stock of any of its subsidiaries, or make any commitment for any such action;

(f) will not sell, lease, or otherwise dispose of any of its assets that are material to Corporation A, individually or in the aggregate, except in the ordinary course of business;

(g) will not take any action that is likely to materially delay or adversely affect the ability of any party (1) to obtain any consent, authorization, order, or approval of any governmental commission or other regulatory body or (2) to consummate the Separation Transaction;

(h) will not make or rescind any express or deemed election relating to Taxes or settle or compromise any material tax liability;

(i) will not make any material change to its accounting methods, principles, or practices; and

(j) will not agree, in writing or otherwise, to take any of the foregoing actions.

6.2 *Cooperation.* Corporation A, Corporation B, and Corporation C each will cooperate and use commercially reasonable efforts to make all filings and obtain all licenses, permits, consents, approvals, and authorizations necessary for them to consummate the Separation Transaction.

Article 7

Closing Conditions

The obligation of each party to effect the Separation Transaction will be subject to the fulfillment of the following conditions at or before the Closing Date:

(a) None of the parties is subject to any decree, order, or injunction of a court of competent jurisdiction, U.S. or foreign, that prohibits the consummation of the Separation Trans-

action, provided, however, that before invoking this condition, each party agrees to use its commercially reasonable efforts to have any such decree, order, or injunction lifted or vacated.

(b) No statute, rule, or regulation has been enacted by any governmental authority that prohibits or makes unlawful the consummation of the Separation Transaction.

(c) Each of the parties has performed in all material respects the covenants and agreements required to be performed by it on or before the Closing Date; the representations and warranties of each of the parties contained in this Agreement and in any document delivered in connection with this Agreement are true and correct in all material respects as of the date of this Agreement and as of the Closing Date (except for representations and warranties made as of a specified date, which need be true and correct in all material respects only as of the specified date); and each of the parties has received a certificate from each of the others, executed and dated the Closing Date, certifying to that effect.

Include the following if applicable. Obtaining an IRS private letter ruling can be costly and time consuming. The parties should weigh the benefits of obtaining an IRS ruling against the costs (both time and financial). The parties may also consider whether an opinion of legal counsel will suffice or whether to dispense with obtaining any ruling or opinion.

(d) Corporation A has received a private letter ruling from the Internal Revenue Service concluding that the Separation Transaction will qualify as a reorganization under section 368(a)(1)(D) of the IRC and that the distribution of the Corporation B Stock and the Corporation C Stock will be tax-free under section 355 of the IRC.

Continue with the following.

Article 8

Termination

8.1 *Termination by Mutual Consent.* This Agreement may be terminated at any time before the Effective Time by the mutual written consent of all the parties.

8.2 *Termination by Legal Action.* This Agreement will terminate if a court of competent jurisdiction (U.S. or foreign) or a U.S. or foreign governmental, regulatory, or administrative agency or commission issues an order, decree, or ruling or takes any other action permanently restraining, enjoining, or otherwise prohibiting the Separation Transaction, and that order, decree, ruling, or other action becomes final and nonappealable.

Article 9

General Provisions

9.1 *Nonsurvival of Representations and Warranties.* The representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement will not survive the Closing.

9.2 *Notices.* All notices, communications, and deliveries made under this Agreement will be made in writing signed by or on behalf of the party sending it, will specify the section of this Agreement under which it is given or made, and will be delivered personally, by facsimile transmission, by registered or certified mail (return receipt requested), or by any courier service, with postage or other fees prepaid, as follows:

If to Corporation A:

[Name of corporation A]

[Address]

[Fax no.]

Attention: [name]

If to Corporation B:

[Name of corporation B]

[Address]

[Fax no.]

Attention: [name]

If to Corporation C:

[Name of corporation C]

[Address]

[Fax no.]

Attention: [name]

If to Owner 1:

[Name of owner 1]

[Address]

[Include if applicable: [fax no.]]

If to Owner 2:

[Name of owner 2]

[Address]

[Include if applicable: [fax no.]]

Any such notice, communication, or delivery may also be made to any other address or representative designated in writing by the party. Any notice, communication, or delivery will be deemed given or made (a) on the date of delivery if delivered in person or by courier service,

(b) on transmission by facsimile if receipt is confirmed by telephone, or (c) on the fifth business day after it is mailed by registered or certified mail.

9.3 *Assignment; Binding Effect; Benefit.* Neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned by any of the parties (whether by operation of law or otherwise) without the prior written consent of the other parties. Nothing in this Agreement, express or implied, is intended to confer on any party, other than the parties hereto and their respective permitted assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, and no person who is not a party to this Agreement may rely on the terms except as otherwise set out. Subject to the preceding sentences, this Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

9.4 *Entire Agreement; Amendments.* This Agreement and any documents delivered by the parties in connection with it constitute the entire agreement among the parties with respect to the subject matter of the Agreement and supersede all prior agreements and understandings among the parties with respect to the Agreement. No addition, amendment to, or modification of any provision of this Agreement will be binding on any party hereto unless made in writing and signed by all parties to this Agreement.

9.5 *Governing Law.* This Agreement is governed by, enforced under, and construed in accordance with the laws of the state of Texas without regard to any of its rules of conflict of laws that might cause the application of any other state's laws.

9.6 *Counterparts.* This Agreement may be executed by the parties in separate counterparts, each of which constitutes an original, but all counterparts together constitute one and the same instrument.

9.7 *Severability.* If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, the legality,

validity, and enforceability of the remaining provisions of this Agreement will not be affected thereby, and in lieu of the illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be legal, valid, and enforceable.

9.8 *Waiver.* No term or provision of this Agreement may be waived or modified unless such waiver or modification is in writing and executed by all the parties hereto. Any waiver by any party hereto of a breach or failure to perform will not constitute a waiver of any subsequent breach or failure.

9.9 *Section Headings.* The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

9.10 *Interpretation.* Unless the context otherwise requires, words describing the singular number include the plural, and vice versa; words denoting any gender include all genders; words denoting natural persons include entities, and vice versa; and “include” and “including” do not denote or imply any limitation.

9.11 *Further Acts.* Each party will perform all further acts and execute all documents reasonably required to effect transactions contemplated by this Agreement.

Remainder of page intentionally left blank. Separate signature page follows.
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IN WITNESS WHEREOF, the parties have executed and delivered this Agreement on the day and year written in the first paragraph of this Agreement.

Corporation A:

[Name of corporation A]

[Name of officer], [title]

Corporation B:

[Name of corporation B]

[Name of officer], [title]

Corporation C:

[Name of corporation C]

[Name of officer], [title]

Owner 1:

[Name of owner 1]

Owner 2:

[Name of owner 2]

Attach schedules 1.1(a), 1.1(b), 1.2(a), 1.2(b), and 2.4.

Form 16-4

This agreement describes two transactions, a stock “redemption” and a recapitalization under tax law. The transactions are separate; neither is required for, or at the same time as, the other.

Type E Reorganization—Agreement for Redemption of Shares and Recapitalization

This Agreement for Redemption of Shares and Recapitalization (this “Agreement”), dated [date], is made by and among [name of shareholder A], [name of shareholder B], [name of shareholder C], and [name of corporation], a Texas corporation (the “Corporation”). [Name of shareholder A], [name of shareholder B], and [name of shareholder C] are collectively the “Shareholders”; and the Shareholders and the Corporation are collectively the “Parties.”

Recitals

A. The Shareholders own all the issued and outstanding, \$[amount] par value, voting common stock of the Corporation (“Common Stock”), as follows:

Shareholder	Number of Shares of Common Stock
[shareholder A]	[number]
[shareholder B]	[number]
[shareholder C]	[number]
Shares Outstanding	[number]

B. The certificate of formation of the Corporation has been amended to authorize issuance of a total of [number] shares of [percent] percent noncumulative, nonvoting, preferred stock, \$[amount] par value, of the Corporation (“Preferred Stock”).

C. The Parties now desire the Corporation to repurchase or redeem [number] shares of Common Stock owned by [name of shareholder C] and to issue shares of Preferred Stock in exchange for the remaining shares of Common Stock owned by [name of shareholder C] and all the shares of Common Stock owned by [name of shareholder B] pursuant to a plan of recapitalization.

Agreement

THEREFORE, in consideration of the foregoing and of the representations, warranties, covenants, and agreements contained herein, the Parties agree as follows:

Article 1

Redemption

1.1 *Redemption of Shares.* The Corporation will redeem [number] shares of Common Stock owned by [name of shareholder C] and will issue to him [a secured/an unsecured] promissory note, payable to the order of [name of shareholder C], in the principal amount of \$[amount], bearing interest at [percent] percent per year, payable in equal quarterly installments of [principal and interest together/principal, plus accrued interest], over [number] years (the “Note”). The performance of the Corporation’s obligations under the Note will be secured by [a security interest in the property of the Corporation/a lien on certain real estate owned by the Corporation] described in Schedule 1.1 attached hereto.

1.2 *Tax Rulings—Redemption.* Consummation of the transaction described in section 1.1 of this Agreement is contingent on receipt of rulings from the Internal Revenue Service (the “IRS”) that—

(a) under sections 302(a) and 302(b)(2) of the Internal Revenue Code of 1986, as amended (the “IRC”), the redemption of the [number] shares of Common Stock owned by [name of

shareholder C] in exchange for the Note will be treated as a distribution in full payment in exchange for those shares of Common Stock; and

(b) under section 1001 of the IRC, gain or loss will be realized by **[name of shareholder C]** on the redemption, measured by the difference between the cost or other basis of the shares of Common Stock surrendered by him and the fair market value of the Note received in exchange.

1.3 *Implementation of Redemption.* Promptly after the Corporation's receipt of the tax rulings described in section 1.2 of this Agreement, the Corporation will give notice to **[name of shareholder C]** of a closing to consummate the transactions described in section 1.1. The Corporation and **[name of shareholder C]** will conduct that closing within **[number]** days after the Corporation's notice at the Corporation's executive offices. At that closing, **[name of shareholder C]** will deliver to the Corporation the stock certificate or certificates representing his **[number]** shares of Common Stock, either endorsed or accompanied by a stock assignment form signed by **[name of shareholder C]**, and the Corporation will deliver to **[name of shareholder C]**, in exchange, the Note and a security agreement necessary to grant the security interests referred to in section 1.1 of this Agreement.

Article 2

Recapitalization

2.1 *Recapitalization.* Immediately after the transaction described in section 1.1 of this Agreement has been consummated, the Corporation will be recapitalized as follows:

(a) The Corporation will issue to **[name of shareholder C]**, in exchange for his remaining **[number]** shares of Common Stock, **[number]** shares of Preferred Stock.

(b) The Corporation will issue to **[name of shareholder B]**, in exchange for his **[number]** shares of Common Stock, **[number]** shares of Preferred Stock.

2.2 *Tax Rulings—Recapitalization.* Consummation of the transactions described in section 2.1 of this Agreement is contingent on receipt of rulings from the IRS that—

(a) the exchange by [name of shareholder C] and [name of shareholder B] of shares of Common Stock for shares of Preferred Stock will constitute a recapitalization or reorganization within the meaning of section 368(a)(1) of the IRC;

(b) under section 354(a)(1) of the IRC, no gain or loss will be recognized by [name of shareholder C] and [name of shareholder B] on the exchange of Common Stock for Preferred Stock;

(c) as provided in section 358(a)(1) of the IRC, the basis of the Preferred Stock received by [name of shareholder C] and [name of shareholder B] will be the same as the basis of the Common Stock surrendered by [name of shareholder C] and [name of shareholder B] in exchange; and

(d) under section 1223(1) of the IRC, the holding period for the Preferred Stock received by [name of shareholder C] and [name of shareholder B] will include the period during which the Common Stock exchanged was held if the Common Stock was a capital asset in the hands of [name of shareholder C] and [name of shareholder B] at the time of the exchange.

2.3 *Implementation of Recapitalization.* Promptly after the Corporation's receipt of the tax rulings described in section 2.2 of this Agreement, the Corporation will give notice to [name of shareholder C] and [name of shareholder B] of a closing to consummate the transactions described in section 2.1. The Parties will conduct that closing within [number] days after the Corporation's notice at the Corporation's executive offices. The following will occur at that closing:

(a) [Name of shareholder C] will deliver to the Corporation the stock certificate or certificates representing his [number] shares of Common Stock, either endorsed or accompanied by

a stock assignment form signed by **[name of shareholder C]**. The Corporation will deliver to **[name of shareholder C]**, in exchange, one or more stock certificates (as requested by **[name of shareholder C]**) issued in the name of **[name of shareholder C]** representing **[number]** shares of Preferred Stock.

(b) **[Name of shareholder B]** will deliver to the Corporation the stock certificate or certificates representing his **[number]** shares of Common Stock, either endorsed or accompanied by a stock assignment form signed by **[name of shareholder B]**. The Corporation will deliver to **[name of shareholder B]**, in exchange, one or more stock certificates (as requested by **[name of shareholder B]**) issued in the name of **[name of shareholder B]** representing **[number]** shares of Preferred Stock.

Once the Corporation has given the notice described in the first sentence of this section 2.3, the stock certificates representing shares of Common Stock issued in the name of **[name of shareholder C]** and in the name of **[name of shareholder B]** will no longer represent any outstanding shares of Common Stock but will be deemed to represent only the right to receive one or more stock certificates representing the shares of Preferred Stock to which **[name of shareholder C]** and **[name of shareholder B]** are entitled under section 2.1 of this Agreement.

2.4 *Common Stock Received.* On the transfer by **[name of shareholder C]** and **[name of shareholder B]** of shares of Common Stock in exchange for shares of Preferred Stock, the Corporation will [hold those reacquired shares of Common Stock in treasury, for subsequent sale or cancellation, as determined by the Corporation's board of directors/, as soon as reasonably practicable, cause those reacquired shares of Common Stock to be canceled in accordance with the Texas Business Organizations Code].

Article 3

General Provisions

3.1 *Applications for Rulings.* The Corporation will prepare the application or applications for the private letter rulings from the IRS described in sections 1.2 and 2.2 of this Agreement and submit it or them to the IRS promptly after all Parties execute this Agreement. The Corporation will bear the entire cost of preparing, submitting, and obtaining the private letter rulings, though the Shareholders will, at their own expense, cooperate with all reasonable requests of the Corporation in its efforts to obtain those rulings.

3.2 *Relationship of Transactions.* Consummation of the transactions described in Article 2 of this Agreement is contingent on consummation of the transaction described in Article 1 of this Agreement, but consummation of the transaction described in Article 1 is in no way contingent on consummation of the transactions described in Article 2.

3.3 *Binding Effect.* Nothing in this Agreement, express or implied, is intended to confer on any party, other than the Parties hereto and their respective permitted assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, and no person who is not a party to this Agreement may rely on the terms except as otherwise set out. This Agreement (a) constitutes the entire agreement between the Parties relating to the subject matter hereof and (b) supersedes all previous understandings and agreements between the Parties relating to the subject matter hereof, both oral and written. This Agreement is binding on and inures to the benefit of the Parties and their respective successors, representatives, heirs, legatees, and assigns (as applicable).

3.4 *Assignment.* No party to this Agreement may assign its rights or delegate its obligations hereunder without the prior written consent of each party. Any such attempted assignment will be void *ab initio*. Subject to the preceding sentences, this Agreement will be binding on and inure to the benefit of the Parties and their respective successors and assigns.

3.5 *Amendment and Termination.* This Agreement may be amended, and any provision of it may be waived, only by a document signed by the Parties. This Agreement will terminate, and be of no further force or effect, if the private letter ruling described in section 1.2 above is not obtained from the IRS [**include if applicable:** within [**number**] days after the date of this Agreement].

3.6 *Counterparts.* This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

3.7 *Severability.* If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected thereby, and in lieu of the illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be legal, valid, and enforceable.

3.8 *Notices.* All notices, communications, and deliveries made under this Agreement will be made in writing signed by or on behalf of the party, will specify the section of this Agreement under which it is given or made, and will be delivered personally, by facsimile transmission, by registered or certified mail (return receipt requested), or by any courier service, with postage or other fees prepaid, as follows:

If to [**name**]:

[**Address**]

[**Fax no.**]

Attention: [**name**]

Repeat as necessary.

Any such notice, communication, or delivery may also be made to any other address or person designated in writing by the party. Such addresses may be changed from time to time by written notice to the other party. Any notice, communication, or delivery will be deemed given or made (a) on the date of delivery if delivered in person or by courier service, (b) on transmission by facsimile if receipt is confirmed by telephone, or (c) on the fifth business day after it is mailed by registered or certified mail.

3.9 *Waiver.* No term or provision of this Agreement may be waived or modified unless the waiver or modification is in writing and executed by all the Parties hereto. Any waiver by any party hereto of a breach or failure to perform will not constitute a waiver of any subsequent breach or failure.

3.10 *Further Assurances.* The parties agree to take further actions and execute and deliver other documents, certificates, agreements, and other instruments as may be reasonably necessary or desirable to implement transactions contemplated by this Agreement.

3.11 *Section Headings.* The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

3.12 *Gender and Number of Words.* When the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter, and the number of all words includes the singular and the plural.

3.13 *Applicable Law.* This Agreement is made pursuant to, will be construed under, will be enforced by, and will be conclusively deemed for all purposes to have been executed and delivered under the laws of the state of Texas without reference to conflicts of laws.

Remainder of page intentionally left blank. Separate signature page follows.
--

IN WITNESS WHEREOF, this Agreement has been signed by the Parties to be effective as of the date stated in the first paragraph of this Agreement.

[Name of corporation]

[Name of officer], [title]

[Name of shareholder A]

[Name of shareholder B]

[Name of shareholder C]

Attach schedule 1.1.

Form 17-1

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Formation—Nonprofit Corporation
(SOS Form 202)**

Form 17-1
Form 202—General Information
(Certificate of Formation – Nonprofit Corporation)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A nonprofit corporation is governed by titles 1 and 2 of the Texas Business Organizations Code (BOC). Title 1, chapter 3, subchapter A, of the BOC governs the formation of a nonprofit corporation and sets forth the provisions required or permitted to be contained in the certificate of formation. Nonprofit corporations may be incorporated for any lawful purpose. Corporations formed for the purpose of operating a nonprofit institution, including an institution devoted to a charitable, benevolent, religious, patriotic, civic, cultural, missionary, education, scientific, social, fraternal, athletic, or aesthetic purpose, may be formed and governed only as a nonprofit corporation under the BOC and not as a for-profit corporation. In a nonprofit corporation, no part of the income of the corporation may be distributed to a member, director or officer of the corporation.

Please note that this form cannot be used to form a corporation authorized by or under a special state statute, such as a water supply corporation, a cemetery corporation or an industrial development corporation.

Taxes: Nonprofit corporations are subject to a state franchise tax and federal income taxes unless an exemption from those taxes is granted. For franchise tax information visit the web site of the Comptroller of Public Accounts at www.window.state.tx.us/taxinfo/franchise/index.html. For information on state tax exemption, including applications and publications, visit the Comptroller's Exempt Organizations web site at www.window.state.tx.us/taxinfo/exempt/index.html or call (800) 252-5555. For information relating to federal income tax filing requirements, exemptions, federal employer identification numbers, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service (IRS) web site at www.irs.gov.

This form does not include any additional statements or provisions that the Texas Comptroller of Public Accounts or the IRS may require as a condition to granting a tax-exempt status. Please refer to IRS publication 557, "Tax-Exempt Status for Your Organization," and Comptroller publication 96-1045, "Guidelines to Texas Tax Exemptions," for further information before completing this form.

Instructions for Form

- **Article 1—Entity Name and Type:** Provide a corporate name. An organizational designation may be used, but is not required. Under section 5.053 of the BOC, if the name chosen is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based

on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate of formation under a name does not authorize the use of a name in violation of another person's rights to the name.

- **Article 2—Registered Agent and Registered Office:** The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The corporation cannot act as its own registered agent; do not enter the corporate name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the certificate of formation. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent. (BOC § 5.207)*

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Article 3—Management:** Except as provided by section 22.202 of the BOC, the affairs of a nonprofit corporation are governed by a board of directors.

Board of Directors: The board of directors may be designated by any name appropriate to the customs, usages, or tenets of the corporation. If managed by a board of directors, three directors are required. A director must be a natural person; there are no residency requirements for directors. Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.).

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for directors, use a business or post office box address rather than a residence address if privacy concerns are an issue.

Managed by Members: A nonprofit corporation is considered to have vested the management of the corporation in the board of directors unless otherwise provided in the certificate of formation. This certificate of formation also may be used to create a nonprofit corporation that is managed solely by its members. If management of the corporation is to be vested in the nonprofit corporation's members, a statement to that effect must be included in the certificate. If the nonprofit corporation is to be governed *solely* by its members, check the appropriate statement and proceed to Article 4 of this form. *The fact that the individuals named on the board of directors are also members of the nonprofit entity does not mean that the corporation is governed by its members.*

Article 4—Members: If the corporation will not have members, the certificate of formation must include a statement to that effect. If management of the affairs of the corporation is vested in its members, you also must check statement A in Article 4 of this form. Checking statement B in Article 4 is inconsistent with a corporation that is managed by its members and will result in a rejection of the instrument.

- **Article 5—Purpose:** State the purpose of the corporation in the space provided. A nonprofit corporation may be formed for any lawful purpose or purposes not expressly prohibited under title 1, chapter 2, or title 2, chapter 22, of the BOC, which may be stated as “any or all lawful purposes” in the space provided. While the BOC allows formation with a general purpose, please note that other laws, including the Texas Tax Code and the Internal Revenue Code, may require that the certificate of formation include a more specific purpose statement as a basis for granting a license or a tax-exempt or tax-deductible status. An additional text area is provided to include any additional language or additional provisions that may be needed. In addition, the “Supplemental Provisions/Information” section may be used if the additional text area provided in this section is not sufficient.
- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an article within this form or to provide for additional articles to contain optional provisions. This space also may be used to provide for additional statements or provisions needed by the Texas Tax Code or Internal Revenue Code as a basis for granting a tax-exempt or tax-deductible status.

Manner of Distribution: Section 22.304 of the BOC provides that after all liabilities and obligations of the corporation in the process of winding up are paid, satisfied, and discharged in accordance with chapter 11 of the BOC, the property of the corporation shall be applied and distributed as follows:

- Property held by the corporation on a condition requiring return, transfer, or conveyance because of the winding up or termination shall be returned, transferred, or conveyed in accordance with that requirement; and
- The remaining property shall be distributed only for tax-exempt purposes to one or more organizations that are exempt under Section 501(c)(3), or described by Section 170(c)(1) or (2) of the Internal Revenue Code as provided in a plan of distribution adopted by the corporation under the BOC unless the certificate of formation provides otherwise.

If the corporation is not applying and distributing its property in accordance with section 22.304, the certificate of formation must include a statement describing the manner of distribution in the Supplemental Provisions/Information section of this form. If the space provided is not sufficient, an addendum may be included and attached to this form.

Duration: Pursuant to section 3.003 of the BOC, a Texas nonprofit corporation exists perpetually unless provided otherwise in the certificate of formation. If formation of a corporation with a stated period of duration is desired, use the “Supplemental Provisions/Information” section of this form to provide for a limited duration.

- **Organizer:** Only one organizer is required for the formation of a nonprofit corporation. An organizer may be any person having the capacity to contract for the person or for another; that is, a natural person 18 years of age or older, or a corporation or other legal entity. There are no residency requirements for an organizer.
- **Effectiveness of Filing:** A certificate of formation becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state

the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file with the secretary of state a statement regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity will be shown as "in existence" on the records of the secretary of state.

- **Execution:** The organizer must sign the certificate of formation, but it does not need to be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by an organizer is an affirmation that the person named in the certificate of formation has consented to serve in that capacity. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.


- **Payment and Delivery Instructions:** The filing fee for a certificate of formation for a nonprofit corporation is **\$25**. Fees may be paid by personal checks, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas, 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **Registered Agent/Office:** A corporation is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the certificate of formation. Failure to maintain a registered agent and registered office may result in the involuntary termination of the corporation.
- **Periodic Reports:** Under section 22.357 of the BOC, the secretary of state may require a nonprofit corporation to file a report not more often than once every four years. The secretary of state will send notice to the corporation at its registered office as to the time the report is due. Failure to file the report when requested to do so by the secretary will result in the involuntary termination of the corporation.
- **Information for Public Inspection:** Records, books and annual reports of the corporation's financial activity are required to be maintained at the registered office or principal office for three years after the close of a fiscal year. The corporation shall make those documents available to the

public for inspection and copying during regular business hours and may charge a reasonable fee for preparing a copy of those records. Failure to maintain those records, prepare an annual report or make the record or report available to the public is a Class B misdemeanor. These provisions do not apply to those corporations exempted under section 22.355 of the BOC. Also note that a nonprofit corporation supported in whole or in part by public funds or that spends public funds is considered a governmental body under chapter 552 of the Government Code (Public Information Act) and thus subject to the provisions of that Act regarding access to public information. In addition, a property owner's association may also be subject to the Public Information Act pursuant to section 552.0035 of the Government Code.

Revised 05/11

<p>Form 202 (Revised 05/11)</p> <p>Submit in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX: 512/463-5709 Filing Fee: \$25</p>	<p style="font-size: small;">This space reserved for office use.</p>  <p>Certificate of Formation Nonprofit Corporation</p>
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Article 1 – Entity Name and Type

The filing entity being formed is a nonprofit corporation. The name of the entity is:

Article 2 – Registered Agent and Registered Office

(See instructions. Select and complete either A or B and complete C.)

A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>
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C. The business address of the registered agent and the registered office address is:

<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>
		TX	

Article 3 – Management

The management of the affairs of the corporation is vested in the board of directors. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of members or until their successors are elected and qualified are as follows:

A minimum of three directors is required.

Director 1				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 2				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 3				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

OR

The management of the affairs of the corporation is to be vested in the nonprofit corporation's members.

Article 4 – Membership

(See instructions. Do not select statement B if the corporation is to be managed by its members.)

A. The nonprofit corporation shall have members.

B. The nonprofit corporation will have no members.

Article 5 – Purpose

(See instructions. This form does not contain language needed to obtain a tax-exempt status on the state or federal level.)

The nonprofit corporation is organized for the following purpose or purposes:

The following text area may be used to include any additional language or provisions that may be needed to obtain tax-exempt status.

Form 17-2

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Application for Registration for a Foreign Nonprofit Corporation
or Cooperative Association
(SOS Form 302)**

Form 17-2
Form 302—General Information
(Application for Registration for a Foreign Nonprofit Corporation or Cooperative Association)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

To transact business in Texas, a foreign entity must register with the secretary of state under chapter 9 of the Texas Business Organizations Code (BOC). The registration requirement applies to a foreign corporation, foreign limited partnership, foreign limited liability company, foreign business trust, foreign real estate investment trust, foreign cooperative, foreign public or private limited company, or another foreign entity, the formation of which, if formed in Texas, would require the filing of a certificate of formation with the secretary of state. Also, a foreign entity that affords limited liability for any owner or member under the laws of its jurisdiction of formation is required to register.

Failure to Register: A foreign entity may engage in certain limited activities in the state without being required to register (BOC § 9.251). However, a foreign entity that fails to register when required to do so 1) may be enjoined from transacting business in Texas on application by the attorney general, 2) may not maintain an action, suit, or proceeding in a court of this state until registered, and 3) is subject to a civil penalty in an amount equal to all fees and taxes that would have been imposed if the entity had registered when first required.

Penalty for Late Filing: A foreign entity that has transacted business in the state for more than ninety (90) days is also subject to a late filing fee. The secretary of state may condition the filing of the registration on the payment of a late filing fee that is equal to the registration fee for each year, or part of a year, that the entity transacted business in the state without being registered.

Taxes: Nonprofit corporations are subject to a state franchise tax unless an exemption from those taxes is granted. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information and eligibility and application for exemption. For information relating to federal income tax filing requirements, exemptions, federal employer identification numbers, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- **Item 1—Entity Name and Type:** Provide the full legal name of the foreign entity as stated in the entity's formation document. The name of the foreign entity must comply with chapter 5 of the BOC. Chapter 5 requires that:
 - (1) the entity name not contain any word or phrase that indicates or implies that the entity is engaged in a business that the entity is not authorized to pursue (BOC § 5.052);
 - (2) the entity name not be the same as, or deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state (BOC § 5.053); and

- (3) in the case of a foreign cooperative association, the entity name contain a recognized term of organization for the entity type as listed in section 5.057 of the BOC.

The name of a foreign nonprofit corporation may, but is not required to, contain a recognized term of organization (BOC § 5.054(b)).

If the entity name does not comply with chapter 5, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate under a name does not authorize the use of a name in violation of another person's rights to the name.

- **Item 2A—Assumed Name:** If the name of a foreign cooperative association fails to contain an appropriate organizational designation, a recognized organizational designation should be added to the legal name and set forth in item 2A. Accepted organizational designations for a foreign cooperative association are the word “cooperative” or an abbreviation of that word (BOC § 5.057).
- **Item 2B—Assumed Name:** If it has been determined that the entity's legal name is not available for its use in Texas due to a conflict with a previously existing name, the foreign entity must obtain its registration to transact business under an assumed name that complies with chapter 5 of the BOC. State the assumed name that the foreign entity elects to adopt for use in Texas in item 2B of the certificate. In addition, the foreign entity is required to file an assumed name certificate in compliance with chapter 71 of the Texas Business & Commerce Code. The promulgated form for filing the assumed name with the secretary of state is **Form 503**. This form is not acceptable for filing with the county clerk.
- **Item 3—Federal Employer Identification Number:** Enter the entity's federal employer identification number (FEIN) in the space provided. The FEIN is a 9-digit number (e.g., 12-3456789) that is issued by the Internal Revenue Service (IRS). If the entity has not received its FEIN at the time of submission, this should be noted in item 3 on the application form. Provision of the FEIN number at the time of submission will assist in the establishment of the entity's tax account with the Comptroller of Public Accounts, if applicable.
- **Item 4—Jurisdictional Information:** The application must state the foreign entity's jurisdiction of formation and the date of its formation in the format shown in the application.
- **Item 5—Certification of Existence:** The application must contain a statement that the entity exists as a valid foreign filing entity of the stated type under the laws of the entity's jurisdiction of formation.
- **Item 6—Statement of Purpose:** The application must state each business or activity that the entity proposes to pursue in Texas, which may be stated to be “any lawful business or activity under the law of this state.” In addition, as required by chapter 9, the application must contain a statement that the entity is authorized to pursue the same business or activity under the laws of the entity's jurisdiction of formation.

- **Item 7—Beginning Date of Business:** Provide the date the foreign entity began or will begin to transact business in the state. If the foreign entity has had prior activities within the state, the entity may wish to consult with a private attorney regarding the beginning date of business. The beginning date of business is the date the entity's activities were considered the transaction of business for purposes of registration under chapter 9 of the BOC. *If the entity has transacted business in Texas for more than 90 days before submission, a late filing fee will be assessed.*
- **Item 8—Principal Office Address:** Provide the street or mailing address of the principal office of the foreign entity.
- **Item 9—Initial Registered Agent and Registered Office:** The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The foreign entity cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the application for registration. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Item 10—Appointment of Secretary of State:** By signing the application for registration, the foreign entity consents to the appointment of the secretary of state as an agent of the foreign filing entity for service of process under the circumstances described by section 5.251 of the BOC.
- **Item 11—Governing Persons:** Provide the name and address of each person serving as part of the governing authority of the foreign entity. Generally, this would be the board of directors of the corporation or cooperative or other group of persons who are entitled to manage and direct the affairs of the entity. A minimum of one governing person is required. Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.).
- **Item 12—Officers:** Provide the name and address of each person serving as a managerial official or officer of the corporation or cooperative association. Generally, this would be the President, Secretary, Treasurer, and any other person or committee of persons that may perform the function of an officer. A minimum of one officer is required. Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.).

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for directors, governing persons, officers or managerial officials, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Item 13—Membership:** The foreign nonprofit corporation must state whether the corporation has members.
- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an item within this form.
- **Effectiveness of Filing:** The application for registration becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the instrument to take effect under option C, the entity must, within ninety (90) days of the filing of the instrument, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity's registration will be shown as "in existence" on the records of the secretary of state.

- **Execution:** Pursuant to section 4.001 of the BOC, the application for registration must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

The application for registration need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for an application for registration for a nonprofit corporation or cooperative association is **\$25**. In addition, the foreign entity will be assessed a late filing fee for each year of delinquency if the entity has transacted business in Texas for more than 90 days prior to filing the application for registration. For purposes of computing the late filing fee, a partial calendar year is counted as a full year. Fees may be paid by personal checks,

money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A registered foreign corporation or cooperative association is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the application for registration. Failure to maintain a registered agent and registered office may result in the revocation of the foreign filing entity's registration.

Under section 22.357 of the BOC, the secretary of state may require a nonprofit corporation to file a report not more often than once every four years. The secretary of state will send notice to the corporation at its registered office as to the time the report is due. Failure to file the report when requested to do so by the secretary will result in the revocation of the foreign filing entity's registration.

Revised 05/11

Form 302
(Revised 05/11)
 Submit in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 (512) 463-5555
 FAX: 512/463-5709
Filing Fee: \$25



This space reserved for office use.

**Application for Registration
 for a Nonprofit
 Corporation or Cooperative
 Association**

1. The foreign entity is a nonprofit corporation. cooperative association.

The name is _____
A foreign cooperative association name must contain the word "cooperative" or an abbreviation of that word.

2A. If the entity filing the registration is a foreign cooperative association and the name of the cooperative in its jurisdiction of formation does not contain the word "cooperative," or an abbreviation thereof, then the name of the cooperative with the word or abbreviation that it elects to add for use in Texas is:

2B. The entity name is not available in Texas. The assumed name under which the entity will qualify and transact business in Texas is:

3. Its federal employer identification number is: _____
 Federal employer identification number information is not available at this time.

4. It is organized under the laws of: (set forth state or foreign country) _____
 and the date of its formation in that jurisdiction is: _____

5. As of the date of filing, the undersigned certifies that the named entity currently exists as a valid foreign filing entity of the stated type under the laws of the jurisdiction of its formation.

6. The purpose or purposes of the corporation that it proposes to pursue in the transaction of business in Texas are set forth below.

The corporation also certifies that it is authorized to pursue such stated purpose or purposes in the state or country under which it is incorporated.

7. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas is: _____
mm/dd/yyyy Late fees may apply (see instructions).

8. The principal office address of the entity is:

Address City State Country Zip Code

Complete item 9A or 9B, but not both. Complete item 9C.

9A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

9B. The initial registered agent is an individual resident of the state whose name is:

<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>
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9C. The business address of the registered agent and the registered office address is:

<i>Street Address</i>	<i>City</i>	TX	<i>State</i>	<i>Zip Code</i>
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10. The entity hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

11. The name and address of each person on the board of directors is:

Director 1				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

Director 2				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

Director 3				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

12. The name, address, and office title of each officer or managerial official are:

<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	<i>Office Title</i>
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	<i>Office Title</i>
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	<i>Office Title</i>
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<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>
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<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	<i>Office Title</i>
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<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>
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13. The foreign entity is a nonprofit corporation and has members.
 The foreign entity is a nonprofit corporation and has no members.

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person.

Form 17-3

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Periodic Report—Nonprofit Corporation
(SOS Form 802)**

Form 17-3
Form 802—General Information
(Periodic Report – Nonprofit Corporation)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A nonprofit corporation is required by Section 22.357 of the Texas Business Organizations Code (BOC) to file a periodic report that lists the names and addresses of all directors and officers of the corporation. The Office of the Secretary of State may require a domestic nonprofit corporation or a foreign nonprofit corporation registered to transact business in this state to file a report not more than once every four years. The failure to file the report when due will result, after notice, in the involuntary termination of the domestic corporation or the revocation of the registration of the foreign corporation.

Please note that a document on file with the Secretary of State is a public record that is subject to public access and disclosure. When providing address information for a director or officer, use a business or post office box address rather than a residence address if privacy concerns are an issue.

Instructions for Form

- **File Number:** It is recommended that the file number assigned by the Secretary of State be provided to facilitate processing of the document.
- **1—Corporation Name:** Provide the legal name of the corporation. Changes to the name of the corporation require an amendment to the certificate or registration of the corporation. See **Additional Documentation** instructions below.
- **2—Jurisdictional Information:** Provide the state or other jurisdiction under the laws of which the corporation is formed.
- **3—Registered Agent:** The registered agent can be either: (option A) a domestic entity or a foreign entity that is registered to do business in Texas; or (option B) an individual resident of the state. The corporation cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: A person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the periodic report. *The liabilities and penalties imposed by Sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

- **4—Registered Office Address:** The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service. (BOC § 5.201)

- **5—Principal Office Address:** Provide the street or mailing address of the principal office of the corporation in the state or country under the laws of which the corporation is incorporated if the corporation is a foreign corporation.
- **6—Directors:** Provide the name and address of each member of the board of directors. A corporation is generally managed by a board of directors. However, a corporation that has members may be managed by its members or by a board of directors. A minimum of three directors is required. If the space provided is insufficient, include the information as an attachment to this form for item 6.
- **7—Officers:** Provide the name, address, and title of each officer. The officers of a corporation must include a president and a secretary and may also consist of one or more vice-presidents, a treasurer, and such other officers and assistant officers as may be deemed necessary. Any one person may serve in more than one office, except the offices of president and secretary. If the space provided is insufficient, include the information as an attachment to this form for item 7.
- **Execution:** Pursuant to Section 4.001 of the BOC, the periodic report must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument. The periodic report need not be notarized; however, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by an organizer or managerial official is an affirmation by the organizer or managerial official that the person named in the instrument as registered agent has consented to serve in that capacity. (BOC § 5.2011)

A person commits an offense under Section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the Secretary of State for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Filing Fees:** The filing fee for a periodic report for a nonprofit corporation is **\$5**. If the corporation has forfeited its right to conduct affairs for failure to file the periodic report within thirty (30) days of the first notification, the fee is the original **\$5** plus a late fee of **\$1** per month or part of a month for one hundred twenty (120) days following the forfeiture, but not less than **\$5** nor more than **\$25**.
- **Additional Documentation:**
Name Change (optional): To change the name of the corporation at the same time of filing the required periodic report, an amendment (Form 424 or 412, as appropriate) and filing fee of **\$25 and** Form 802 and filing fee (as stated in **Filing Fees**), must be submitted at the same time to the Reports Unit for filing.

Reinstatement: If the report is not filed within the one hundred twenty (120) day period from the date of the second notification, the domestic corporation will be involuntarily terminated or the registration of the foreign corporation will be revoked. The corporation may be relieved of the involuntary termination or revocation and reinstated by filing the required periodic report (Form 802) and filing fee of **\$25**.

Tax Clearance from Comptroller of Public Accounts: If the corporation is not tax exempt, a tax clearance letter from the Texas Comptroller of Public Accounts stating that the filing entity has satisfied all franchise tax liabilities and may be reinstated is required to be filed with Form 802 and filing fee of **\$25**. Form 811 is not required when reinstating. Contact the Comptroller for assistance in complying with franchise tax filing requirements and obtaining the necessary tax clearance letter by email at: tax.help@cpa.state.tx.us or by calling (800) 252-1381 or (512) 463-4600.


Amendment to Certificate of Formation or Registration: The name of the corporation must be available at the time of reinstatement. The administrative rules adopted for determining entity name availability (Texas Administrative Code, Title 1, Part 4, Chapter 79, subchapter C) may be viewed at: <http://www.sos.state.tx.us/tac/index.shtml> A preliminary determination on "name availability" may be obtained by calling (512) 463-5555 or e-mail to: corpinfo@sos.state.tx.us

At the time of reinstating, if the corporation name is no longer available, or if written consent is required but cannot be obtained for the use of the name, simultaneously submit: (A) a certificate of amendment to the certificate of formation to change the name of the domestic entity as a condition of reinstatement; or (B) an amended registration to state the assumed name under which the foreign entity shall transact business. The amendment (Form 424 or 412, as appropriate) and filing fee of **\$25 and** Form 802 and filing fee of **\$25, and** the tax clearance letter, must be submitted at the same time to the Reports Unit for filing. Forms 424 and 412 are available at: http://www.sos.state.tx.us/corp/forms_boc.shtml

Upon completing the reinstatement process of submitting all required forms, paying all applicable filing fees, and meeting all filing requirements, the status of the nonprofit corporation will be changed to in existence.

- **Payment Instructions:** Accepted methods of payment are: (1) a check or money order payable through a U.S. bank or financial institution made payable to the **Secretary of State**; (2) a valid American Express, Discover, MasterCard, or Visa credit card (subject to a statutorily authorized convenience fee of 2.7% of the total fees incurred); (3) a funded LegalEase account; or (4) a prefunded Secretary of State client account. Use Form 815 at: http://www.sos.state.tx.us/corp/forms_reports.shtml to pay by credit card, LegalEase, or client account.
- **Delivery Instructions:** Submit the completed form(s), with the filing fees, in duplicate to the Secretary of State. Mail to: Secretary of State, Reports Unit, P.O. Box 12028, Austin, Texas 78711-2028; deliver to: James Earl Rudder Office Building, Reports Unit, 1019 Brazos, Suite 505, Austin, Texas 78701; or fax to: (512) 463-1423 (requires Form 815 for payment). On filing the document(s), the Secretary of State will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed. If you require additional assistance, you may contact the Reports Unit at: (512) 475-2705.

Revised 07/13

<p>Form 802 (Revised 08/12)</p> <p>Submit in duplicate to: Secretary of State Reports Unit P.O. Box 12028 Austin, TX 78711-2028 Phone: (512) 475-2705 FAX: (512) 463-1423 Dial: 7-1-1 for Relay Services Filing Fee: See Instructions</p>	 <p>Periodic Report of a Nonprofit Corporation</p>	<p>This space reserved for filing office use.</p>
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File Number: _____

1. The name of the corporation is: *(A name change requires an amendment; see Instructions)*

2. It is incorporated under the laws of: *(Set forth state or foreign country)* _____

3. The name of the registered agent is:

A. The registered agent is a corporation (cannot be entity named above) by the name of:

OR

B. The registered agent is an individual resident of the state whose name is:

First Name _____ *MI* _____ *Last Name* _____ *Suffix* _____

4. The registered office address, which is identical to the business address of the registered agent in Texas, is:
(Only use street or building address; see Instructions)

_____ TX
Street Address _____ *City* _____ *State* *Zip Code*

5. If the corporation is a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated is:

_____ *Street or Mailing Address* _____ *City* _____ *State* *Zip Code* _____ *Country*

6. The names and addresses of all directors of the corporation are: *(A minimum of three directors is required.)*
(If additional space is needed, include the information as an attachment to this form for item 6.)

<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>
<i>Street or Mailing Address</i>			
	<i>City</i>	<i>State</i>	<i>Zip Code</i> _____ <i>Country</i>

<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>
<i>Street or Mailing Address</i>			
	<i>City</i>	<i>State</i>	<i>Zip Code</i> _____ <i>Country</i>

<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>
<i>Street or Mailing Address</i>			
	<i>City</i>	<i>State</i>	<i>Zip Code</i> _____ <i>Country</i>

7. The names, addresses, and titles of all officers of the corporation are: (The offices of president and secretary must be filled, but both may not be held by the same officer.)

(If additional space is needed, include the information as an attachment to this form for item 7.)

					Officer Title	
					President	
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>			
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>	

					Officer Title	
					Secretary	
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>			
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>	

					Officer Title	
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>			
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>	

Execution:

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Signature of authorized officer

Form 18-1

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Formation—Limited Partnership
(SOS Form 207)**

Form 18-1
Form 207—General Information
(Certificate of Formation—Limited Partnership)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A limited partnership (hereinafter LP) is governed by title 4, chapters 151 and 153 of the Texas Business Organizations Code (BOC). Title 1, chapter 3, subchapter A of the BOC governs the formation of an LP and sets forth the provisions required or permitted to be contained in the certificate of formation.

An association of two or more persons to carry on a business for profit creates a partnership unless the association or organization is created under a statute other than title 4 of the BOC. A limited partnership is a partnership with limited partners that do not have the obligations or duties of general partners solely by reason of being limited partners. To form a limited partnership, the partners must enter into a partnership agreement and file a certificate of formation with the secretary of state. In a limited partnership, there will be one or more general partners and one or more limited partners. Partners may be individuals, partnerships, corporations, and any other type of legal entity.

Taxes: Limited partnerships are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- **Article 1—Entity Name and Type:** Provide a partnership name and organizational designation. Under section 5.053 of the BOC, if the name chosen is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.texas.gov. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate of formation under a name does not authorize the use of a name in violation of another person's rights to the name.
- **Article 2—Registered Agent and Registered Office:** The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The limited partnership cannot act as its own registered agent; do not enter the limited partnership name as the name of the registered agent.

Consent: A person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the

certificate of formation. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Article 3—Governing Authority:** The certificate of formation must state the name and address of each general partner in the space provided. A minimum of one general partner is required.

If the general partner is an individual, set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.). If the general partner is an organization, set forth the legal name of the organization. For each governing person, only one name should be entered. Do not include both the name of an individual and the name of an organization. An address is always required for each general partner.

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for a general partner, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Article 4—Principal Office:** The certificate of formation must include the address of the principal office of the partnership in the United States where records are to be kept or made available in accordance with section 153.551 of the BOC. Set forth the principal office in article 4.
- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an article within this form or to provide for additional articles to contain optional provisions.
- **Effectiveness of Filing:** A certificate of formation becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity will be shown as "in existence" on the records of the secretary of state.

- **Execution:** Each general partner must sign the certificate of formation, but it does not need to be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by a managerial official or organizer is an

affirmation that the person named in the certificate of formation has consented to serve in that capacity. (BOC § 5.2011)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for a certificate of formation for an LP is **\$750**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** An LP is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the certificate of formation. Failure to maintain a registered agent and registered office may result in the involuntary termination of the LP.

Sections 153.301 through 153.312 of the BOC, as amended by House Bill 2891 (effective January 1, 2016), authorize the secretary of state to require a domestic limited partnership that is not required to file a public information report with the Comptroller of Public Accounts under section 171.203 of the Tax Code to file a report not more than once every four (4) years. The report includes information on the LP's registered agent and office, principal office, and the names and addresses of the general partners of the partnership. A notice that the report is due will be sent by the secretary of state to the partnership and will be mailed to the registered office address. Failure to file the report with the secretary of state within the time period specified by the secretary will result in the involuntary termination of the LP.

Revised 12/15

**Form 207
(Revised 12/15)**

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512 463-5709

Filing Fee: \$750



This space reserved for office use.

**Certificate of Formation
Limited Partnership**

Article 1 – Entity Name and Type

The filing entity being formed is a limited partnership. The name of the entity is:

The name must contain the words "limited," "limited partnership," or an abbreviation of that word or phrase. The name of a limited partnership that is also a limited liability partnership must also contain the phrase "limited liability partnership" or "limited liability limited partnership" or an abbreviation of one of those phrases.

Article 2 – Registered Agent and Registered Office

(Select and complete either A or B and complete C)

A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

First Name *M.I.* *Last Name* *Suffix*

C. The business address of the registered agent and the registered office address is:

Street Address *City* *State* *Zip Code*

TX

Article 3—Governing Authority

(Provide the name and address of each general partner.)

The name and address of each general partner are set forth below:

GENERAL PARTNER 1				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

GENERAL PARTNER 2				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country</i> <i>Zip Code</i>

GENERAL PARTNER 3				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country</i> <i>Zip Code</i>

Article 4—Principal Office

The address of the principal office of the limited partnership in the United States where records are to be kept or made available under section 153.551 of the Texas Business Organizations Code is:

	USA		
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i> <i>Zip Code</i>

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned general partner affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: _____

Signature for each general partner:

Form 18-2

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Application for Registration of a Foreign Limited Partnership
(SOS Form 306)**

Form 18-2
Form 306—General Information
(Application for Registration of a Foreign Limited Partnership)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

To transact business in Texas, a foreign entity must register with the secretary of state under chapter 9 of the Texas Business Organizations Code (BOC). The registration requirement applies to a foreign corporation, foreign limited partnership, foreign limited liability company, foreign business trust, foreign real estate investment trust, foreign cooperative, foreign public or private limited company, or another foreign entity, the formation of which, if formed in Texas, would require the filing of a certificate of formation with the secretary of state. Also, a foreign entity that affords limited liability to any owner or member under the laws of its jurisdiction of formation is required to register.

Failure to Register: A foreign entity may engage in certain limited activities in the state without being required to register (BOC § 9.251). However, a foreign entity that fails to register when required to do so 1) may be enjoined from transacting business in Texas on application by the attorney general, 2) may not maintain an action, suit, or proceeding in a court of this state until registered, and 3) is subject to a civil penalty in an amount equal to all fees and taxes that would have been imposed if the entity had registered when first required.

Penalty for Late Filing: A foreign entity that has transacted business in the state for more than ninety (90) days is also subject to a late filing fee. The secretary of state may condition the filing of the registration on the payment of a late filing fee that is equal to the registration fee for each year, or part of a year, that the entity transacted business in the state without being registered.

Taxes: Limited partnerships are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

A foreign limited partnership that is a limited liability limited partnership also must comply with the registration requirements of subchapter K of chapter 152 of the BOC. **Form 307** may be used to effect the registration of a foreign limited liability limited partnership.

Instructions for Form

- **Item 1—Entity Name and Type:** Provide the full legal name of the foreign entity as stated in the entity's formation document. Do not include a "d/b/a" or assumed name in item 1. In addition, the name of the foreign entity must comply with chapter 5 of the BOC, which requires that:
 - (1) the entity name contain a recognized term of organization for the entity type as listed in section 5.055 of the BOC;
 - (2) the entity name not contain any word or phrase that indicates or implies that the entity is engaged in a business that the entity is not authorized to pursue (BOC § 5.052); and

- (3) the entity name not be the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state (BOC § 5.053).

If the entity name does not comply with chapter 5, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.texas.gov. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based upon a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate under a name does not authorize the use of a name in violation of another person's rights to the name.

- **Item 2A—Assumed Name:** If the entity name fails to contain an appropriate organizational designation for the entity type, a recognized organizational designation should be added to the legal name and set forth in item 2A. Accepted organizational designations for a foreign limited partnership are: “limited,” “limited partnership,” or an abbreviation of those terms.
- **Item 2B—Assumed Name:** If it has been determined that the entity's legal name is not available for its use in Texas due to a conflict with a previously existing name, the foreign entity must obtain its registration to transact business under an assumed name that complies with chapter 5 of the BOC. State the assumed name that the foreign entity elects to adopt for use in Texas in item 2B of the certificate. In addition, the foreign entity is required to file an assumed name certificate in compliance with chapter 71 of the Texas Business & Commerce Code. The promulgated form for filing the assumed name with the secretary of state is **Form 503**. This form is not acceptable for filing with the county clerk.
- **Item 3—Federal Employer Identification Number:** Enter the entity's federal employer identification number (FEIN) in the space provided. The FEIN is a 9-digit number (e.g., 12-3456789) that is issued by the Internal Revenue Service (IRS). If the entity has not received its FEIN at the time of submission, this should be noted in item 3 on the application form. Provision of the FEIN number at the time of submission will assist in the establishment of the entity's tax account with the Comptroller of Public Accounts.
- **Item 4—Jurisdictional Information:** The application must state the foreign entity's jurisdiction of formation and the date of its formation in the format shown in the application.
- **Item 5—Certification of Existence:** The application must contain a statement that the entity exists as a valid foreign filing entity of the stated type under the laws of the entity's jurisdiction of formation.
- **Item 6—Beginning Date of Business:** Provide the date the foreign entity began or will begin to transact business in the state. If the foreign entity has had prior activities within the state, the entity may wish to consult with a private attorney regarding the beginning date of business. The beginning date of business is the date the entity's activities were considered the transaction of business for purposes of registration under chapter 9 of the BOC. *If the entity has transacted business in Texas for more than 90 days before submission, a late filing fee will be assessed.*
- **Item 7—Principal Office Address:** Provide the street or mailing address of the principal office of the foreign entity.

- **Item 8—Initial Registered Agent and Registered Office:** A registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The foreign limited partnership cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: A person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the application for registration. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Item 9—Appointment of Secretary of State:** By signing the application for registration, the foreign entity consents to the appointment of the secretary of state as an agent of the foreign filing entity for service of process under the circumstances described by section 5.251 of the BOC.
- **Item 10—Governing Persons:** Provide the name and address of each person serving as part of the governing authority of the foreign limited partnership. Generally, this would be the general partners of the partnership. A minimum of one governing person is required. If the governing person is an individual, set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.). If the governing person is an organization, set forth the legal name of the organization. For each governing person, only one name should be entered. Do not include both the name of an individual and the name of an organization. An address is always required for each governing person.

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

Please note that a foreign limited partnership is required to file an amendment to its registration (Form 412) to reflect the admission of a new general partner; the withdrawal of a named general partner; and to reflect a change of name of a general partner stated in its application for registration. (BOC § 9.009(a)(3))

- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an item within this form.
- **Effectiveness of Filing:** The application for registration becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect

and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity's registration will be shown as "in existence" on the records of the secretary of state.

- **Execution:** Pursuant to section 4.001 of the BOC, the application for registration must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Generally, a general partner of the partnership signs a filing instrument.

The application for registration need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for an application for registration for a limited partnership is **\$750**. In addition, the foreign filing entity will be assessed a late filing fee of \$750 for each year of delinquency if the entity has transacted business in Texas for more than 90 days prior to filing the application for registration. For purposes of computing the late filing fee, a partial calendar year is counted as a full year. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A registered limited partnership is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the application for registration. Failure to maintain a registered agent and registered office may result in the revocation of the foreign filing entity's registration.

Sections 153.301 through 153.312 of the BOC, as amended by House Bill 2891 (effective January 1, 2016), authorize the secretary of state to require a foreign limited partnership that is not required to file a public information report with the Comptroller of Public Accounts under section 171.203 of the Tax Code to file a report not more than once every four (4) years. The report includes information on the limited partnership's registered agent and office, principal office, and the names and addresses of the general partners of the partnership. A notice that the report is due will be sent by the secretary of state to the partnership and will be mailed to the registered office address. Failure to file the report within the time period specified by the secretary of state will result in the revocation of the entity's registration.

Revised 12/15

Form 306
(Revised 12/15)

Submit in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512/463-5709

Filing Fee: \$750



**Application for
 Registration
 of a Foreign Limited
 Partnership**

This space reserved for office use.

1. The entity is a foreign limited partnership. The name of the entity is:

Provide the full legal name of the entity as stated in the entity's formation document in its jurisdiction of formation.

2A. The name of the entity in its jurisdiction of formation does not contain the word "limited partnership" or "limited" (or an abbreviation thereof). The name of the entity with the word or abbreviation that it elects to add for use in Texas is:

2B. The entity name is not available in Texas. The assumed name under which the entity will qualify and transact business in Texas is:

The assumed name must include an acceptable organizational identifier or an accepted abbreviation of one of these terms.

3. Its federal employer identification number is: _____

Federal employer identification number information is not available at this time.

4. It is organized under the laws of: (set forth state or foreign country) _____
 and the date of its formation in that jurisdiction is: _____

5. As of the date of filing, the undersigned certifies that the foreign limited partnership currently exists as a valid limited partnership under the laws of the jurisdiction of its formation.

6. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas is: _____

mm/dd/yyyy Late fees may apply (see instructions).

7. The principal office address of the limited partnership is:

Address	City	State	Country	Zip/Postal Code
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Complete item 8A or 8B, but not both. Complete item 8C.

8A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

8B. The initial registered agent is an individual resident of the state whose name is:

First Name	M.I.	Last Name	Suffix
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8C. The business address of the registered agent and the registered office address is:

<i>Street Address</i>	<i>City</i>	TX	<i>State</i>	<i>Zip Code</i>
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9. The entity hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

10. Governing Persons: The name and address of each general partner is:

NAME AND ADDRESS OF GENERAL PARTNER (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country Zip Code</i>

NAME AND ADDRESS OF GENERAL PARTNER (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country Zip Code</i>

NAME AND ADDRESS OF GENERAL PARTNER (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country Zip Code</i>

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
 - B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
 - C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____
- The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person.

Form 18-3

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Registration of a Limited Liability Partnership
(SOS Form 701)**

Form 18-3
Form 701—General Information
(Registration of a Limited Liability Partnership)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

In accordance with title 4, chapter 152, subchapter J of the Texas Business Organizations Code (BOC), a general or limited partnership may register with the secretary of state as a "limited liability partnership." The application for registration as a *limited liability partnership* does not create a partnership, either general or limited. The creation of a limited partnership requires the filing of a certificate of formation (Form 207) with the secretary of state. A general partner's liability in a limited liability partnership differs from that in an ordinary partnership. In general, a general partner in a limited liability partnership is not individually liable for any obligation of the partnership incurred while the partnership is a limited liability partnership.

Effective January 1, 2016, Senate Bill 859 amends subchapter J of chapter 152 of the BOC. The amendments make the registration of a limited liability partnership effective until it is voluntarily withdrawn or terminated by the secretary of state and impose an annual reporting requirement on Texas LLPs.

Annual Report: BOC section 152.806, effective January 1, 2016, requires a Texas partnership that elects to register as a limited liability partnership to file an annual report with the secretary of state. The report is due no later than June 1 of each year following the calendar year in which the application for registration takes effect. No later than March 31 of each year, the secretary of state will send notice to file the report to the limited liability partnership. Failure to receive the notice sent does not relieve the partnership of the requirement to file the annual report. Please note that failure to file the annual report may result in the termination of the partnership's limited liability partnership registration. The fee for the annual report is \$200 for each partner on the date of filing the report.

Taxes: Limited liability partnerships are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- **Item 1—Entity Name:** Set forth the name of the partnership. The name must include the phrase "limited liability partnership" or an abbreviation of that phrase. If the partnership is a limited partnership, then the name must comply with the requirements of BOC section 5.055(a), and also must contain the phrase "limited liability partnership" or "limited liability limited partnership" or an abbreviation of one of those phrases. In processing a limited liability partnership registration, the secretary of state *does not* review the name of the partnership, or a change of name of the partnership, to determine whether the name conforms to the entity name availability rules.
- **Item 2—FEIN:** Enter the partnership's federal employer identification number (FEIN) in the space provided. The FEIN is a 9-digit number (e.g., 12-3456789) issued by the Internal Revenue Service (IRS). If the partnership has not obtained a FEIN at this time, check the appropriate statement and

leave the field blank. The partnership may file an amendment to the registration after it receives its FEIN number from the IRS.

- **Item 3—Number of Partners:** Provide the number of general partners in the partnership in item 3. (For purposes of completing the registration, § 153.352 of the BOC provides that the term "partners" refers to general partners only and does not include the limited partners in a limited partnership.) All general partnerships must have two or more general partners. *The secretary of state will not accept a registration on behalf of a general partnership that lists the number of partners as one.* A limited partnership must have one or more general partners and one or more limited partners. The filing fee will be calculated by multiplying the number of partners listed in item 3 by **\$200** per partner.
- **Item 4—Principal Office:** Set forth the street address of the principal office of the partnership. The address may be inside or outside of Texas as applicable.
- **Item 5—Statement of Partnership's Business:** Set forth a brief statement of the partnership's business. The business or activity to be pursued in Texas may be stated to be "any lawful business or activity under the law of this state."
- **Effectiveness of Filing:** The registration of a limited liability partnership becomes effective as of the date of filing by the secretary of state (option A). However, pursuant to sections 4.052, 4.053 and 152.802 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B).

On the filing of a document with a delayed effective date, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective. In addition, at the time of such filing, the status of the entity's registration will be shown as "in existence" on the records of the secretary of state.

- **Execution:** For a general partnership, the registration must be signed by a majority-in-interest of the partners, or by one or more partners authorized by a majority-in-interest of the partners. For a limited partnership, any general partner may sign.

The registration need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for registration is **\$200** per general partner. To calculate the filing fee multiply the number of partners stated in the registration by \$200. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 12/15

Form 701
(Revised 12/15)
 Submit in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512 463-5709
Filing Fee: See instructions



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**Registration of a
 Limited Liability Partnership**

Entity Information

1. The name of the partnership is:

Name must contain the phrase "limited liability partnership" or an abbreviation of that phrase. If the partnership is a limited partnership, the entity name may include the phrase "limited liability limited partnership" or an abbreviation of that phrase.

2. The federal employer identification number of the partnership is: _____

The partnership has not obtained a federal employer identification number at this time.

Number of Partners

3. The number of general partners at the date of registration is: _____

The number of general partners in a general partnership must be at least two.

Principal Office

4. The address of the partnership's principal office in Texas or outside of Texas, as applicable, is:

Street Address City State Country Zip Code

Statement of Partnership's Business

5. The partnership's business is:

Effectiveness of Filing (Select either A or B)

A. This document becomes effective when the document is filed by the secretary of state.

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

For a general partnership, signature of a majority-in-interest of the partners or signature of one or more of the partners authorized by a majority-in-interest. For a limited partnership, signature of one general partner.

Form 18-4

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Application for Registration of a Foreign Limited Liability
Partnership
(SOS Form 307)**

Form 18-4
Form 307—General Information
(Application for Registration of a Foreign Limited Liability Partnership)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

To transact business in Texas, a foreign limited liability partnership must register with the secretary of state under chapters 9 and 152 of the Texas Business Organizations Code (BOC). The registration requirements of chapter 9 apply to a foreign corporation, foreign limited partnership, foreign limited liability company, foreign business trust, foreign real estate investment trust, foreign cooperative, foreign public or private limited company, or another foreign entity, the formation of which, if formed in Texas, would require the filing of a certificate of formation with the secretary of state. Also, a foreign entity that affords limited liability to any owner or member under the laws of its jurisdiction of formation is required to register.

Failure to Register: A foreign entity may engage in certain limited activities in the state without being required to register (BOC § 9.251). However, a foreign entity that fails to register when required to do so 1) may be enjoined from transacting business in Texas on application by the attorney general, 2) may not maintain an action, suit, or proceeding in a court of this state until registered, and 3) is subject to a civil penalty in an amount equal to all fees and taxes that would have been imposed if the entity had registered when first required.

A partner of a foreign limited liability partnership is not liable for a debt or obligation of the partnership solely because the partnership transacted business in this state without registration (BOC § 152.910).

Penalty for Late Filing: A foreign entity that has transacted business in the state for more than ninety (90) days is also subject to a late filing fee. The secretary of state may condition the filing of the registration on the payment of a late filing fee that is equal to the registration fee for each year, or part of a year, that the entity transacted business in the state without being registered.

Taxes: Limited liability partnerships are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

A foreign limited partnership that is also a limited liability limited partnership must comply with the registration requirements of chapter 9 of the BOC as a limited partnership in addition to its registration as a limited liability partnership. **Form 306** may be used to effect the registration of a foreign limited partnership.

Term of Registration: A registration of a foreign limited liability partnership is effective until the first anniversary of the date after the date of registration or a later effective date unless withdrawn or revoked at an earlier time or renewed under section 152.908 of the BOC (BOC § 152.905(e)).

Change in Partners: A registration of a foreign limited liability partnership is not affected by subsequent changes in the number of partners in this state (BOC § 152.905(d)). However, please note that if the foreign limited liability partnership is also registered as a foreign limited partnership, the limited partnership must file an application for amended registration to reflect the admission or withdrawal of a general partner or a change of name to the general partner stated in its application for registration. (Form 412)

Instructions for Form

- **Item 1—Entity Name:** Provide the full legal name of the foreign entity as stated in the entity's formation or registration document. Do not include a "d/b/a" or assumed name in item 1. The name of the foreign entity must comply with chapter 5 of the BOC. Chapter 5 requires that the name of a foreign limited liability partnership contain a recognized term of organization as listed in sections 5.055 and 5.063 of the BOC.
- **Item 2—Assumed Name:** If the entity name fails to contain an appropriate organizational designation for the entity type, a recognized organizational designation should be added to the legal name and set forth in item 2. Accepted organizational designations for a foreign limited liability partnership are "limited liability partnership" or an abbreviation of that phrase. The name of a foreign limited partnership that is a limited liability partnership may contain the words "limited liability limited partnership," an abbreviation of that phrase, or the organization terms permitted by section 5.063 (BOC § 5.055(b)).

In addition, the foreign entity is required to file an assumed name certificate in compliance with chapter 71 of the Texas Business & Commerce Code. The promulgated form for filing the assumed name with the secretary of state is **Form 503**. This form is not acceptable for filing with the county clerk.

Item 3—Federal Employer Identification Number: Enter the entity's federal employer identification number (FEIN) in the space provided. The FEIN is a 9-digit number (e.g., 12-3456789) that is issued by the Internal Revenue Service (IRS). Provision of the partnership's FEIN is required under section 9.007(b)(2) of the BOC. If the entity has not received its FEIN at the time of submission, this should be noted in item 3 on the application form. The partnership may file an amendment to the registration after it receives its FEIN number from the IRS.

- **Item 4—Jurisdictional Information:** The application must state the foreign entity's jurisdiction of formation and the date of its initial registration as a limited liability partnership under the laws of its jurisdiction in the format shown in the application.
- **Item 5—Certification of Existence:** The application also must contain a statement that the entity exists as a valid foreign limited liability partnership under the laws of the entity's jurisdiction of formation.
- **Item 6—Number of Partners:** For purposes of completion of the application, the number of partners means the number of partners in Texas as of the date of the statement. In the context of the provisions of chapter 152, subchapter K, the term "partners" refers to general partners only in a limited partnership registering as a limited liability partnership (BOC § 4.155(12)). For purpose of determining the number of partners in Texas, the secretary of state has adopted administrative rules providing that a partner is considered to be in Texas if:

- (1) the partner is a resident of the state;
- (2) the partner is domiciled or located in the state;
- (3) the partner is licensed or otherwise legally authorized to perform the services of the partnership in this state; or
- (4) the partner, or a representative of the partnership working under the direct supervision or control of the partner, will be providing services or otherwise transacting the business of the partnership within the state for a period of more than 30 days.

The filing fee is calculated by multiplying the number of partners listed in item 6 of the application by \$200. However, the fee shall be not less than \$200 nor exceed \$750.

- **Item 7—Beginning Date of Business:** Provide the date the foreign entity began or will begin to transact business in the state. If the foreign entity has had prior activities within the state, the entity may wish to consult with a private attorney regarding the beginning date of business. The beginning date of business is the date the entity's activities were considered the transaction of business for purposes of registration under chapters 9 and 152 of the BOC. *If the entity has transacted business in Texas for more than 90 days before submission, a late filing fee will be assessed.*
- **Item 8—Principal Office Address:** Provide the street or mailing address of the principal office of the foreign entity.
- **Item 9—Initial Registered Agent and Registered Office:** A registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The foreign partnership cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the application for registration. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Item 10—Appointment of Secretary of State:** By signing the application for registration, the foreign entity consents to the appointment of the secretary of state as an agent of the foreign limited liability partnership for service of process under the circumstances described by section 5.251 of the BOC (BOC § 9.007(b)(11)).
- **Item 11—Business or Activity to be Pursued in Texas:** The application must state each business or activity that the entity proposes to pursue in Texas, which may be stated to be "any lawful business or activity under the law of this state."
- **Effectiveness of Filing:** The application for registration of a limited liability partnership becomes effective as of the date of filing by the secretary of state (option A). However, pursuant to sections

4.052, 4.053, and 152.905(c) of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B).

On the filing of a document with a delayed effective date, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective. In addition, at the time of such filing, the status of the entity's registration will be shown as "in existence" on the records of the secretary of state.

- **Execution:** Pursuant to section 152.905 of the BOC, the application for registration must be signed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners.

The application for registration need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for an application for registration of a foreign limited liability partnership is **\$200 per general partner not to exceed \$750. In addition, the foreign entity will be assessed a late filing fee for each year of delinquency if the entity has transacted business in Texas for more than 90 days prior to filing the application for registration. For purposes of computing the late filing fee, a partial calendar year is counted as a full year.** Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A foreign limited liability partnership is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the application for registration. Failure to maintain a registered agent and registered office may result in the revocation of the entity's registration.

Revised 05/11

**Form 307
(Revised 05/11)**

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709

Filing Fee: See instructions



**Application for
Registration
of a Foreign Limited
Liability Partnership**

This space reserved for office use.

1. The entity is a foreign limited liability partnership or foreign limited liability limited partnership.
The name of the entity is:

Provide the full legal name of the entity as stated in the entity's formation/registration document in its jurisdiction of formation.

2. The name of the partnership in its jurisdiction of formation does not contain the phrase "limited liability partnership" or "limited liability limited partnership" or an abbreviation of one of these phrases. The name of the entity with the word or abbreviation that it elects to add for use in Texas is:

3. The entity's federal employer identification number is: _____

Federal employer identification number information is not available at this time.

4. It is organized under the laws of: (set forth state or foreign country) _____

and the date of its initial registration in that jurisdiction is: _____
mm/dd/yyyy

5. As of the date of filing, the undersigned certifies that the foreign limited liability partnership currently exists as a valid limited liability partnership under the laws of the jurisdiction of its formation.

6. The number of general partners in Texas as of the date of the application is: _____ *(See instructions.)*

7. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas is: _____
mm/dd/yyyy Late fees may apply (see instructions).

8. The principal office address of the limited liability partnership is:

Address City State Country Zip/Postal Code

Complete item 9A or 9B, but not both. Complete item 9C.

9A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

9B. The registered agent is an individual resident of the state whose name is:

First Name M.I. Last Name Suffix

9C. The business address of the registered agent and the registered office address is:

		TX	
<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>

10. The entity hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

11. The business or activities of the entity that it proposes to pursue in the transaction of business in Texas are set forth below.

Effectiveness of Filing (Select either A or B)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Signature of a majority-in-interest of the partners or signature of one or more of the partners authorized by a majority-in-interest.

Form 18-5

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Application for Renewal of Registration of a Foreign Limited
Liability Partnership
(SOS Form 308)**

Form 18-5
Form 308—General Information
(Application for Renewal of Registration of a Foreign Limited Liability Partnership)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

To transact business in Texas, a foreign limited liability partnership must register with the secretary of state under chapters 9 and 152 of the Texas Business Organizations Code (BOC). A registration of a foreign limited liability partnership is effective until the first anniversary of the date after the date of registration or a later effective date unless renewed under section 152.908 of the BOC (BOC § 152.905(e)). This form may be used to renew the registration of a foreign limited liability partnership prior to its expiration. When the renewal application is filed by the secretary of state, the registration is continued for one year after the date the registration would otherwise expire. Renewal applications submitted after expiration will not be accepted for filing and the foreign limited liability partnership will be required to submit a new application for registration. Renewals should not be submitted earlier than 90 days prior to expiration.

Instructions for Form

- **Item 1—Entity Name:** Provide the full legal name of the foreign entity as stated in the entity's formation document. The name of the foreign entity must comply with chapter 5 of the BOC. Chapter 5 requires that the name of a foreign limited liability partnership contain a recognized term of organization as listed in sections 5.055 and 5.063 of the BOC.
- **Item 2—Assumed Name:** If the entity name fails to contain an appropriate organizational designation for the entity type, a recognized organizational designation should be added to the legal name and set forth in item 2. Accepted organizational designations for a foreign limited liability partnership are "limited liability partnership" or an abbreviation of that phrase. The name of a foreign limited partnership that is a limited liability partnership may contain the words "limited liability limited partnership," an abbreviation of that phrase, or the organization terms permitted by section 5.063 (BOC § 5.055(b)).

In addition, the foreign entity is required to file an assumed name certificate in compliance with chapter 71 of the Texas Business & Commerce Code. The promulgated form for filing the assumed name with the secretary of state is **Form 503**. This form is not acceptable for filing with the county clerk.

- **Item 3—Most Recent Date of Registration:** Enter partnership's most recent date of registration or renewal of registration. Provide the file number of the registration being renewed.
- **Item 4—Federal Employer Identification Number:** Enter the entity's federal employer identification number (FEIN) in the space provided. The FEIN is a 9-digit number (e.g., 12-3456789) that is issued by the Internal Revenue Service (IRS). If the entity has not received its FEIN at the time of submission, this should be noted in item 4 on the application form.

- **Item 5—Jurisdictional Information:** The application must state the foreign entity's jurisdiction of formation and the date of its initial registration as a limited liability partnership under the laws of its jurisdiction in the format shown in the application.
- **Item 6—Certification of Existence:** The application also must contain a statement that the entity exists as a valid foreign limited liability partnership under the laws of the entity's jurisdiction of formation.
- **Item 7—Number of Partners:** Provide the number of partners in Texas as of the date of the renewal application. In the context of the provisions of chapter 152, subchapter K, the term "partners" refers to general partners only in a limited partnership registering as a limited liability partnership (BOC § 4.155(12)). For the purpose of determining the number of partners in Texas, the secretary of state has adopted administrative rules providing that a partner is considered to be in Texas if:
 - (1) the partner is a resident of the state;
 - (2) the partner is domiciled or located in the state;
 - (3) the partner is licensed or otherwise legally authorized to perform the services of the partnership in this state; or
 - (4) the partner, or a representative of the partnership working under the direct supervision or control of the partner, will be providing services or otherwise transacting the business of the partnership within the state for a period of more than 30 days.

The filing fee will be calculated by multiplying the number of partners listed in item 7 of the application by **\$200**. The fee shall be not less than **\$200** nor exceed **\$750**.

- **Item 8—Principal Office Address:** Provide the street or mailing address of the principal office of the foreign entity.
- **Item 9—Registered Agent and Registered Office:** A registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The foreign partnership cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the application for registration. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Item 10—Appointment of Secretary of State:** By signing the application for renewal of registration, the foreign entity consents to the appointment of the secretary of state as an agent of the foreign limited liability partnership for service of process under the circumstances described by section 5.251 of the BOC (BOC § 9.007(b)(11)).

- **Item 11—Business or Activity to be Pursued in Texas:** Set forth a brief statement of the partnership's business or activity only if the business or activity of the partnership as stated in its initial registration or most recent renewal of registration has changed. The business or activity to be pursued in Texas may be stated to be "any lawful business or activity under the law of this state."
- **Effectiveness of Filing:** The application for renewal of registration of a limited liability partnership becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052, 4.053, and 152.905(c) of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed provided that the effective date is within the current term of registration (option B). In either case, the filing of the application for renewal will extend the registration for one year after the date the existing registration would expire.
- **Execution:** Pursuant to section 152.905 of the BOC, the application for renewal of registration must be signed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners.

The application for renewal of registration need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for an application for renewal of registration of a foreign limited liability partnership is **\$200 per general partner not to exceed \$750**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A foreign limited liability partnership is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the application for registration. Failure to maintain a registered agent and registered office may result in the revocation of the entity's registration.

Revised 05/11

**Form 308
(Revised 05/11)**

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555

FAX: 512/463-5709

Filing Fee: See instructions



This space reserved for office use.

**Application for Renewal
of Registration
of a Foreign Limited
Liability Partnership**

1. The entity is a foreign limited liability partnership or a foreign limited liability limited partnership.
The name of the entity is:

Provide the full legal name of the entity as stated in the entity's formation/registration document in its jurisdiction of formation.

2. The name of the partnership in its jurisdiction of formation does not contain the phrase "limited liability partnership," "limited liability limited partnership" or an abbreviation thereof. The name of the entity with the word or abbreviation that it elects to add for use in Texas is:

3. The most recent date of registration or renewal of registration is: _____
The file number assigned to the registration is: _____

4. Its federal employer identification number is: _____
 Federal employer identification number information is not available at this time.

5. It is organized under the laws of: (set forth state of formation) _____
and the date of its initial registration in that jurisdiction is: _____

6. As of the date of filing, the undersigned certifies that the foreign limited liability partnership currently exists as a valid limited liability partnership under the laws of the jurisdiction of its formation.

7. The number of general partners in Texas as of the date of the application is: _____
See instructions.

8. The principal office address of the limited liability partnership is:

Address City State Country Zip/Postal Code

Complete item 9A or 9B, but not both. Complete item 9C.

9A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

9B. The registered agent is an individual resident of the state whose name is:

First Name M.I. Last Name Suffix

9C. The business address of the registered agent and the registered office address is:

		TX	
<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>

10. The entity hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

11. The partnership engages in the same business specified in its original registration or in its most recent renewal of registration unless a different statement of business is provided below:

Effectiveness of Filing (Select either A or B.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Signature and title of a majority-in-interest of the partners or one or more of the partners authorized by a majority-in-interest.

Form 18-6

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Formation—Professional Corporation
(SOS Form 203)**

Form 18-6
Form 203—General Information
(Certificate of Formation – Professional Corporation)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A professional corporation is a corporation that is formed for the purpose of providing a professional service that by law a for-profit or nonprofit corporation is prohibited from rendering. A “*professional service*” means any type of service that requires, as a condition precedent to the rendering of the service, the obtaining of a license in this state. A professional corporation is governed by title 1, chapters 20 and 21 of title 2, and chapters 301 and 303 of title 7 of the Texas Business Organizations Code (BOC). Title 1, chapter 3, subchapter A of the BOC governs the formation of a professional corporation and sets forth the provisions required or permitted to be contained in the certificate of formation.

Title 7, chapter 301 establishes certain restrictions and requirements regarding ownership and management of a professional corporation. Only a professional individual licensed to practice the same professional service as the professional corporation may be a governing person or managerial official of a professional corporation. Also note that a professional corporation cannot be formed for the practice of medicine (BOC § 301.003(3)). If the purpose of the entity is to provide medical services, the professional may form either a professional association or a professional limited liability company.

Taxes: Professional corporations are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- **Article 1—Entity Name and Type:** Provide a corporate name and organizational designation. Under section 5.053 of the BOC, if the name chosen is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate of formation under a name does not authorize the use of a name in violation of another person’s rights to the name.

Pursuant to section 5.060 of the BOC, the name of a professional entity must not be contrary to a statute or regulation that governs a person who provides a professional service through the professional entity, including a rule of professional ethics. Contact the state agency or examining

board exercising control over the profession to determine whether the name chosen complies with statutory and regulatory requirements governing the profession.

- **Article 2—Registered Agent and Registered Office:** The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The corporation cannot act as its own registered agent; do not enter the corporate name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the certificate of formation. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Article 3—Directors:** *This form is not drafted for use in forming a close corporation or a corporation that is to be managed by a shareholders agreement. A minimum of one director is required.* A director must be a natural person who is licensed to provide the same professional service to be rendered by the professional corporation; there are no residency requirements for directors.

Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., JD, RN, Ph.D.).

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for directors, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Article 4—Authorized Shares:** Shares represent ownership interest in the corporation. The total number of shares that the corporation will have authority to issue must be provided in article 4. Select and complete option A if the shares are to have a stated par value or select option B if the shares are without a stated par value.

Option A—Par Value: "Par value" means the stated dollar amount assigned to a share. In general terms, it represents the minimum stated amount for which each share shall be issued. For example, if the corporation has authorized a total of 1,000 shares of common stock of \$1 par value and if payment for the share is to be made in cash, the corporation must receive at least \$1 for each share issued. Do not state that the shares have \$0 par value if the shares are to be without a stated par value (i.e., option B).

Option B—No Par Value: Shares that are designated as having no par value may be issued for an amount of consideration determined by the board of directors.

- **Article 5—Purpose:** The certificate of formation of a professional corporation must state the type of professional service to be provided by the professional entity. Pursuant to section 2.004 of the BOC, a professional entity may engage in only one type of professional service, unless the entity is expressly authorized to provide more than one type of professional service under state law regulating the professional services.

Joint Practice by Certain Professionals: Pursuant to section 301.012 of the BOC, professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a professional corporation that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.

The state agencies exercising regulatory control over professions to which the joint practice provisions apply continue to exercise regulatory authority over their respective licenses.

- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an article within this form or to provide for additional articles to contain optional provisions.

Duration: Pursuant to section 3.003 of the BOC, a Texas professional corporation exists perpetually unless provided otherwise in the certificate of formation. If formation of a corporation with a stated period of duration is desired, use the “Supplemental Provisions/Information” section of this form to provide for a limited duration.

- **Organizer:** Only one organizer is required for the formation of a professional corporation. An organizer may be any person having the capacity to contract for the person or for another; that is, a natural person 18 years of age or older, or a corporation or other legal entity. There are no residency requirements for an organizer. The organizer is not required to be licensed to perform the professional service for which the entity is formed.
- **Effectiveness of Filing:** A certificate of formation becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file with the secretary of state a statement regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity will be shown as “in existence” on the records of the secretary of state.

- **Execution:** The organizer must sign the certificate of formation, but it does not need to be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by an organizer is an affirmation that the person named

in the certificate of formation has consented to serve in that capacity. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for a certificate of formation for a professional corporation is **\$300**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A corporation is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the certificate of formation. Failure to maintain a registered agent and registered office may result in the involuntary termination of the corporation. In addition, section 21.802 of the BOC provides a penalty for the failure to timely file a statement of change of registered office or registered agent with the secretary of state. To be timely, the filing must be made by the corporation before the 30th day after the change.

Revised 05/11

**Form 203
(Revised 05/11)**

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: \$300



This space reserved for office use.

**Certificate of Formation
Professional Corporation**

Article 1 – Entity Name and Type

The filing entity being formed is a professional corporation. The name of the entity is:

The name must contain the word “corporation,” “company,” “incorporated,” “limited,” “professional corporation” or an abbreviation of one of these terms.

Article 2 – Registered Agent and Registered Office

(See instructions. Select and complete either A or B and complete C.)

A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

First Name *M.I.* *Last Name* *Suffix*

C. The business address of the registered agent and the registered office address is:

Street Address *City* *State* *Zip Code*
TX

Article 3 – Directors

(A minimum of 1 director is required.)

The number of directors constituting the initial board of directors and the names and addresses of the person or persons who are to serve as directors until the first annual meeting of shareholders’ or until their successors are elected and qualified are as follows:

Director 1				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 2				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 3				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Article 4 – Authorized Shares

(Provide the number of shares in the space below, then select option A or option B, do not select both.)

The total number of shares the corporation is authorized to issue is _____

A. The par value of each of the authorized shares is _____

OR

B. The shares shall have no par value

If the shares are to be divided into classes, you must set forth the designation of each class, the number of shares of each class, the par value (or statement of no par value), and the preferences, limitations, and relative rights of each class in the space provided for supplemental information on this form.

Article 5 – Purpose

(Certain restrictions and limitations apply. See instructions.)

The type of professional service to be provided by the professional entity is:

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Organizer

The name and address of the organizer:

Name

Street or Mailing Address

City

State

Zip Code

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: _____

Signature of organizer

Printed or typed name of organizer

Form 18-7

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Application for Registration for a Foreign Professional
Corporation
(SOS Form 303)**

Form 18-7
Form 303—General Information
(Application for Registration for a Foreign Professional Corporation)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

To transact business in Texas, a foreign professional entity must register with the secretary of state under chapter 9 of the Texas Business Organizations Code (BOC). A foreign professional corporation is a corporation formed under the laws of a jurisdiction other than Texas that is formed for the specific purpose of providing a professional service that by law a business corporation is prohibited from rendering. A foreign professional corporation may provide a professional service in this state only through owners, managerial officials, employees, or agents, each of whom is a professional individual or professional organization that is licensed or duly authorized in this state to provide the same professional service provided by the entity.

Reciprocity: A foreign professional entity cannot obtain an application for registration unless the jurisdiction in which the professional entity is incorporated or organized would permit reciprocal admission of a Texas professional entity formed under title 7 of the BOC.

Failure to Register: A foreign entity may engage in certain limited activities in the state without being required to register (BOC § 9.251). However, a foreign entity that fails to register when required to do so 1) may be enjoined from transacting business in Texas on application by the attorney general, 2) may not maintain an action, suit, or proceeding in a court of this state until registered, and 3) is subject to a civil penalty in an amount equal to all fees and taxes that would have been imposed if the entity had registered when first required.

Penalty for Late Filing: A foreign entity that has transacted business in the state for more than ninety (90) days is also subject to a late filing fee. The secretary of state may condition the filing of the registration on the payment of a late filing fee that is equal to the registration fee for each year, or part of a year, that the entity transacted business in the state without being registered.

Taxes: Corporations are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- **Item 1—Entity Name and Type:** Provide the full legal name of the foreign professional entity as stated in the entity's formation document. The name of the foreign entity must comply with chapter 5 of the BOC. Chapter 5 requires that:
 - (1) the entity name contain a recognized term of organization for the entity type as listed in section 5.054 of the BOC;

- (2) the entity name not contain any word or phrase that indicates or implies that the entity is engaged in a business that the entity is not authorized to pursue (BOC § 5.052); and
- (3) the entity name not be the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state (BOC § 5.053).

If the entity name does not comply with chapter 5, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate under a name does not authorize the use of a name in violation of another person's rights to the name.

- **Item 2A—Assumed Name:** If the entity name fails to contain an appropriate organizational designation for the entity type, a recognized organizational designation should be added to the legal name and set forth in item 2A. Accepted organizational designations for a foreign professional corporation are: “corporation,” “incorporated,” “company,” “limited,” “professional corporation,” or an abbreviation of those terms.
- **Item 2B—Assumed Name:** If it has been determined that the entity’s legal name is not available for its use in Texas due to a conflict with a previously existing name, the foreign entity must obtain its registration to transact business under an assumed name that complies with chapter 5 of the BOC. State the assumed name that the foreign entity elects to adopt for use in Texas in item 2B of the certificate. In addition, the foreign entity is required to file an assumed name certificate in compliance with chapter 71 of the Texas Business & Commerce Code. The promulgated form for filing the assumed name with the secretary of state is **Form 503**. This form is not acceptable for filing with the county clerk.
- **Item 3—Federal Employer Identification Number:** Enter the corporation’s federal employer identification number (FEIN) in the space provided. The FEIN is a 9-digit number (e.g., 12-3456789) that is issued by the Internal Revenue Service (IRS). If the corporation has not received its FEIN at the time of submission, this should be noted in item 3 on the application form. Provision of the FEIN number at the time of submission will assist in the establishment of the corporation’s tax account with the Comptroller of Public Accounts.
- **Item 4—Jurisdictional Information:** The application must state the foreign entity’s jurisdiction of formation and the date of its formation in the format shown in the application.
- **Item 5—Certification of Existence:** The application must contain a statement that the entity exists as a valid foreign filing entity of the stated type under the laws of the entity’s jurisdiction of formation.
- **Item 6—Reciprocity Statement:** The application must contain a statement that the jurisdiction of formation of the foreign professional entity permits reciprocal admission of an entity formed under the BOC.

- **Item 7—Statement of Purpose:** The application must state the professional service that the entity proposes to pursue in Texas. The purpose of a foreign professional corporation must comply with the provisions of title 7 and title 1, chapter 2 of the BOC. Except as provided by title 7, chapter 2 of the BOC limits the purposes of a professional entity to:
 - (1) the provision of one type of professional service, unless the entity is expressly authorized to provide more than one type of professional service under state law regulating the professional services; and
 - (2) services ancillary to the provision of the professional service.

In addition, as required by chapter 9, the application must contain a statement that the entity is authorized to pursue the same business or activity under the laws of the entity's jurisdiction of formation.

Joint Practice by Certain Professionals: Pursuant to section 301.012 of the BOC, professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a professional corporation that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.

The state agencies exercising regulatory control over professions to which the joint practice provisions apply continue to exercise regulatory authority over their respective licenses.

- **Item 8—Beginning Date of Business:** Provide the date the foreign entity began or will begin to transact business in the state. If the foreign entity has had prior activities within the state, the entity may wish to consult with a private attorney regarding the beginning date of business. The beginning date of business is the date the entity's activities were considered the transaction of business for purposes of registration under chapter 9 of the BOC. *If the entity has transacted business in Texas for more than 90 days before submission, a late filing fee will be assessed.*
- **Item 9—Principal Office Address:** Provide the street or mailing address of the principal office of the foreign entity.
- **Item 10—Initial Registered Agent and Registered Office:** A registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The foreign corporation cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the application for registration. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of

business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Item 11—Appointment of Secretary of State:** By signing the application for registration, the foreign entity consents to the appointment of the secretary of state as an agent of the foreign filing entity for service of process under the circumstances described by section 5.251 of the BOC.
- **Item 12—Governing Persons:** Provide the name and address of each person serving as part of the governing authority of the foreign corporation. Generally, this would be the board of directors of the corporation or other group of persons who are entitled to manage and direct the affairs of the foreign corporation. A minimum of one governing person is required. Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.).

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for directors or governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an item within this form.
- **Effectiveness of Filing:** The application for registration becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity's registration will be shown as "in existence" on the records of the secretary of state.

- **Execution:** Pursuant to section 4.001 of the BOC, the application for registration must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

The application for registration need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for an application for registration for a professional corporation is **\$750**. In addition, the foreign entity will be assessed a late filing fee for each year of delinquency if the entity has transacted business in Texas for more than 90 days prior to filing the application for registration. For purposes of computing the late filing fee, a partial calendar year is counted as a full year. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A registered foreign professional corporation is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the application for registration formation. Failure to maintain a registered agent and registered office may result in the revocation of the foreign filing entity's registration. In addition, section 21.802 of the BOC provides a penalty for the failure to timely file a statement of change of registered office or registered agent with the secretary of state. To be timely, the filing must be made by the corporation before the 30th day after the change.

Revised 05/11

**Form 303
(Revised 05/11)**

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: \$750



**Application for
Registration
of a Foreign Professional
Corporation**

This space reserved for office use.

1. The entity is a foreign professional corporation. The name of the entity is:

Provide the full legal name of the entity as stated in the entity's formation document in its jurisdiction of formation.

2A. The name of the entity in its jurisdiction of formation does not contain the word "corporation," "company," "incorporated," "limited," or "professional corporation" (or an abbreviation thereof). The name of the entity with the word or abbreviation that it elects to add for use in Texas is:

2B. The corporation name is not available in Texas. The assumed name under which the corporation will qualify and transact business in Texas is:

The assumed name must include an acceptable organizational identifier or an accepted abbreviation of one of these terms.

3. Its federal employer identification number is: _____

Federal employer identification number information is not available at this time.

4. It is incorporated under the laws of: (set forth state or foreign country) _____

and the date of its formation in that jurisdiction is: _____
mm/dd/yyyy

5. As of the date of filing, the undersigned certifies that the foreign professional corporation currently exists as a valid corporation under the laws of the jurisdiction of its formation.

6. The jurisdiction of formation of the foreign professional entity permits reciprocal admission of an entity formed under the Texas Business Organizations Code.

7. The type of professional service that the professional corporation proposes to pursue in Texas is set forth below.

The corporation also certifies that it is authorized to pursue such stated purpose in the state or country under which it is incorporated.

8. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas is: _____
mm/dd/yyyy Late fees may apply (see instructions).

9. The principal office address of the corporation is:

Address City State Country Zip/ Code

Complete item 10A or 10B, but not both. Complete item 10C.

10A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

10B. The initial registered agent is an individual resident of the state whose name is:

<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>
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10C. The business address of the registered agent and the registered office address is:

<i>Street Address</i>	<i>City</i>	TX	<i>State</i>	<i>Zip Code</i>
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11. The corporation hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

12. The name and address of each person on the board of directors is:

Director 1				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

Director 2				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

Director 3				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person.

Form 18-8

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Formation—Professional Limited Liability Company
(SOS Form 206)**

Form 18-8
Form 206—General Information
(Certificate of Formation—Professional Limited Liability Company)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

The professional limited liability company (hereinafter PLLC) is a limited liability company that is formed for the purpose of providing a professional service. A “*professional service*” means any type of service that requires, as a condition precedent to the rendering of the service, the obtaining of a license in this state, including the personal service rendered by a dentist, attorney, physician, or veterinarian. A PLLC is governed by title 1, title 3, and chapters 301 and 304 of title 7 of the Texas Business Organizations Code (BOC). Title 1, chapter 3, subchapter A of the BOC governs the formation of a PLLC and sets forth the provisions required or permitted to be contained in the certificate of formation.

Title 7, chapter 301 establishes certain restrictions and requirements regarding ownership and management of a PLLC. Only a professional individual or professional organization may be an owner or manager of a PLLC. Only a professional individual may be an officer of a PLLC. A *professional individual* is an individual who is licensed to practice the same professional service as the PLLC. A *professional organization* is a person other than an individual that renders the same professional service as the PLLC only through owners, members, managerial officials, employees, or agents, each of whom is a professional individual or professional organization.

Taxes: A PLLC is subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications, and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- **Article 1—Entity Name and Type:** Provide a company name and organizational designation. Under section 5.053 of the BOC, if the name chosen is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate of formation under a name does not authorize the use of a name in violation of another person’s rights to the name.

Pursuant to section 5.060 of the BOC, the name of a professional entity must not be contrary to a statute or regulation that governs a person who provides a professional service through the professional entity, including a rule of professional ethics. Contact the state agency or examining

board exercising control over the profession to determine whether the name chosen complies with statutory and regulatory requirements governing the profession.

- **Article 2—Registered Agent and Registered Office:** The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The limited liability company cannot act as its own registered agent; do not enter the limited liability company name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the certificate of formation. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Article 3—Governing Authority:** The certificate of formation must state whether the PLLC will or will not have managers. If the PLLC will have managers, select option A and provide the name and address of each initial manager in the space provided. If the PLLC will not have managers, select option B and provide the name and address of each initial member of the PLLC in the space provided. A minimum of one person is required. NOTE: Only a professional individual or professional organization may be a manager or member of a PLLC.

If the governing person is a professional individual, set forth the name of the individual in the format specified. Do not use prefixes (e.g., Dr., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.). If the governing person is a professional organization, set forth the legal name of the organization. For each governing person, only one name should be entered. Do not include both the name of an individual and the name of an organization. An address is always required for each governing person.

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for a manager or member, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Article 4—Purpose:** The certificate of formation of a PLLC must state the type of professional service to be provided by the professional entity. Pursuant to section 2.004 of the BOC, a professional entity may engage in only one type of professional service, unless the entity is expressly authorized to provide more than one type of professional service under state law regulating the professional services.

Joint Practice by Certain Professionals: Pursuant to section 301.012 of the BOC, the following professionals are permitted to jointly form and own a PLLC to perform a professional service that falls within the scope of practice of those practitioners.

- (1) Doctors of medicine and doctors of osteopathy may jointly form and own a PLLC with persons licensed as podiatrists by the Texas State Board of Podiatric Medical Examiners to perform professional services that fall within the scope of practice of those practitioners.
- (2) Persons licensed as physicians under Subtitle B, Title 3, Occupations Code, and persons licensed as physician assistants under Chapter 204, Occupations Code, may form and own a PLLC to perform professional services that fall within the scope of practice of those practitioners.
- (3) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a PLLC that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.
- (4) Doctors of medicine and doctors of osteopathy may jointly form and own a PLLC with persons licensed as optometrists or therapeutic optometrists by the Texas Optometry Board to perform professional services that fall within the scope of practice of those practitioners. Only a physician, optometrist, or therapeutic optometrist may hold an ownership interest in a PLLC formed for the joint practice of medicine or osteopathy and optometry or therapeutic optometry.

The state agencies exercising regulatory control over the professions to which these joint practice provisions apply continue to exercise regulatory authority over their respective licenses.

- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an article within this form or to provide for additional articles to contain optional provisions.

Duration: Pursuant to section 3.003 of the BOC, a Texas PLLC exists perpetually unless provided otherwise in the certificate of formation. If formation of a PLLC with a stated period of duration is desired, use the "Supplemental Provisions/Information" section of this form to provide for a limited duration.

- **Organizer:** Only one organizer is required for the formation of a PLLC. An organizer may be any person having the capacity to contract for the person or for another; that is, a natural person 18 years of age or older, or a corporation or other legal entity. There are no residency requirements for an organizer. The organizer is not required to be licensed to perform the professional service for which the entity is formed.

If the PLLC is formed and owned jointly by a physician and physician assistant, the organizer must be a physician and must ensure that a physician or physicians control and manage the PLLC.

- **Effectiveness of Filing:** A certificate of formation becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was

conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity will be shown as “in existence” on the records of the secretary of state.

- **Execution:** The organizer must sign the certificate of formation, but it does not need to be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by an organizer is an affirmation that the person named in the certificate of formation has consented to serve in that capacity. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for a certificate of formation for a PLLC is **\$300**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A PLLC is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the certificate of formation. Failure to maintain a registered agent and registered office may result in the involuntary termination of the professional entity.

Revised 06/11

<p>Form 206 (Revised 06/11)</p> <p>Submit in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX: 512 463-5709</p> <p>Filing Fee: \$300</p>	<p style="text-align: right;">This space reserved for office use.</p> <div style="text-align: center;">  Certificate of Formation Professional Limited Liability Company </div>
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Article 1 – Entity Name and Type

The filing entity being formed is a professional limited liability company. The name of the entity is:

The name must contain the phrase "professional limited liability company," or an abbreviation of this phrase.

Article 2 – Registered Agent and Registered Office
(See instructions. Select and complete either A or B and complete C.)

A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>
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C. The business address of the registered agent and the registered office address is:

<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>
		TX	

Article 3—Governing Authority

(Select and complete either A or B and provide the name and address of each governing person.)

A. The professional limited liability company will have managers. The name and address of each initial manager are set forth below.

B. The professional limited liability company will not have managers. The company will be governed by its members, and the name and address of each initial member are set forth below.

GOVERNING PERSON 1			
NAME (Enter the name of either an individual or an organization, but not both.)			
IF INDIVIDUAL			
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>
OR			
IF ORGANIZATION			
<i>Organization Name</i>			
ADDRESS			
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country Zip Code</i>

GOVERNING PERSON 2				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country</i> <i>Zip Code</i>

GOVERNING PERSON 3				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country</i> <i>Zip Code</i>

Article 4 – Purpose

The type of professional service to be provided by the professional entity is (use space provided below):

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Organizer

The name and address of the organizer:

Name

Street or Mailing Address

City

State

Zip Code

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: _____

Signature of organizer

Printed or typed name of organizer

Form 18-9

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Application for Registration of a Foreign Professional Limited
Liability Company
(SOS Form 305)**

Form 18-9
Form 305—General Information
(Application for Registration of a Foreign Professional Limited Liability Company)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

To transact business in Texas, a foreign professional entity must register with the secretary of state under chapter 9 of the Texas Business Organizations Code (BOC). A foreign professional limited liability company is a limited liability company formed under the laws of a jurisdiction other than Texas that is formed for the specific purpose of providing a professional service. A “professional service” is any type of service that requires, as a condition precedent to the rendering of the service, the obtaining of a license in this state, including the personal service rendered by an attorney, dentist, physician, public accountant, or veterinarian. A foreign professional limited liability company (hereinafter PLLC) may provide a professional service in this state only through owners, managerial officials, employees, or agents, each of whom is a professional individual or professional organization that is licensed or duly authorized in this state to provide the same professional service provided by the entity.

Reciprocity: A foreign professional entity cannot obtain an application for registration unless the jurisdiction in which the professional entity is incorporated or organized would permit reciprocal admission of a Texas professional entity formed under title 7 of the BOC.

Failure to Register: A foreign entity may engage in certain limited activities in the state without being required to register (BOC § 9.251). However, a foreign entity that fails to register when required to do so 1) may be enjoined from transacting business in Texas on application by the attorney general, 2) may not maintain an action, suit, or proceeding in a court of this state until registered, and 3) is subject to a civil penalty in an amount equal to all fees and taxes that would have been imposed if the entity had registered when first required.

Penalty for Late Filing: A foreign entity that has transacted business in the state for more than ninety (90) days is also subject to a late filing fee. The secretary of state may condition the filing of the registration on the payment of a late filing fee that is equal to the registration fee for each year, or part of a year, that the entity transacted business in the state without being registered.

Taxes: Limited liability companies are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- **Item 1—Entity Name and Type:** Provide the full legal name of the foreign entity as stated in the entity’s formation document. The name of the foreign entity must comply with chapter 5 of the BOC. Chapter 5 requires that:

- (1) the entity name contain a recognized term of organization for the entity type as listed in section 5.059 of the BOC;
- (2) the entity name not contain any word or phrase that indicates or implies that the entity is engaged in a business that the entity is not authorized to pursue (BOC § 5.052); and
- (3) the entity name not be the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state.

If the entity name does not comply with chapter 5, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate under a name does not authorize the use of a name in violation of another person's rights to the name.

- **Item 2A—Assumed Name:** If the entity name fails to contain an appropriate organizational designation for the entity type, a recognized organizational designation should be added to the legal name and set forth in item 2A. Accepted organizational designations for a foreign PLLC are the words “professional limited liability company” or an abbreviation of those terms.
- **Item 2B—Assumed Name:** If it has been determined that the entity’s legal name is not available for its use in Texas due to a conflict with a previously existing name, the foreign entity must obtain its registration to transact business under an assumed name that complies with chapter 5 of the BOC. State the assumed name that the foreign entity elects to adopt for use in Texas in item 2B of the certificate. In addition, the foreign entity is required to file an assumed name certificate in compliance with chapter 71 of the Texas Business & Commerce Code. The promulgated form for filing the assumed name with the secretary of state is **Form 503**. This form is not acceptable for filing with the county clerk.
- **Item 3—Federal Employer Identification Number:** Enter the entity’s federal employer identification number (FEIN) in the space provided. The FEIN is a 9-digit number (e.g., 12-3456789) that is issued by the Internal Revenue Service (IRS). If the entity has not received its FEIN at the time of submission, this should be noted in item 3 on the application form. Provision of the FEIN number at the time of submission will assist in the establishment of the entity’s tax account with the Comptroller of Public Accounts.
- **Item 4—Jurisdictional Information:** The application must state the foreign entity’s jurisdiction of formation and the date of its formation in the format shown in the application.
- **Item 5—Certification of Existence:** The application must contain a statement that the entity exists as a valid foreign filing entity of the stated type under the laws of the entity’s jurisdiction of formation.
- **Item 6—Reciprocity Statement:** The application must contain a statement that the jurisdiction of formation of the foreign professional entity permits reciprocal admission of an entity formed under the BOC.

- **Item 7—Statement of Purpose:** The application must state the professional service that the entity proposes to pursue in Texas. The purpose of a foreign PLLC must comply with the provisions of title 7 and chapter 2 of the BOC. Except as provided by title 7, chapter 2 of the BOC limits the purposes of a professional entity to:
 - (1) the provision of one type of professional service, unless the entity is expressly authorized to provide more than one type of professional service under state law regulating the professional services; and
 - (2) services ancillary to the provision of the professional service.

Joint Practice by Certain Professionals: Pursuant to section 301.012 of the BOC, the following professionals are permitted to jointly form and own a PLLC to perform a professional service that falls within the scope of practice of those practitioners.

- (1) Doctors of medicine and doctors of osteopathy may jointly form and own a PLLC with persons licensed as podiatrists by the Texas State Board of Podiatric Medical Examiners to perform professional services that fall within the scope of practice of those practitioners.
- (2) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a PLLC that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.
- (3) Doctors of medicine and doctors of osteopathy may jointly form and own a PLLC with persons licensed as optometrists or therapeutic optometrists by the Texas Optometry Board to perform professional services that fall within the scope of practice of those practitioners. Only a physician, optometrist, or therapeutic optometrist may hold an ownership interest in a PLLC formed for the joint practice of medicine or osteopathy and optometry or therapeutic optometry.

The state agencies exercising regulatory control over the professions to which these joint practice provisions apply continue to exercise regulatory authority over their respective licenses.

- **Item 8—Beginning Date of Business:** Provide the date the foreign entity began or will begin to transact business in the state. If the foreign entity has had prior activities within the state, the entity may wish to consult with a private attorney regarding the beginning date of business. The beginning date of business is the date the entity's activities were considered the transaction of business for purposes of registration under chapter 9 of the BOC. *If the entity has transacted business in Texas for more than 90 days before submission, a late filing fee will be assessed.*
- **Item 9—Principal Office Address:** Provide the street or mailing address of the principal office of the foreign entity.
- **Item 10—Initial Registered Agent and Registered Office:** A registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The foreign limited liability company cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the application for registration. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Item 11—Appointment of Secretary of State:** By signing the application for registration, the foreign entity consents to the appointment of the secretary of state as an agent of the foreign filing entity for service of process under the circumstances described by section 5.251 of the BOC.
- **Item 12—Governing Persons:** Provide the name and address of each person serving as part of the governing authority of the foreign professional limited liability company. Generally, this would be the group of persons who are entitled to manage and direct the affairs of the foreign professional limited liability company. A minimum of one governing person is required. If the governing person is an individual, set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.). If the governing person is an organization, set forth the legal name of the organization. For each governing person, only one name should be entered. Do not include both the name of an individual and the name of an organization. An address is always required for each governing person.

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an item within this form.
- **Effectiveness of Filing:** The application for registration becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was

conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity's registration will be shown as "in existence" on the records of the secretary of state.

- **Execution:** Pursuant to section 4.001 of the BOC, the application for registration must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

The application for registration need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for an application for registration for a PLLC is **\$750**. In addition, the foreign entity will be assessed a late filing fee for each year of delinquency if the entity has transacted business in Texas for more than 90 days prior to filing the application for registration. For purposes of computing the late filing fee, a partial calendar year is counted as a full year. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A registered foreign limited liability company is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the application for registration. Failure to maintain a registered agent and registered office may result in the revocation of the foreign filing entity's registration.

Revised 05/11

**Form 305
(Revised 05/11)**

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: \$750



This space reserved for office use.

**Application for
Registration of
a Foreign Professional
Limited Liability Company**

1. The entity is a foreign professional limited liability company. The name of the entity is:

Provide the full legal name of the entity as stated in the entity's formation document in its jurisdiction of formation.

2A. The name of the entity in its jurisdiction of formation does not contain the word "professional limited liability company" (or an abbreviation thereof). The name of the entity with the word or abbreviation that it elects to add for use in Texas is:

2B. The entity name is not available in Texas. The assumed name under which the entity will qualify and transact business in Texas is:

The assumed name must include an acceptable organizational identifier or an accepted abbreviation of one of these terms.

3. Its federal employer identification number is: _____

Federal employer identification number information is not available at this time.

4. It is organized under the laws of: (set forth state or foreign country) _____

and the date of its formation in that jurisdiction is: _____
mm/dd/yyyy

5. As of the date of filing, the undersigned certifies that the foreign professional limited liability company currently exists as a valid professional limited liability company under the laws of the jurisdiction of its formation.

6. The jurisdiction of formation of the foreign professional entity permits reciprocal admission of an entity formed under the Texas Business Organizations Code.

7. The type of professional service that the professional limited liability company proposes to pursue in Texas is set forth below.

The entity also certifies that it is authorized to pursue such stated purpose in the state or country under which it is organized.

8. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas is: _____
mm/dd/yyyy *Late fees may apply (see instructions).*

9. The principal office address of the limited liability company is:

Address *City* *State* *Country* *Zip/Postal Code*

Complete item 10A or 10B, but not both. Complete item 10C.

10A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

10B. The initial registered agent is an individual resident of the state whose name is:

First Name *M.I.* *Last Name* *Suffix*

10C. The business address of the registered agent and the registered office address is:

Street Address *City* *TX* *State* *Zip Code*

11. The entity hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

12. The name and address of each governing person is:

NAME AND ADDRESS OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)			
IF INDIVIDUAL			
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>
OR			
IF ORGANIZATION			
<i>Organization Name</i>			
<i>Street or Mailing Address</i>		<i>City</i>	<i>State Country Zip Code</i>

NAME AND ADDRESS OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)			
IF INDIVIDUAL			
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>
OR			
IF ORGANIZATION			
<i>Organization Name</i>			
<i>Street or Mailing Address</i>		<i>City</i>	<i>State Country Zip Code</i>

NAME AND ADDRESS OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)			
IF INDIVIDUAL			
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>
OR			
IF ORGANIZATION			
<i>Organization Name</i>			
<i>Street or Mailing Address</i>		<i>City</i>	<i>State Country Zip Code</i>

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person.

Form 18-10

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Formation—Professional Association
(SOS Form 204)**

Form 18-10
Form 204—General Information
(Certificate of Formation – Professional Association)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A professional association is a professional entity formed for the purpose of providing the professional service rendered by a doctor of medicine, doctor of osteopathy, doctor of podiatry, dentist, chiropractor, optometrist, therapeutic optometrist, veterinarian, or licensed mental health professional. A “licensed mental health professional” means a person, other than a physician, who is licensed by the state to engage in the practice of psychology or psychiatric nursing or to provide professional therapy or counseling services.

A professional association is governed by title 1, title 2, chapters 20 and 21, and title 7, chapters 301 and 302 of the Texas Business Organizations Code (BOC). Title 1, chapter 3, subchapter A of the BOC governs the formation of a professional association and sets forth the provisions required or permitted to be contained in the certificate of formation.

Title 7, chapter 301 establishes certain restrictions and requirements regarding ownership and management of a professional association. Only a professional individual licensed to practice the same professional service as the professional association may be a governing person, managerial official, owner, or member of a professional association. Only a governing person of the professional association may serve as the president of the association.

Taxes: Professional associations are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- **Article 1—Entity Name and Type:** Provide an association name and organizational designation. Under section 5.053 of the BOC, if the name chosen is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.texas.gov. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate of formation under a name does not authorize the use of a name in violation of another person’s rights to the name.

Pursuant to section 5.060 of the BOC, the name of a professional entity must not be contrary to a statute or regulation that governs a person who provides a professional service through the professional entity, including a rule of professional ethics. Contact the state agency or examining board exercising control over the profession to determine whether the name chosen complies with statutory and regulatory requirements governing the profession.

- **Article 2—Registered Agent and Registered Office:** The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The association cannot act as its own registered agent; do not enter the corporate name as the name of the registered agent.

Consent: A person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the certificate of formation. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Article 3—Management:** A professional association is governed and managed by either a board of directors or an executive committee. Select the management structure and the names of the individuals serving as members of the board or committee. A minimum of one member is required. Members of the board or committee must be individuals who are licensed to provide the same professional service to be rendered by the professional association; there are no residency requirements.

Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.).

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for a director, executive committee member, or initial member, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Article 4—Purpose:** The certificate of formation of a professional association must state the type of professional service to be provided by the professional entity. Pursuant to section 2.004 of the BOC, a professional entity may engage in only one type of professional service, unless the entity is expressly authorized to provide more than one type of professional service under state law regulating the professional services.

Joint Practice by Certain Professionals: Pursuant to section 301.012 of the BOC, the following professionals are permitted to jointly form and own a professional association to perform a professional service that falls within the scope of practice of those practitioners.

- (1) Doctors of medicine and doctors of osteopathy may jointly form and own a professional association with persons licensed as podiatrists by the Texas State Board of Podiatric Medical Examiners to perform professional services that fall within the scope of practice of those practitioners.
- (2) Persons licensed as physicians under Subtitle B, Title 3, Occupations Code, and persons licensed as physician assistants under Chapter 204, Occupations Code, may form and own a professional association to perform professional services that fall within the scope of practice of those practitioners.
- (3) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a professional association that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.
- (4) Doctors of medicine and doctors of osteopathy may jointly form and own a professional association with persons licensed as optometrists or therapeutic optometrists by the Texas Optometry Board to perform professional services that fall within the scope of practice of those practitioners.

The state agencies exercising regulatory control over professions to which these joint practice provisions apply continue to exercise regulatory authority over their respective licenses.

- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an article within this form or to provide for additional articles to contain optional provisions.

Duration: Pursuant to section 3.003 of the BOC, a domestic entity exists perpetually unless provided otherwise in the certificate of formation. Please note that section 302.002 of the BOC provides that a professional association's existence is subject to certain conditions and limitations. If formation of a professional association with a stated period of duration is desired, use the "Supplemental Provisions/Information" section of this form to provide for a limited duration.

- **Organizers—Original Members:** The certificate of formation of a professional association must state the name and address of each member of the association. Except as provided below, each original member acts as an organizer of the association and must sign the certificate of formation. Each organizer or original member is required to be a licensed individual.

Physician and Physician Assistant PAs: Certain management and ownership restrictions apply to a professional association that is formed and owned jointly by a physician and physician assistant. One or more of the original members must be a physician and each physician that is an original member must sign the certificate of formation as an organizer and must ensure that a physician or physicians control and manage the professional association. A licensed physician assistant who is an original member of the association cannot act as an organizer, director, or officer of the association.

- **Effectiveness of Filing:** A certificate of formation becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file with the secretary of state a statement regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity will be shown as “in existence” on the records of the secretary of state.

- **Execution:** Each original member must sign the certificate of formation, but it does not need to be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by a managerial official or organizer is an affirmation that the person named in the certificate of formation has consented to serve in that capacity. (BOC § 5.2011)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for a certificate of formation for a professional association is **\$750**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A professional association is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the certificate of formation. Failure to maintain a registered agent and registered office may result in the involuntary termination of the association. In addition, section 21.802 of the BOC provides a penalty for the failure to timely file a statement of change of registered office or registered agent with the secretary of state. To be timely, the filing must be made by the association before the 30th day after the change.

Revised 12/15

**Form 204
(Revised 12/15)**

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: \$750



This space reserved for office use.

**Certificate of Formation
Professional Association**

Article 1 – Entity Name and Type

The filing entity being formed is a professional association. The name of the entity is:

The name must contain the word “associated,” “associates,” “association,” “professional association” or an abbreviation of one of these terms.

Article 2 – Registered Agent and Registered Office

(See instructions. Select and complete either A or B and complete C.)

A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

First Name *M.I.* *Last Name* *Suffix*

C. The business address of the registered agent and the registered office address is:

Street Address *City* *TX* *State* *Zip Code*

Article 3 – Governing Persons

Select either A or B. (A minimum of 1 individual is required.)

A. The professional association is to be managed by a board of directors. The names and addresses of the members who are to serve as initial directors are set forth below:

OR

B. The professional association is to be managed by an executive committee. The names and addresses of the members who are to serve on the executive committee are set forth below:

First Name *M.I.* *Last Name* *Suffix*

Street or Mailing Address *City* *State* *Zip Code* *Country*

First Name *M.I.* *Last Name* *Suffix*

Street or Mailing Address *City* *State* *Zip Code* *Country*

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: _____

Signature of original member

Printed or typed name of original member

Signature of original member

Printed or typed name of original member

Signature of original member

Printed or typed name of original member

Form 18-11

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Application for Registration for a Foreign Professional Association
(SOS Form 311)**

Form 18-11
Form 311—General Information
(Application for Registration for a Foreign Professional Association)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

To transact business in Texas, a foreign professional entity must register with the secretary of state under chapter 9 of the Texas Business Organizations Code (BOC). A foreign professional association is an association, other than a partnership, formed under the laws of a jurisdiction other than Texas that is formed for the specific purpose of providing a professional service that by law a for-profit corporation is prohibited from rendering. A foreign professional association may provide a professional service in this state only through owners, managerial officials, employees, or agents, each of whom is a professional individual who is licensed or duly authorized in this state to provide the same professional service provided by the entity.

Reciprocity: A foreign professional entity cannot obtain an application for registration unless the jurisdiction in which the professional entity is incorporated or organized would permit reciprocal admission of a Texas professional entity formed under title 7 of the BOC.

Failure to Register: A foreign entity may engage in certain limited activities in the state without being required to register (BOC § 9.251). However, a foreign entity that fails to register when required to do so 1) may be enjoined from transacting business in Texas on application by the attorney general, 2) may not maintain an action, suit, or proceeding in a court of this state until registered, and 3) is subject to a civil penalty in an amount equal to all fees and taxes that would have been imposed if the entity had registered when first required.

Penalty for Late Filing: A foreign entity that has transacted business in the state for more than ninety (90) days is also subject to a late filing fee. The secretary of state may condition the filing of the registration on the payment of a late filing fee that is equal to the registration fee for each year, or part of a year, that the entity transacted business in the state without being registered.

Taxes: Professional associations are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- **Item 1—Entity Name and Type:** Provide the full legal name of the foreign professional entity as stated in the entity’s formation document. Do not include a “d/b/a” or assumed name in item 1. In addition, the name of the foreign entity must comply with chapter 5 of the BOC. Chapter 5 requires that:

- (1) the entity name contain a recognized term of organization for the entity type as listed in section 5.054 of the BOC;
- (2) the entity name not contain any word or phrase that indicates or implies that the entity is engaged in a business that the entity is not authorized to pursue (BOC § 5.052); and
- (3) the entity name not be the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state (BOC § 5.053).

If the entity name does not comply with chapter 5, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.texas.gov. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate under a name does not authorize the use of a name in violation of another person's rights to the name.

In addition, section 5.060 of the BOC provides that the name of a professional entity must not be contrary to a statute or regulation that governs a person who provides a professional service through the professional entity, including a rule of professional ethics. Consult the applicable regulatory board or agency about name requirements that might be applicable to the profession. The secretary of state cannot advise you regarding those requirements.

- **Item 2A—Assumed Name:** If the entity name fails to contain an appropriate organizational designation for the entity type, a recognized organizational designation should be added to the legal name and set forth in item 2A. Accepted organizational designations for a foreign professional association are: “associated,” “associates,” “association,” “professional association,” or an abbreviation of those terms.
- **Item 2B—Assumed Name:** If it has been determined that the entity’s legal name is not available for its use in Texas due to a conflict with a previously existing name, the foreign entity must obtain its registration to transact business under an assumed name that complies with chapter 5 of the BOC. State the assumed name that the foreign entity elects to adopt for use in Texas in item 2B of the certificate. In addition, the foreign entity is required to file an assumed name certificate in compliance with chapter 71 of the Texas Business & Commerce Code. The promulgated form for filing the assumed name with the secretary of state is **Form 503**. This form is not acceptable for filing with the county clerk.
- **Item 3—Federal Employer Identification Number:** Enter the association’s federal employer identification number (FEIN) in the space provided. The FEIN is a 9-digit number (e.g., 12-3456789) that is issued by the Internal Revenue Service (IRS). If the association has not received its FEIN at the time of submission, this should be noted in item 3 on the application form. Provision of the FEIN at the time of submission will assist in the establishment of the association’s tax account with the Comptroller of Public Accounts.
- **Item 4—Jurisdictional Information:** The application must state the foreign entity’s jurisdiction of formation and the date of its formation in the format shown in the application.

- **Item 5—Certification of Existence:** The application must contain a statement that the entity exists as a valid foreign filing entity of the stated type under the laws of the entity's jurisdiction of formation.
- **Item 6—Reciprocity Statement:** The application must contain a statement that the jurisdiction of formation of the foreign professional entity permits reciprocal admission of a professional entity formed under the BOC.
- **Item 7—Statement of Purpose:** The application must state the professional service that the entity proposes to pursue in Texas. The purpose of a foreign professional association must comply with the provisions of title 7 and title 1, chapter 2 of the BOC. Except as provided by title 7, chapter 2 of the BOC limits the purposes of a professional entity to:
 - (1) the provision of one type of professional service, unless the entity is expressly authorized to provide more than one type of professional service under state law regulating the professional services; and
 - (2) services ancillary to the provision of the professional service.

In addition, as required by chapter 9, the application must contain a statement that the entity is authorized to pursue the same business or activity under the laws of the entity's jurisdiction of formation.

Joint Practice by Certain Professionals: Pursuant to section 301.012 of the BOC, the following professionals are permitted to jointly form and own a professional association to perform a professional service that falls within the scope of practice of those practitioners.

- (1) Doctors of medicine and doctors of osteopathy may jointly form and own a professional association with persons licensed as podiatrists by the Texas State Board of Podiatric Medical Examiners to perform professional services that fall within the scope of practice of those practitioners.
- (2) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a professional association that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.
- (3) Doctors of medicine and doctors of osteopathy may jointly form and own a professional association with persons licensed as optometrists or therapeutic optometrists by the Texas Optometry Board to perform professional services that fall within the scope of practice of those practitioners.

A state board or agency exercising regulatory control over a profession provided through a professional entity continues to exercise regulatory authority over its respective license. Questions relating to the provision of the entity's professional services should be directed to the regulatory board or agency.

- **Item 8—Beginning Date of Business:** Provide the date the foreign entity began or will begin to transact business in the state. If the foreign entity has had prior activities within the state, the entity may wish to consult with a private attorney regarding the beginning date of business. The beginning date of business is the date the entity's activities were considered the transaction of business for

purposes of registration under chapter 9 of the BOC. *If the entity has transacted business in Texas for more than 90 days before submission, a late filing fee will be assessed.*

- **Item 9—Principal Office Address:** Provide the street or mailing address of the principal office of the foreign entity.
- **Item 10—Initial Registered Agent and Registered Office:** A registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The foreign professional association cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: A person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the application for registration. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Item 11—Appointment of Secretary of State:** By signing the application for registration, the foreign entity consents to the appointment of the secretary of state as an agent of the foreign filing entity for service of process under the circumstances described by section 5.251 of the BOC.
- **Item 12—Governing Persons:** Provide the name and address of each person serving as part of the governing authority of the foreign professional association. Generally, this would be the board of directors of the association or other group of persons who are entitled to manage and direct the affairs of the association. A minimum of one governing person is required. Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.).

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for directors or governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an item within this form.
- **Effectiveness of Filing:** The application for registration becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the instrument to take

effect under option C, the entity must, within ninety (90) days of the filing of the instrument, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity's registration will be shown as "in existence" on the records of the secretary of state.

- **Execution:** Pursuant to section 4.001 of the BOC, the application for registration must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

The application for registration need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for an application for registration for a professional association is **\$750**. In addition, the foreign filing entity will be assessed a late filing fee of \$750 for each year of delinquency if the entity has transacted business in Texas for more than 90 days prior to filing the application for registration. For purposes of computing the late filing fee, a partial calendar year is counted as a full year. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **FYI:** A registered foreign professional association is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the application for registration formation. Failure to maintain a registered agent and registered office may result in the revocation of the foreign filing entity's registration.

Revised 01/16

**Form 311
(Revised 01/16)**

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: \$750



**Application for
Registration
of a Foreign Professional
Association**

This space reserved for office use.

1. The entity is a foreign professional association. The name of the entity is:

Provide the full legal name of the entity as stated in the entity's formation document in its jurisdiction of formation.

2A. The name of the entity in its jurisdiction of formation does not contain the word "associated," "associates," or "association" or the phrase "professional association" (or an abbreviation thereof). The name of the entity with the word or abbreviation that it elects to add for use in Texas is:

2B. The association name is not available in Texas. The assumed name under which the association will qualify and transact business in Texas is:

The assumed name must include an acceptable organizational identifier or an accepted abbreviation of one of these terms.

3. Its federal employer identification number is: _____

Federal employer identification number information is not available at this time.

4. It is formed under the laws of: (set forth state or foreign country) _____

and the date of its formation in that jurisdiction is: _____
mm/dd/yyyy

5. As of the date of filing, the undersigned certifies that the foreign professional association currently exists as a valid association under the laws of the jurisdiction of its formation.

6. The jurisdiction of formation of the foreign professional association permits reciprocal admission of an entity formed under the Texas Business Organizations Code.

7. The type of professional service that the professional association proposes to pursue in Texas is set forth below.

The association also certifies that it is authorized to pursue such stated purpose in the state or country under which it is organized.

8. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas is: _____
mm/dd/yyyy *Late fees may apply (see instructions).*

9. The principal office address of the association is:

Address City State Country Zip/Postal Code

Complete item 10A or 10B, but not both. Complete item 10C.

10A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

10B. The initial registered agent is an individual resident of the state whose name is:

First Name *M.I.* *Last Name* *Suffix*

10C. The business address of the registered agent and the registered office address is:

Street Address *City* *State* *Zip Code*

11. The association hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

12. The name and address of each person on the board of directors is:

Director 1
<i>First Name</i> <i>M.I.</i> <i>Last Name</i> <i>Suffix</i>
<i>Street or Mailing Address</i> <i>City</i> <i>State</i> <i>Country</i> <i>Zip Code</i>

Director 2
<i>First Name</i> <i>M.I.</i> <i>Last Name</i> <i>Suffix</i>
<i>Street or Mailing Address</i> <i>City</i> <i>State</i> <i>Country</i> <i>Zip Code</i>

Director 3
<i>First Name</i> <i>M.I.</i> <i>Last Name</i> <i>Suffix</i>
<i>Street or Mailing Address</i> <i>City</i> <i>State</i> <i>Country</i> <i>Zip Code</i>

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Empty text area box for supplemental provisions.

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person.

Form 19-2

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Merger—Domestic Entity Divisional Merger
(SOS Form 621)**

Form 19-2

**Form 621—General Information
(Certificate of Merger—Domestic Entity Divisional Merger)**

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

This certificate of merger is to be used to effect a merger as defined by section 1.002(55)(A) of the Texas Business Organizations Code (BOC). A merger, as defined by that section, means the division of a domestic entity into two or more new domestic entities or other organizations or into a surviving domestic entity and one or more new domestic or foreign entities or non-code organizations. A domestic entity may effect a merger by complying with the applicable provisions of title 1, chapter 10 of the BOC, as well as the title and chapter applicable to the domestic entity. To effect the merger the domestic entity must set forth a plan of merger that is approved in the manner prescribed by the BOC. A domestic entity may not merge if an owner or member of that entity that is a party to the merger will, as a result of the merger, become subject to owner liability, without that owner's or member's consent, for liability or other obligation of any other person.

If one or more non-code organizations is to be created by the merger, each non-code organization must effect the merger by taking all action required by the BOC and its governing documents, and the merger must be permitted by the law of the state or country under whose law each non-code organization is incorporated or organized, or the governing documents of each non-code organization if the documents are not inconsistent with such law.

Form 622 should be used to effect a merger that combines one or more domestic entities with one or more domestic entities or non-code organizations.

Form 623 should be used to effect a short form merger of a parent organization with a subsidiary organization under section 10.006 of the BOC.

Formation Documents of New Domestic Filing Entities: If a domestic filing entity is being created pursuant to the plan of merger, the certificate of formation of the entity must be filed with the certificate of merger. Pursuant to section 3.005 of the BOC, the certificate of formation of a domestic filing entity that is to be created by the plan of merger must contain the statement that the domestic filing entity is being formed under a plan of merger. The formation and existence of a domestic filing entity created pursuant to a plan of merger takes effect and commences on the effectiveness of the merger (BOC § 3.006).

Registration as a Limited Liability Partnership: A general partnership or limited partnership that is created by a plan of merger may file for registration to become a limited liability partnership by complying with section 152.803 of the BOC and by filing an application for registration with the secretary of state in accordance with section 152.802.

Instructions for Form

- **Merging Entity Information:** The certificate of merger is filed by the domestic filing entity that is dividing itself. Provide the legal name of the filing entity, its organizational form (e.g., for-profit corporation, limited partnership, etc.) and the address of the entity's principal place of business. If the name of the merging entity is to be changed pursuant to the plan of merger, state the current

name and not the amended name. It is recommended that the file number assigned by the secretary of state be provided to facilitate processing of the document. *It is required that you indicate whether the entity will or will not survive the merger.*

- **Plan of Merger:** Unless the domestic filing entity opts to complete the Alternative Statements section of this form, a plan of merger conforming to the requirements of sections 10.002 and 10.003 of the BOC must be attached to the certificate of merger.
- **Alternative Statements Option:** As an alternative to attaching the complete plan of merger, the entity may opt to certify and complete the statements contained in the Alternative Statements section of the form (items 1-4).

Items 3A-3D—Amendments: A plan of merger may include amendments to, restatements of, or amended and restatements of the certificate of formation of any surviving organization. If the filing entity is to survive the merger, the alternative statements **must** include a statement that: (A) no amendments or changes to the certificate of formation of the filing entity are to be effected by the merger; (B) no amendments or changes to the certificate of formation are being effected by the merger or by the restated certificate of formation attached to the certificate of merger; (C) the plan of merger amended and restated the certificate of formation of the filing entity as set forth in the attached restated certificate of formation containing amendments; or (D) identifies the amendments to be effected to the certificate of formation of the surviving entity.

Option 3A is the default selection unless the plan of merger amends, restates, or amends and restates the certificate of formation of the surviving entity. If option B is selected, attach the restated certificate of formation without further amendments as an exhibit to the certificate of merger. If C is selected, attach the restated certificate of formation containing further amendments to the certificate of merger. If D is selected, state the amendments or changes in the text area provided on the form. If the space provided is insufficient, the amendments may be provided as an exhibit to the certificate of merger.

Item 4—Organizations Created by Merger: Section 10.151(b) of the BOC requires the identification of each domestic entity or non-code organization that is to be created by the plan of merger. The identification must include: the legal name of the entity, which must include an appropriate organizational designation; the name of the jurisdiction in which each new organization is to be incorporated or organized; a description of the organizational form of each new organization (e.g., for-profit corporation, limited partnership, etc.); and the principal place of business of the new organization. In addition, the certificate of merger must state that the certificate of formation of each new filing entity is being filed with the certificate of merger.

This form provides space for identifying up to three new organizations. Should the space provided be insufficient, provide the additional information in the format specified as an attachment or exhibit.

- **Approval of the Plan of Merger:** The certificate of merger must include a statement that the plan of merger has been approved by each organization that is a party to the merger as required by the laws of the jurisdiction of formation and its governing documents.

For-profit or Professional Corporation and Professional Association

Section 21.452 and sections 21.456 to 21.458 of the BOC set forth the procedures and requirements for approval of the plan of merger by a Texas for-profit corporation, professional corporation, or

professional association. Generally, unless required otherwise by the certificate of formation or unless otherwise provided by the BOC, the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation entitled to vote on the matter would be required to approve the transaction.

Limited Liability Company

Sections 101.355 and 101.356 of the BOC set forth the voting requirements for a fundamental business transaction. The affirmative vote of the majority of all the company's members would be required to approve the plan of merger.

Limited Partnership

Pursuant to section 10.009 of the BOC, the partnership agreement of each domestic partnership that is a party to the merger must contain provisions that authorize the merger provided for in the plan of merger adopted by the partnership. Each domestic partnership that is a party to the merger must approve the plan of merger in the manner prescribed by its partnership agreement.

- **Effectiveness of Filing:** A certificate of merger becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a non-surviving domestic filing entity will be shown as "merged" and the status of any new domestic filing entity created by the merger will be shown as "in existence" on the records of the secretary of state.

- **Tax Certificate:** The secretary of state may not accept a certificate of merger for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of merger must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that all taxes under title 2 of the Tax Code have been paid and that the non-surviving party to the merger may legally end its existence in Texas. Please note that the Comptroller issues many different types of certificates of account status. If the Texas entity will not survive the divisive merger, you need to attach form #05-305, which is issued by the Comptroller of Public Accounts, to the certificate of merger. *Do not attach a print-out of the entity's franchise tax account status obtained from the Comptroller's web site as this does not meet statutory requirements.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600; toll-free (800) 252-1381; (TDD) (800) 248-4099. You also may contact tax.help@cpa.state.tx.us.

Alternative: Instead of a tax certificate, the certificate of merger may include a statement that one or more of the surviving, new, or acquiring organizations is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of merger must be signed by a person authorized by the BOC to act on behalf of the *merging* entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

In the case of a corporation or professional association, an authorized officer should sign the certificate of merger (BOC § 20.001). A certificate of merger filed by a limited liability company should be signed by an authorized manager if the company has managers. If the company does not have managers and is managed by its members, an authorized managing-member must sign the certificate of merger. A certificate of merger filed by a limited partnership should be signed by at least one general partner. The execution of a certificate by a general partner is an oath or affirmation, under a penalty of perjury, that to the best of the executing party's knowledge and belief, the facts contained in the certificate are true and correct (BOC 153.553(c)).


The certificate of merger need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of merger of a domestic filing entity is **\$300, plus the fee imposed for filing a certificate of formation for each newly created filing entity.**

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 12/15

<p>Form 621 (Revised 12/15) Return in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX: 512 463-5709 Filing Fee: see instructions</p>	<p>This space reserved for office use.</p>  <p>Certificate of Merger Domestic Entity Divisional Merger Business Organizations Code</p>
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Merging Entity Information

Pursuant to chapter 10 of the Texas Business Organizations Code, and the title applicable to the filing entity, the undersigned submits this certificate of merger to divide itself into two or more new domestic entities or other organizations or divide itself into a surviving domestic entity and one or more new domestic or foreign entities or non-code organizations.

The name of the domestic filing entity that is dividing itself is:

Its principal place of business is: _____
Address City State

The file number issued to the filing entity by the secretary of state is: _____

The entity is organized as a _____
(Provide organizational form of domestic entity; e.g., for-profit corporation, limited partnership, etc.)

- The filing entity will survive the merger. The filing entity will not survive the merger.
- The plan of merger amends the name of the merging entity. The new name is set forth below.

_____ Name as Amended

Plan of Merger

- The plan of merger is attached.

If the plan of merger is not attached, the following statements must be completed.

Alternative Statements

Instead of providing the plan of merger, the domestic filing entity certifies that:

1. A plan of merger is on file at the principal place of business of each surviving, acquiring, or new domestic entity or non-code organization provided in this form.
2. On written request, a copy of the plan of merger will be furnished without cost by each surviving, acquiring, or new domestic entity or non-code organization to any owner or member of any domestic entity that is a party to or created by the plan of merger.

Item 3A is the default selection. If the merger effected an amendment to, a restatement of, or an amendment and restatement of the certificate of formation of a surviving filing entity, you must select and complete one of the options shown below. Options 3B and 3C require the submission of the described attachment.

- 3A. No amendments to the certificate of formation are being effected by the merger.
- 3B. No amendments to the certificate of formation are being effected by the merger or by the restated certificate of formation, which is attached to the certificate of merger.

3C. The plan of merger effected an amendment and restatement of the certificate of formation of the surviving filing entity. The amendments being made are set forth in the attached restated certificate of formation containing amendments.

3D. The plan of merger effected changes or amendments to the filing entity's certificate of formation. The changes or amendments to the filing entity's certificate of formation, other than the name change noted previously, are stated below.

Amendment Text Area

4. Organizations Created by Merger:

The name, jurisdiction of organization, principal place of business address, and entity description of each entity or other organization to be created pursuant to the plan of merger are set forth below. The certificate of formation of each new domestic filing entity to be created is being filed with this certificate of merger.

<i>Name of New Organization 1</i>	<i>Jurisdiction</i>	<i>Entity Type (See instructions)</i>
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<i>Principal Place of Business Address</i>	<i>City</i>	<i>State Zip Code</i>
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<i>Name of New Organization 2</i>	<i>Jurisdiction</i>	<i>Entity Type (See instructions)</i>
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<i>Principal Place of Business Address</i>	<i>City</i>	<i>State Zip Code</i>
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<i>Name of New Organization 3</i>	<i>Jurisdiction</i>	<i>Entity Type (See instructions)</i>
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<i>Principal Place of Business Address</i>	<i>City</i>	<i>State Zip</i>
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Approval of the Plan of Merger

The plan of merger has been approved as required by the laws of the jurisdiction of formation and by the governing documents of the merging filing entity.

Effectiveness of Filing (Select either A, B, or C.)

A. This document becomes effective when the document is accepted and filed by the secretary of state.

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. This document takes effect on the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Text Area

Tax Certificate

- Attached hereto is a certificate from the comptroller of public accounts that all taxes under title 2, Tax Code, have been paid by the non-surviving filing entity.
- Instead of providing the tax certificate, one or more of the newly created organizations will be liable for the payment of the required franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code to execute the filing instrument.

Date: _____

Signature and title of authorized person on behalf of the merging filing entity

Form 19-3

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Merger—Combination Merger
(SOS Form 622)**

Form 19-3
Form 622—General Information
(Certificate of Merger—Combination Merger)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

This certificate of merger is to be used to effect a merger as defined by section 1.002(55)(B) of the Texas Business Organizations Code (BOC). A merger, as defined by that section, means the combination of one or more domestic entities with one or more domestic entities or non-code organizations resulting in:

- (1) one or more surviving domestic entities or non-code organizations;
- (2) the creation of one or more new domestic entities or non-code organizations; or
- (3) one or more surviving domestic entities or non-code organizations and the creation of one or more new domestic entities or non-code organizations.

The certificate of merger is required to be filed with the secretary of state if any domestic entity that is a party to the merger is a filing entity, or if any domestic entity to be created under the plan of merger is a filing entity. A domestic filing entity may effect a merger by complying with the applicable provisions of chapter 10 of the BOC, as well as the title and chapter applicable to the domestic entity. To effect the merger, the domestic entity must set forth a plan of merger that is approved in the manner prescribed by the BOC. A domestic entity may not merge if an owner or member of that entity that is a party to the merger will, as a result of the merger, become subject to owner liability, without that owner's or member's consent, for liability or other obligation of any other person.

If one or more non-code organizations is a party to the merger or is to be created by the merger, each non-code organization must effect the merger by taking all action required by the BOC and its governing documents, and the merger must be permitted by the law of the state or country under whose law each non-code organization is incorporated or organized, or the governing documents of each non-code organization if the documents are not inconsistent with such law.

This certificate of merger form is not designed to effect the short form merger of a parent organization with a subsidiary organization under section 10.006 of the BOC. Form 623 may be used for this purpose.

Form 621 should be used to effect a merger that divides a single domestic entity into two or more new domestic entities or non-code organizations.

Formation Documents of New Domestic Filing Entities: If a domestic filing entity is being created pursuant to the plan of merger, the certificate of formation of the entity must be filed with the certificate of merger. Pursuant to section 3.005 of the BOC, the certificate of formation of a domestic filing entity that is to be created by the plan of merger must contain the statement that the domestic filing entity is being formed under a plan of merger. The formation and existence of a domestic filing entity created pursuant to a plan of merger takes effect and commences on the effectiveness of the merger (BOC § 3.006).

Registration as a Limited Liability Partnership: A general partnership or limited partnership that is created by a plan of merger may file for registration to become a limited liability partnership by complying with section 152.803 of the BOC and by filing an application for registration with the secretary of state in accordance with section 152.802.

Instructions for Form

- **Parties to the Merger:** The certificate of merger must state the name, organizational form, and the jurisdiction in which each domestic entity or non-code organization is incorporated or organized. If the name of a merging domestic filing entity is to be changed pursuant to the plan of merger, state the current name, indicate that the name is to be changed, and state the name as amended. It is recommended that the file number assigned by the secretary of state to each domestic or foreign filing entity that is a party to the merger be provided to facilitate processing of the document. *It is required that you indicate whether a party to the merger is to survive the merger.*
- **Plan of Merger:** Unless the parties to the merger opt to complete the Alternative Statements section of this form, a plan of merger conforming to the requirements of section 10.002 of the BOC must be attached to the certificate of merger. If more than one organization is to survive the merger, the plan of merger also must include the information required under section 10.003 of the BOC.
- **Alternative Statements Option:** As an alternative to attaching the complete plan of merger, the parties to the merger may opt to certify and complete the statements contained in the Alternative Statements section of the form (items 1-4).

Items 3A-3D—Amendments: A plan of merger may include amendments to, restatements of, or amended and restatements of the certificate of formation of any surviving organization. If a filing entity is to survive the merger, the alternative statements **must** include a statement that: (A) no amendments or changes to the certificate of formation of any filing entity are to be effected by the merger; (B) no amendments or changes to the certificate of formation of a filing entity are being effected by the merger or by the restated certificate of formation attached to the certificate of merger; (C) the plan of merger amended and restated the certificate of formation of a surviving filing entity as set forth in the attached restated certificate of formation containing amendments; or (D) identifies the amendments to be effected to the certificate of formation of a surviving filing entity.

Option 3A is the default selection unless the plan of merger amends, restates, or amends and restates the certificate of formation of a surviving filing entity. If option B is selected, attach the restated certificate of formation without further amendments of the filing entity as an exhibit to the certificate of merger. If C is selected, attach the restated certificate of formation containing further amendments to the certificate of merger. If D is selected, state the amendments or changes in the text area provided on the form. If the space provided is insufficient, the amendments may be provided as an exhibit to the certificate of merger.

Item 4: Organizations Created by Merger: Section 10.151(b) of the BOC requires the identification of each domestic entity or non-code organization that is to be created by the plan of merger. The identification must include: the legal name of the entity, which must include an appropriate organizational designation; the name of the jurisdiction in which each new organization is to be incorporated or organized; a description of the organizational form of each new organization (e.g., for-profit corporation, limited partnership, etc.); and the principal place of business of the new organization. In addition, the certificate of merger must state that the certificate of formation of each new filing entity is being filed with the certificate of merger.

This form provides space for identifying up to three new organizations. Should the space provided be insufficient, provide the additional information in the format specified as an attachment or exhibit.

- **Approval of the Plan of Merger:** The certificate of merger must include a statement that the plan of merger has been approved by each organization that is a party to the merger as required by the laws of the jurisdiction of formation and its governing documents. If approval of the owners or members of any domestic entity that is a party to the merger is not required by the BOC, provide the name of the domestic entity to which the statement applies in the space provided on the form.

For-profit or Professional Corporation and Professional Association

Section 21.452 and sections 21.456 to 21.458 of the BOC set forth the procedures and requirements for approval of the plan of merger by a Texas for-profit corporation, professional corporation, or professional association. Generally, unless required otherwise by the certificate of formation or unless otherwise provided by the BOC, the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation entitled to vote on the matter would be required to approve the transaction.

Section 21.459 of the BOC sets forth the circumstances under which the approval of the shareholders of the sole surviving entity in the merger is not required.

Limited Liability Company

Section 101.355 of the BOC sets forth the voting requirements for a fundamental business transaction. The affirmative vote of the majority of all the company's members would be required to approve the plan of merger.

Limited Partnership

Pursuant to section 10.009 of the BOC, the partnership agreement of each domestic partnership that is a party to the merger must contain provisions that authorize the merger provided for in the plan of merger adopted by the partnership. Each domestic partnership that is a party to the merger must approve the plan of merger in the manner prescribed by its partnership agreement.

- **Effectiveness of Filing:** A certificate of merger becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was

conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a non-surviving domestic filing entity will be shown as “merged” and the status of any new domestic filing entity created by the merger will be shown as “in existence” on the records of the secretary of state.

- **Tax Certificate:** The secretary of state may not accept a certificate of merger for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of merger must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that all taxes under title 2 of the Tax Code have been paid and that the non-surviving party to the merger may legally end its existence in Texas. Please note that the Comptroller issues many different types of certificates of account status. You need to attach form #05-305, which is issued by the Comptroller of Public Accounts, for each non-surviving party to the merger. *Do not attach a print-out of the entity’s franchise tax account status obtained from the Comptroller’s web site as this does not meet statutory requirements.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact tax.help@cpa.state.tx.us.

Alternative: Instead of a tax certificate, the certificate of merger may provide that one or more of the surviving, new, or acquiring organizations is liable for the payment of the required franchise taxes.

- **Execution:** Each domestic entity and non-code organization that is a party to the merger must sign the certificate of merger. Pursuant to section 10.151(b) of the BOC, the certificate of merger must be signed by an officer or other authorized representative of each party to the merger. Generally, a governing person or managerial official of a domestic filing entity signs a filing instrument.

In the case of a corporation or professional association, an authorized officer should sign the certificate of merger (BOC § 20.001). A certificate of merger filed by a limited liability company should be signed by an authorized manager if the company has managers. If the company does not have managers and is managed by its members, an authorized managing-member must sign the certificate of merger. A certificate of merger filed by a limited partnership should be signed by at least one general partner. The execution of a certificate by a general partner is an oath or affirmation, under a penalty of perjury, that to the best of the executing party’s knowledge and belief, the facts contained in the certificate are true and correct (BOC 153.553(c)).

The certificate of merger need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person’s intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of merger of a domestic filing entity is **\$300, plus the fee imposed for filing a certificate of formation for each newly created filing entity.**

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 12/15

Form 622
(Revised 12/15)
 Return in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512 463-5709
Filing Fee: see instructions



This space reserved for office use.

**Certificate of Merger
 Combination Merger
 Business Organizations Code**

Parties to the Merger

Pursuant to chapter 10 of the Texas Business Organizations Code, and the title applicable to each domestic filing entity identified below, the undersigned parties submit this certificate of merger.

The name, organizational form, state of incorporation or organization, and file number, if any, issued by the secretary of state for each organization that is a party to the merger are as follows:

Party 1

Name of Organization
 The organization is a _____ It is organized under the laws of _____
Specify organizational form (e.g., for-profit corporation)

The file number, if any, is _____
State Country Texas Secretary of State file number

Its principal place of business is _____
Address City State

- The organization will survive the merger. The organization will not survive the merger.
- The plan of merger amends the name of the organization. The new name is set forth below.

Name as Amended

Party 2

Name of Organization
 The organization is a _____ It is organized under the laws of _____
Specify organizational form (e.g., for-profit corporation)

The file number, if any, is _____
State Country Texas Secretary of State file number

Its principal place of business is _____
Address City State

- The organization will survive the merger. The organization will not survive the merger.
- The plan of merger amends the name of the organization. The new name is set forth below.

Name as Amended

Party 3

Name of Organization
 The organization is a _____ It is organized under the laws of _____
Specify organizational form (e.g., for-profit corporation)

The file number, if any, is _____
State Country Texas Secretary of State file number

Its principal place of business is _____
Address City State

- The organization will survive the merger. The organization will not survive the merger.
- The plan of merger amends the name of the organization. The new name is set forth below.

Name as Amended

Plan of Merger

- The plan of merger is attached.

If the plan of merger is not attached, the following statements must be completed.

Alternative Statements

Instead of providing the plan of merger, each domestic filing entity certifies that:

1. A plan of merger is on file at the principal place of business of each surviving, acquiring, or new domestic entity or non-code organization that is named in this form as a party to the merger or an organization created by the merger.
2. On written request, a copy of the plan of merger will be furnished without cost by each surviving, acquiring, or new domestic entity or non-code organization to any owner or member of any domestic entity that is a party to or created by the plan of merger and, if the certificate of merger identifies multiple surviving domestic entities or non-code organizations, to any creditor or obligee of the parties to the merger at the time of the merger if a liability or obligation is then outstanding.

Item 3A is the default selection. If the merger effected an amendment to, a restatement of, or an amendment and restatement of the certificate of formation of a surviving filing entity, you must select and complete one of the options shown below. Options 3B and 3C require the submission of the described attachment.

- 3A. No amendments to the certificate of formation of any surviving filing entity that is a party to the merger are effected by the merger.
- 3B. No amendments to the certificate of formation of any filing entity are being effected by the merger or by the restated certificate of formation of the surviving filing entity named in the attached restated certificate of formation.
- 3C. The plan of merger effected an amendment and restatement of the certificate of formation of a surviving filing entity. The amendments being made and the name of the surviving entity restating its certificate of formation are set forth in the attached restated certificate of formation containing amendments.
- 3D. The plan of merger effected amendments or changes to the following surviving filing entity's certificate of formation.

Name of filing entity effecting amendments

The changes or amendments to the filing entity's certificate of formation, other than the name change noted previously, are stated below.

Amendment Text Area

4. Organizations Created by Merger

The name, jurisdiction of organization, principal place of business address, and entity description of each entity or other organization to be created pursuant to the plan of merger are set forth below. The certificate of formation of each new domestic filing entity to be created is being filed with this certificate of merger.

<i>Name of New Organization 1</i>	<i>Jurisdiction</i>	<i>Entity Type (See instructions)</i>
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<i>Principal Place of Business Address</i>	<i>City</i>	<i>State Zip Code</i>
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<i>Name of New Organization 2</i>	<i>Jurisdiction</i>	<i>Entity Type (See instructions)</i>
-----------------------------------	---------------------	---------------------------------------

<i>Principal Place of Business Address</i>	<i>City</i>	<i>State Zip Code</i>
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<i>Name of New Organization 3</i>	<i>Jurisdiction</i>	<i>Entity Type (See instructions)</i>
-----------------------------------	---------------------	---------------------------------------

<i>Principal Place of Business Address</i>	<i>City</i>	<i>State Zip</i>
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Approval of the Plan of Merger

The plan of merger has been approved as required by the laws of the jurisdiction of formation of each organization that is a party to the merger and by the governing documents of those organizations.

The approval of the owners or members of _____
Name of domestic entity
 was not required by the provisions of the BOC.

Effectiveness of Filing (Select either A, B, or C.)

A. This document becomes effective when the document is accepted and filed by the secretary of state.

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. This document takes effect on the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Text Area

[Empty rectangular box for text entry]

Tax Certificate

- Attached hereto is a certificate from the comptroller of public accounts that all taxes under title 2, Tax Code, have been paid by the non-surviving filing entity.
- Instead of providing the tax certificate, one or more of the surviving, acquiring or newly created organizations will be liable for the payment of the required franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code, or other law applicable to and governing the merging entity, to execute the filing instrument.

Date: _____

Merging Entity Name

Signature of authorized person (see instructions)

Printed or typed name of authorized person

Merging Entity Name

Signature of authorized person (see instructions)

Printed or typed name of authorized person

Merging Entity Name

Signature of authorized person (see instructions)

Printed or typed name of authorized person

Form 19-4

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Parent-Subsidiary Certificate of Merger—Parent Survivor
(SOS Form 623)**

Form 19-4

**Form 623—General Information
(Parent-Subsidiary Certificate of Merger)**

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

This certificate of merger may be used to effect a merger of a parent organization with a subsidiary organization when the parent organization is to survive the merger. A parent organization that is a domestic entity may effect a merger by complying with the applicable provisions of chapter 10 of the Texas Business Organizations Code (BOC), as well as the title and chapter applicable to the domestic entity. A domestic entity may not merge if an owner or member of that entity that is a party to the merger will, as a result of the merger, become subject to owner liability, without that owner's or member's consent, for liability or other obligation of any other person.

Pursuant to section 10.006 of the BOC, a parent organization that owns at least 90 percent of the outstanding ownership or membership interests of each class and series of each of one or more subsidiary organizations may merge with one or more of the subsidiary organizations if:

- (1) at least one of the parties to the merger is a domestic entity and each other party is a domestic entity or another non-code organization that is organized under the laws of a jurisdiction that permits a merger of the type authorized by section 10.006;
- (2) *none of the subsidiary organizations is a Texas partnership*; and
- (3) the resulting organization or organizations are the parent organization, one or more existing subsidiary organizations, or one or more new organizations.

A domestic entity that is a subsidiary organization is not required to approve a merger effected under section 10.006 of the BOC. When the parent organization is to survive the merger, the merger is approved by a resolution adopted by the governing authority of the parent organization. *A merger effected through section 10.006 of the BOC cannot make an amendment to the governing documents of any surviving organization.*

Do not use this form if the parent organization will not survive the merger. If the parent organization will not survive the merger, a plan of merger must be approved by the parent organization in the manner provided by section 10.001 of the BOC if the parent is a domestic entity.

Formation Documents of New Domestic Filing Entities: If a domestic filing entity is being created pursuant to the plan of merger, the certificate of formation of the entity must be filed with the certificate of merger. *Pursuant to section 3.005 of the BOC, the certificate of formation of a domestic filing entity that is to be created by the plan of merger must contain the statement that the domestic filing entity is being formed under a plan of merger.* The formation and existence of a domestic filing entity created pursuant to a plan of merger takes effect and commences on the effectiveness of the merger (BOC § 3.006).

Registration as a Limited Liability Partnership: A general partnership or limited partnership that is created by a plan of merger may file for registration to become a limited liability partnership by complying with sections 152.803 and by filing an application for registration with the secretary of state in accordance with section 152.802.

Instructions for Form

- **Parties to the Merger:** The certificate of merger must state the name of the parent organization, the name of each subsidiary organization that is a party to the merger, the jurisdiction of formation of each organization, and the number of outstanding ownership interests of each class or series of each subsidiary organization and the number or percentage of each class or series owned by the parent organization. It is recommended that the file number assigned by the secretary of state to each domestic or foreign filing entity that is a party to the merger be provided to facilitate processing of the document. *It is required that you indicate whether a party to the merger is to survive the merger.* If any surviving organization is not a domestic entity, the certificate of merger must include the address, including street number, of its registered or principal office in its jurisdiction of formation.
- **Resolution of Merger:** The certificate of merger must include a statement that the resolution of merger has been approved as required by the laws of the jurisdiction of formation of the parent organization and by its governing documents. The certificate of merger must include the date of the adoption of the resolution of merger by the governing authority *and a copy of the resolution of merger.* A resolution of merger must describe:
 - (1) the basic terms of the merger, which must include the information required by sections 10.002(c) and 10.003 of the BOC, if applicable;
 - (2) the organizations that are a party to the merger; and
 - (3) the organizations that survive or that are to be created by the merger.

If the parent organization does not own all the outstanding ownership or membership interests of each class or series of ownership or membership interests of each subsidiary organization that is a party to the merger, the resolution of the parent organization must comply with section 10.006(g) of the BOC.

If the resolution of merger authorizes the creation of one or more organizations, the certificate of merger should include the name of the organization, the jurisdiction of its formation and the organizational form of the new organization. If one or more non-code organizations is a party to the merger or is to be created by the merger, each non-code organization must effect the merger by taking all action required by the BOC and its governing documents, and the merger must be permitted by the law of the state or country under whose law each non-code organization is incorporated or organized, or the governing documents of each non-code organization if the documents are not inconsistent with such law.

- **Organizations Created by Merger:** If the merger is to result in the creation of one or more new organizations, the certificate of merger must include the identification of each domestic entity or non-code organization that is to be created by the plan of merger. The identification must include: the legal name of the entity, which must include an appropriate organizational designation; the name of the jurisdiction in which each new organization is to be incorporated or organized; a description of the organizational form of each new organization (e.g., for-profit corporation, limited partnership, etc.); and the principal place of business of the new organization. In addition, the certificate of merger must state that the certificate of formation of each new filing entity is being filed with the certificate of merger.
- **Effectiveness of Filing:** A certificate of merger becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the

date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a non-surviving domestic filing entity will be shown as “merged” and the status of any new domestic filing entity created by the merger will be shown as “in existence” on the records of the secretary of state.

- **Tax Certificate:** The secretary of state may not accept a certificate of merger for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of merger must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that all taxes under title 2 of the Tax Code have been paid and that the non-surviving party to the merger may legally end its existence in Texas. Please note that the Comptroller issues many different types of certificates of account status. You need to attach form #05-305, which is issued by the Comptroller of Public Accounts, for each non-surviving party to the merger. *Do not attach a print-out of the entity’s franchise tax account status obtained from the Comptroller’s web site as this does not meet statutory requirements.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact tax.help@cpa.state.tx.us.

Alternative: In lieu of the tax certificate, the certificate of merger may provide that one or more of the surviving, new, or acquiring organizations is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 10.152, an officer or other authorized representative of the parent organization must sign the certificate of merger.

The certificate of merger need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person’s intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of merger of a domestic filing entity is **\$300, plus the fee imposed for filing a certificate of formation for each newly created filing entity.**

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 12/15

Form 623
(Revised 12/15)
 Return in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512 463-5709
Filing Fee: see instructions



This space reserved for office use.

**Parent-Subsidiary
 Certificate of Merger
 Business Organizations Code**

Parties to the Merger

Pursuant to chapter 10 of the Texas Business Organizations Code, and the title applicable to each domestic filing entity identified below, the undersigned parties submit this certificate of merger.

The name, organizational form, and state of incorporation or organization, and file number, if any, issued by the secretary of state for the parent and subsidiary organization(s) are as follows:

Parent

Name of Organization
 The organization is a _____ It is organized under the laws of _____
Specify organizational form (e.g., for-profit corporation)

_____ The file number, if any, is _____
State Country Texas Secretary of State file number

If not a domestic entity, its registered or principal office address in its jurisdiction of formation is:

Street Address City State Country

Subsidiary 1

Name of Organization
 The organization is a _____ It is organized under the laws of _____
Specify organizational form (e.g., for-profit corporation)

_____ The file number, if any, is _____
State Country Texas Secretary of State file number

If not a domestic entity, its registered or principal office address in its jurisdiction of formation is:

Street Address City State Country

The number of outstanding ownership interests of each class or series and the number and percentage of ownership interests of each class or series owned by the parent organization are as follows:

<i>Number of ownership interests outstanding</i>	<i>Class</i>	<i>Series</i>	<i>Number owned by parent</i>	<i>Percentage Owned</i>

The organization will survive the merger. The organization will not survive the merger.

Subsidiary 2

Name of Organization
 The organization is a _____ It is organized under the laws of _____
Specify organizational form (e.g., for-profit corporation)

The file number, if any, is: _____
State Country Texas Secretary of State file number

If not a domestic entity, its registered or principal office address in its jurisdiction of formation is:

Street Address City State Country

The number of outstanding ownership interests of each class or series and the number and percentage of ownership interests of each class or series owned by the parent organization are as follows:

Number of ownership interests outstanding Class Series Number owned by parent Percentage Owned

The organization will survive the merger. The organization will not survive the merger.

Subsidiary 3

Name of Organization _____

The organization is a: _____ It is organized under the laws of: _____
Specify organizational form (e.g., for-profit corporation)

The file number, if any, is: _____
State Country Texas Secretary of State file number

If not a domestic entity, its registered or principal office address in its jurisdiction of formation is:

Street Address City State Country

The number of outstanding ownership interests of each class or series and the number and percentage of ownership interests of each class or series owned by the parent organization are as follows:

Number of ownership interests outstanding Class Series Number owned by parent Percentage Owned

The organization will survive the merger. The organization will not survive the merger.

Resolution of Merger

A copy of the resolution of merger is attached.

The attached resolution was adopted and approved by the governing authority of the parent organization as required by the laws of its jurisdiction of formation and by its governing documents.

The resolution was adopted by the parent organization on _____
mm/dd/yyyy

Organizations Created by Merger

The name, jurisdiction of organization, principal place of business address, and entity description of each entity or other organization to be created pursuant to the resolution of merger are set forth below. The certificate of formation of each new domestic filing entity to be created is being filed with this certificate of merger.

Name of New Organization 1 Jurisdiction Entity Type (See instructions)

Principal Place of Business Address City State Zip Code

<i>Name of New Organization 2</i>	<i>Jurisdiction</i>	<i>Entity Type (See instructions)</i>
<i>Principal Place of Business Address</i>	<i>City</i>	<i>State Zip Code</i>

<i>Name of New Organization 3</i>	<i>Jurisdiction</i>	<i>Entity Type (See instructions)</i>
<i>Principal Place of Business Address</i>	<i>City</i>	<i>State Zip</i>

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is accepted and filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect on the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Text Area

Tax Certificate

- Attached hereto is a certificate from the comptroller of public accounts that all taxes under title 2, Tax Code, have been paid by the non-surviving filing entity.
- In lieu of providing the tax certificate, one or more of the surviving, acquiring or newly created organizations will be liable for the payment of the required franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code, or other law applicable to and governing the parent organization, to execute the filing instrument.

Date: _____

Parent Organization Name

Signature of authorized person (see instructions)

Printed or typed name of authorized person

Form 19-5

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Merger for Nonprofit Corporations
(SOS Form 624)**

Form 19-5

**Form 624—General Information
(Certificate of Merger for Nonprofit Corporations)**

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

This certificate of merger is to be used to effect a merger, as defined by section 1.002(55)(B) of the Texas Business Organizations Code (BOC), of nonprofit corporations.

The certificate of merger is required to be filed with the secretary of state if any domestic entity that is a party to the merger is a filing entity, or if any domestic entity to be created under the plan of merger is a filing entity. A domestic filing entity may effect a merger by complying with the applicable provisions of chapter 10 of the BOC, as well as the title and chapter applicable to the domestic entity. To effect the merger, the domestic entity must set forth a plan of merger that is approved in the manner prescribed by the BOC. A domestic entity may not merge if a member of that entity that is a party to the merger will, as a result of the merger, become subject to owner liability, without that member's consent, for liability or other obligation of any other person.

Limitations on Mergers Involving Nonprofit Corporations: Section 10.010 limits the authority of a nonprofit corporation to merge. The limitations are as follows:

- A domestic nonprofit corporation may not merge into another entity if the domestic nonprofit corporation would, because of the merger, lose or impair its charitable status.
- One or more domestic or foreign for-profit entities or non-code organizations may merge into one or more domestic nonprofit corporations that continue as the surviving entity or entities.
- A domestic nonprofit corporation may not merge with a foreign for-profit entity if the domestic nonprofit corporation does not continue as the surviving entity.
- One or more domestic nonprofit corporations and non-code organizations may merge into one or more foreign nonprofit entities that continue as the surviving entity or entities.

This form should be used when all of the entities that are parties to the merger or are to be created by the merger are nonprofit corporations. Please consult an attorney for assistance with a merger involving for-profit entities and non-code organizations other than foreign nonprofit corporations.

Formation Documents of New Domestic Nonprofit Corporation: If a Texas nonprofit corporation is being created pursuant to the plan of merger, the certificate of formation of the nonprofit corporation must be filed with the certificate of merger. Pursuant to section 3.005 of the BOC, the certificate of formation of a domestic nonprofit corporation that is to be created by the plan of merger must contain the statement that the domestic nonprofit corporation is being formed under a plan of merger. The formation and existence of a domestic nonprofit corporation created pursuant to a plan of merger takes effect and commences on the effectiveness of the merger (BOC § 3.006).

Instructions for Form

- **Parties to the Merger:** The certificate of merger must state the name, organizational form, and jurisdiction of formation for each party to the merger. If the name of a merging nonprofit corporation is to be changed pursuant to the plan of merger, state the current name, indicate that the name is to be changed, and state the name as amended. It is recommended that the file number

assigned by the secretary of state to each domestic or foreign nonprofit corporation that is a party to the merger be provided to facilitate processing of the document. *It is required that you indicate whether a party to the merger is to survive the merger.*

- **Plan of Merger:** Unless the parties to the merger opt to complete the Alternative Statements section of this form, a plan of merger conforming to the requirements of section 10.002 of the BOC must be attached to the certificate of merger. If more than one organization is to survive the merger, the plan of merger also must include the information required under section 10.003 of the BOC.
- **Alternative Statements in Lieu of Plan:** As an alternative to attaching the complete plan of merger, the parties to the merger may opt to certify and complete the statements contained in the Alternative Statements section of the form (items 1-4).

Items 3A-3D—Amendments: A plan of merger may include amendments to, restatements of, or amended and restatements of the certificate of formation of any surviving organization. If a filing entity is to survive the merger, the alternative statements **must** include a statement that: (A) no amendments or changes to the certificate of formation of any filing entity are to be effected by the merger; (B) no amendments or changes to the certificate of formation of a filing entity are being effected by the merger or by the restated certificate of formation attached to the certificate of merger; (C) the plan of merger amended and restated the certificate of formation of a surviving filing entity as set forth in the attached restated certificate of formation containing amendments; or (D) identifies the amendments to be effected to the certificate of formation of a surviving filing entity.

Option 3A is the default selection unless the plan of merger amends, restates, or amends and restates the certificate of formation of a surviving filing entity. If option B is selected, attach the restated certificate of formation without further amendments of the filing entity as an exhibit to the certificate of merger. If C is selected, attach the restated certificate of formation containing further amendments to the certificate of merger. If D is selected, state the amendments or changes in the text area provided on the form. If the space provided is insufficient, the amendments may be provided as an exhibit to the certificate of merger.

- *Item 4: Nonprofit Corporations Created by Merger:* Section 10.151(b) of the BOC requires the identification of each domestic or foreign nonprofit corporation that is to be created by the plan of merger. The identification must include: the legal name of the nonprofit corporation, which must include an appropriate organizational designation (if applicable); the name of the jurisdiction in which each new nonprofit corporation is to be incorporated; a description of the organizational form of each new organization; and the principal place of business of each new corporation. In addition, the certificate of merger must state that the certificate of formation of each new domestic nonprofit corporation is being filed with the certificate of merger.

This form provides space for identifying up to three new nonprofit corporations. Should the space provided be insufficient, provide the additional information in the format specified as an attachment or exhibit.

- **Approval of the Plan of Merger:** The certificate of merger must include a statement that the plan of merger has been approved by each organization that is a party to the merger as required by the laws of its jurisdiction of formation and its governing documents.

Sections 22.251 and 22.253 of the BOC set forth the procedures and requirements for approval of the plan of merger by a Texas nonprofit corporation. Unless otherwise provided by its certificate of formation, the vote required for approval of a plan of merger is as follows:

- If the nonprofit corporation that is a party to the merger has no members or no members with voting rights, the plan of merger must be approved by the affirmative vote of the majority of directors in office (BOC § 22.164(b)(3)).
 - If management of the affairs of the nonprofit corporation is vested in its members, the members must approve the plan of merger by at least two-thirds of the votes of members present at the meeting at which the action is submitted for a vote (BOC § 22.164(b)(2)).
 - If the corporation that is a party to the merger has members with voting rights, the board of directors must adopt a resolution approving the merger and directing that the plan be submitted to a vote of the members having voting rights. The members must approve the plan of merger by the vote of at least two-thirds of the votes that members present in person or by proxy are entitled to cast at the meeting at which the action is submitted for vote (BOC § 22.164(b)(1)).
- **Tax Certificate:** The secretary of state may not accept a certificate of merger for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of merger must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that all taxes under title 2 of the Tax Code have been paid and that the non-surviving party to the merger may legally end its existence in Texas. Please note that the Comptroller issues many different types of certificates of account status. You need to attach form #05-305, which is issued by the Comptroller of Public Accounts, for each non-surviving party to the merger. *Do not attach a print-out of the entity's franchise tax account status obtained from the Comptroller's web site as this does not meet statutory requirements.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact tax.help@cpa.state.tx.us.

Alternative: In lieu of the tax certificate, the certificate of merger may provide that one or more of the surviving, new, or acquiring organizations is liable for the payment of the required franchise taxes.

- **Effectiveness of Filing:** A certificate of merger becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a non-surviving domestic filing entity will be shown as "merged" and the status of any new domestic filing entity created by the merger will be shown as "in existence" on the records of the secretary of state.

- **Execution:** Each domestic and foreign nonprofit corporation that is a party to the merger must sign the certificate of merger. Pursuant to section 4.001 of the BOC, the certificate of merger must be signed by a person authorized by the BOC to act on behalf of the *merging* entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

In the case of a domestic nonprofit corporation, an authorized officer should sign the certificate of merger (BOC § 20.001).

The certificate of merger need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of merger of nonprofit corporations is **\$50, plus the fee imposed for filing a certificate of formation for each newly created domestic nonprofit corporation.**

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 12/15

Form 624
(Revised 12/15)
 Return in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512 463-5709
Filing Fee: see instructions



This space reserved for office use.

**Certificate of Merger
 for Nonprofit Corporations**

Parties to the Merger

Pursuant to chapter 10 and Title 2 of the Texas Business Organizations Code, the undersigned parties submit this certificate of merger.

The name, organizational form, state of incorporation, and file number, if any, issued by the secretary of state for each organization that is a party to the merger are as follows:

Party 1

Name of Organization

The organization is a nonprofit corporation. It is organized under the laws of:

_____ The file number, if any, is _____
State Country Texas Secretary of State file number

Its principal place of business is _____
Address City State

- The organization will survive the merger. The organization will not survive the merger.
- The plan of merger amends the name of the organization. The new name is set forth below.

Name as Amended

Party 2

Name of Organization

The organization is a nonprofit corporation. It is organized under the laws of:

_____ The file number, if any, is _____
State Country Texas Secretary of State file number

Its principal place of business is _____
Address City State

- The organization will survive the merger. The organization will not survive the merger.
- The plan of merger amends the name of the organization. The new name is set forth below.

Name as Amended

Party 3

Name of Organization

The organization is a nonprofit corporation. It is organized under the laws of:

The file number, if any, is _____
State Country Texas Secretary of State file number

Its principal place of business is _____
Address City State

The organization will survive the merger. The organization will not survive the merger.

The plan of merger amends the name of the organization. The new name is set forth below.

Name as Amended

Plan of Merger

The plan of merger is attached.

If the plan of merger is not attached, the following statements must be completed.

Alternative Statements

In lieu of providing the plan of merger, each domestic nonprofit corporation certifies that:

1. A plan of merger is on file at the principal place of business of each surviving, acquiring, or new domestic or foreign nonprofit corporation that is named in this form as a party to the merger or an organization created by the merger.

2. On written request, a copy of the plan of merger will be furnished without cost by each surviving, acquiring, or new domestic or foreign nonprofit corporation to any member of any domestic nonprofit corporation that is a party to or created by the plan of merger and, if the certificate of merger identifies multiple surviving domestic nonprofit corporations or non-code organizations, to any creditor or obligee of the parties to the merger at the time of the merger if a liability or obligation is then outstanding.

Item 3A is the default selection. If the merger effected an amendment to, a restatement of, or an amendment and restatement of the certificate of formation of a surviving filing entity, you must select and complete one of the options shown below. Options 3B and 3C require the submission of the described attachment.

3A. No amendments to the certificate of formation of any surviving nonprofit corporation that is a party to the merger are effected by the merger.

3B. No amendments to the certificate of formation of any surviving nonprofit corporation are being effected by the merger or by the restated certificate of formation of the surviving nonprofit corporation named in the attached restated certificate of formation.

3C. The plan of merger effected an amendment and restatement of the certificate of formation of a surviving nonprofit corporation. The amendments being made and the name of the surviving entity restating its certificate of formation are set forth in the attached restated certificate of formation containing amendments.

3D. The plan of merger effected amendments or changes to the following surviving nonprofit corporation's certificate of formation.

Name of filing entity effecting amendments

Amendment Text Area

4. Organizations Created by Merger

The name, jurisdiction of organization, principal place of business address, and entity description of each domestic or foreign nonprofit corporation to be created pursuant to the plan of merger are set forth below. The certificate of formation of each new domestic nonprofit corporation to be created is being filed with this certificate of merger.

Name of New Organization 1 *Jurisdiction* *Entity Type (See instructions)*

Principal Place of Business Address *City* *State* *Zip Code*

Name of New Organization 2 *Jurisdiction* *Entity Type (See instructions)*

Principal Place of Business Address *City* *State* *Zip Code*

Name of New Organization 3 *Jurisdiction* *Entity Type (See instructions)*

Principal Place of Business Address *City* *State* *Zip*

Approval of the Plan of Merger

The plan of merger has been approved as required by the laws of the jurisdiction of formation of each organization that is a party to the merger and by the governing documents of those organizations.

The approval of the members of _____
Name of domestic nonprofit corporation
 was not required by the provisions of the BOC.

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is accepted and filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect on the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Text Area

Tax Certificate

- Attached hereto is a certificate from the comptroller of public accounts that all taxes under title 2, Tax Code, have been paid by the non-surviving filing entity.
- In lieu of providing the tax certificate, one or more of the surviving, acquiring or newly created organizations will be liable for the payment of the required franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code, or other law applicable to and governing the merging entity, to execute the filing instrument.

Date: _____

Merging Entity Name

Signature and title of authorized person (see instructions)

Printed or typed name of authorized person

Merging Entity Name

Signature and title of authorized person (see instructions)

Printed or typed name of authorized person

Merging Entity Name

Signature and title of authorized person (see instructions)

Printed or typed name of authorized person

Form 19-6

See Tex. Bus. Orgs. Code §§ 10.001–.004 regarding plans of mergers.

Type A Reorganization—Agreement and Plan of Merger

Agreement and Plan of Merger (this “Agreement”) by and between [name of entity A], a Texas [type of entity] (“[abbreviated name A]”), and [name of entity B], a [name of state of organization] [type of entity] (“[abbreviated name B]”).

WHEREAS, [abbreviated name A] is an organization duly organized and validly existing under the laws of the state of Texas, having authorized [type of ownership interest, e.g., stock] consisting of [number] [type of ownership interest], all of which are entitled to vote and of which [number] [type of ownership interest] are issued and outstanding; and

WHEREAS, [abbreviated name B] is an organization duly organized and validly existing under the laws of the [name of state of organization], having authorized [type of ownership interest] consisting of [number] [type of ownership interest], all of which are entitled to vote and of which [number] [type of ownership interest] are issued and outstanding; and

WHEREAS, the [governing authorities] of [abbreviated name A] and [abbreviated name B] deem it advisable that [name of merging organization] merge with and into [name of surviving organization] on the terms and subject to the conditions set forth herein and in accordance with the laws of the state of Texas (the “Merger”) and that the [type of ownership interest] of [name of merging organization] be canceled upon consummation of the Merger as set forth herein; and

WHEREAS, the [governing authorities] of [name of surviving organization] and [name of merging organization] have duly approved and adopted the provisions of this Agreement as the plan of merger required by section 10.001 of the Texas Business Organizations Code (the

“BOC”) [include if applicable: and the provisions of the statute to which the non-BOC entity is subject].

THEREFORE, in consideration of the mutual promises set forth in this Agreement, the parties agree as follows:

Section 1

**Effect of Merger; Manner and Bases of Converting
and Canceling [type of ownership interest]**

A. At the Effective Time (as defined in section 2 below), [name of merging organization] will be merged into [name of surviving organization], the separate corporate existence of [name of merging organization] (except as may be continued by operation of law) will cease, and [name of surviving organization] will continue as the surviving organization, all with the effects provided by applicable law.

Include the following if applicable.

B. [Describe the name and organizational form of each new organization that is to be created by the plan of merger.]

Continue with the following.

C. At the Effective Time, each [type of ownership interest] of [name of merging organization] issued and outstanding immediately before the Effective Time will, by virtue of the Merger and without any action by [name of merging organization] or any other person, be canceled and [describe manner and basis of converting ownership interests of the merging entity into (1) ownership interests, membership interests, obligations, rights to purchase securities, or other securities of one or more of the surviving or new organizations; (2) cash; (3) other

property including ownership interests, membership interests, obligations, rights to purchase securities, or other securities of any other person or entity; or (4) any combination of (1)–(3)].

Section 2

Effective Time

Select one of the following. Include the second option if the parties are required to file a certificate of merger.

The Merger becomes effective as of [time] [A.M./P.M.] central time, [date] (the “Effective Time”).

Or

The Effective Time is when the secretary of state of Texas accepts the certificate of merger or such other later date as the parties specify (the “Effective Time”).

Include the following if applicable.

Section 3

Organizational Documents

A. The certificate of formation of each new domestic nonfiling entity created by the Merger is attached as Exhibit A.

And/Or

B. The governing documents of each new domestic nonfiling entity created by the Merger is attached as Exhibit [A/B].

And/Or

C. The governing documents of each non-BOC organization that is to survive the merger or be created by the merger and that is not organized under the laws of any state or the United

States, or is not required to file with the appropriate governmental authority the certificate of formation under which the entity is organized, is attached as Exhibit [A/B/C].

And/Or

If there is more than one successor, the plan of merger must include (1) the manner and basis of allocating and vesting property of each organization that is a party to the merger among the new or surviving organizations, (2) the name of each surviving or new organization that is primarily obligated for payment of fair market value of an ownership or membership interest of an owner or member of a domestic entity subject to dissenter's rights that is a party to the merger and who complies with the requirements for dissent and appraisal under the Texas Business Organizations Code applicable to the domestic entity, and (3) the manner and basis of allocating liability among the merging parties or otherwise providing for discharge of liabilities and obligations among the new or surviving entities. Tex. Bus. Orgs. Code § 10.003.

D. [Describe the manner and basis of allocating property, the name of each surviving or new organization, and the manner and basis of allocating liability in accordance with section 10.003 of the Texas Business Organizations Code.]

Include any of the following permissive provisions. See Tex. Bus. Orgs. Code § 10.004 addressing permissive provisions in a plan of merger.

E. [Insert amendments to the governing documents of any surviving organization.]

And/Or

F. [Insert provisions related to an interest exchange.]

And/Or

G. [Insert any other provision not required by chapter 10 of the Texas Business Organizations Code.]

Select from the following boilerplate provisions as applicable.

Section 4

Miscellaneous

Select as applicable.

A. *Binding Effect of Agreement.* Nothing in this Agreement, express or implied, is intended to confer on any party, other than the parties hereto and their respective permitted assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, and no person who is not a party to this Agreement may rely on the terms except as otherwise set out. This Agreement (1) constitutes the entire agreement between the parties relating to the subject matter hereof and (2) supersedes all previous understandings and agreements between the parties relating to the subject matter hereof, both oral and written. The terms and conditions of this Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

And/Or

B. *Assignment.* No party to this Agreement may assign its rights or delegate its obligations hereunder without the prior written consent of each party. Any such attempted assignment will be void *ab initio*. Subject to the preceding sentences, this Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

And/Or

C. *Amendment of Agreement.* This Agreement may be amended or modified only by written instrument duly executed by each of the parties hereto.

And/Or

D. *Applicable Law.* This Agreement is made pursuant to, will be construed under, will be enforced by, and will be conclusively deemed for all purposes to have been executed and delivered under the laws of the state of Texas without reference to conflict of laws.

And/Or

E. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which will constitute one instrument.

And/Or

F. *Severability.* If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected thereby, and in lieu of the illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be legal, valid, and enforceable.

And/Or

G. *Notices.* All notices, communications, and deliveries made under this Agreement will be made in writing signed by or on behalf of the party, will specify the section of the Agreement under which it is given or made, and will be delivered personally, by facsimile transmission, by registered or certified mail (return receipt requested), or by any courier service, with postage or other fees prepaid, as follows:

If to [name]:

[Address]

[Fax no.]

Attention: [name]

Repeat as necessary.

Any such notice, communication, or delivery may also be made to any other address or person designated in writing by the party. Addresses may be changed from time to time by written notice to the other party. Any notice, communication, or delivery will be deemed given or made (1) on the date of delivery if delivered in person or by courier service, (2) on transmission by facsimile if receipt is confirmed by telephone, or (3) on the fifth business day after it is mailed by registered or certified mail.

And/Or

H. *Waiver.* No term or provision of this Agreement may be waived or modified unless such waiver or modification is in writing and executed by all the parties hereto. Any waiver by any party hereto of a breach or failure to perform will not constitute a waiver of any subsequent breach or failure.

And/Or

I. *Further Assurances.* The parties agree to take further actions and execute and deliver other documents, certificates, agreements, and other instruments as may be reasonably necessary or desirable to implement transactions contemplated by this Agreement.

And/Or

J. *Section Headings.* The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

And/Or

K. *Gender and Number of Words.* When the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter, and the number of all words includes the singular and the plural.

Remainder of page intentionally left blank. Separate signature page follows.

[Name of surviving organization]

[Name of officer], [title]

[Name of merging organization]

[Name of officer], [title]

Include applicable exhibit(s).

Form 19-7

See Tex. Bus. Orgs. Code § 10.006 regarding short-form mergers.

The parent organization must own at least 90 percent of the outstanding ownership or membership interests of each class and series of the subsidiary organization. Tex. Bus. Orgs. Code § 10.006(a). The subsidiary organization must be a type of organization other than a partnership or “a domestic entity that has in its governing documents the provision required by Section 10.005(d)(1) and of which there are outstanding ownership or membership interests that would be entitled to vote on the merger absent this section.” Tex. Bus. Orgs. Code § 10.006(i). *See also* Tex. Bus. Orgs. Code § 10.005. Partnership mergers are governed by Tex. Bus. Orgs. Code § 10.009.

At least one party to the merger must be a domestic entity. Each other party may be a domestic entity or a nondomestic entity organized in a jurisdiction that permits this form of merger. Tex. Bus. Orgs. Code § 10.006(a)(1). The resulting organization(s) are, postmerger, the parent organization, one or more existing subsidiary organizations, or one or more new organizations. Tex. Bus. Orgs. Code § 10.006(a)(2).

**Articles of Merger
of [name of subsidiary organization]
into [name of parent organization]**

Pursuant to the provisions of section 10.006 of the Texas Business Organizations Code, [name of parent organization] (“Parent Organization”), a [type of business organization] organized under the laws of the state of [Texas/[name of state]] and owning at least 90 percent of all classes and series of the outstanding [stock/membership interests/[other type of ownership interest]] of [name of subsidiary organization] (“Subsidiary Organization”), a [type of business organization] organized under the laws of the state of [Texas/[name of state]], hereby executes the attached articles of merger.

Attached as Exhibit A is a copy of a resolution of [name of parent organization] adopted on [date] in accordance with the laws of its jurisdiction and its constituent documents.

Dated: _____

[Name of parent organization]

[Name of officer], [title]

Attach copy of resolution as Exhibit A. Resolutions approving a merger must describe the basic terms of the merger, the organizations that are parties to the merger, and the organizations that survive the merger. Tex. Bus. Orgs. Code § 10.006(f). If the parent organization does not own all the outstanding ownership or membership interests of each class and each series of each subsidiary organization that is a party to the merger, additional information must be included in the resolution. See Tex. Bus. Orgs. Code § 10.006(g).

Form 19-8

See Tex. Bus. Orgs. Code § 10.006 regarding short-form mergers.

The parent organization must own at least 90 percent of the outstanding ownership or membership interests of each class and series of the subsidiary organization. Tex. Bus. Orgs. Code § 10.006(a). The subsidiary organization must be a type of organization other than a partnership or “a domestic entity that has in its governing documents the provision required by Section 10.005(d)(1) and of which there are outstanding ownership or membership interests that would be entitled to vote on the merger absent this section.” Tex. Bus. Orgs. Code § 10.006(i). *See also* Tex. Bus. Orgs. Code § 10.005. Partnership mergers are governed by Tex. Bus. Orgs. Code § 10.009.

At least one party to the merger must be a domestic entity. Each other party may be a domestic entity or a nondomestic entity organized in a jurisdiction that permits this form of merger. Tex. Bus. Orgs. Code § 10.006(a)(1). The resulting organization(s) are, postmerger, the parent organization, one or more existing subsidiary organizations, or one or more new organizations. Tex. Bus. Orgs. Code § 10.006(a)(2).

**Articles of Merger
of [name of parent organization]
into [name of subsidiary organization]**

Pursuant to the provisions of section 10.006 of the Texas Business Organizations Code (the “BOC”), [name of parent organization] (“Parent Organization”), a [type of business organization] organized under the laws of the state of [Texas/[name of state]], and owning at least 90 percent of all classes and series of outstanding [stock/membership interests/[other type of ownership interest]] of [name of subsidiary organization] (“Subsidiary Organization”), a [type of business organization] organized under the laws of the state of [Texas/[name of state]], hereby executes the following articles of merger.

1. A plan of merger has been adopted in accordance with the provisions of section[s] 10.002 of the BOC [and of [foreign jurisdiction’s code name and section number]] providing for the combination of [name of parent organization] and [name of subsidiary organization], with [name of subsidiary organization] being the surviving organization.

2. Attached as Exhibit A is a copy of a resolution of [name of parent organization] adopted on [date] in accordance with the laws of its jurisdiction and its constituent documents.

3. Attached as Exhibit B is a copy of the plan of merger of [name of parent organization] adopted on [date] in accordance with the laws of its jurisdiction and its constituent documents.

Dated: _____

[Name of parent organization]

[Name of officer], [title]

Attach copy of resolution as Exhibit A and copy of the plan of merger as set forth in section 10.002 of the Texas Business Organizations Code as Exhibit B. Resolutions approving a merger must describe the basic terms of the merger, the organizations that are a party to the merger, and the organizations that survive the merger. Tex. Bus. Orgs. Code § 10.006(f). If the parent organization does not own all the outstanding ownership or membership interests of each class and each series of each subsidiary organization that is a party to the merger, additional information must be included in the resolution. See Tex. Bus. Orgs. Code § 10.006(g).

Form 19-9

Information regarding special meetings for shareholders can be found in Tex. Bus. Orgs. Code § 21.352. Also, refer to Tex. Bus. Orgs. Code § 21.353 for information about notice of meetings and Tex. Bus. Orgs. Code § 21.3531 regarding notice by electronic transmission.

Notice to Shareholders of Special Meeting to Consider Merger

[Date]

[Name of corporation A]

[Address of corporation A]

TO THE SHAREHOLDERS OF [name of corporation A]

[Name and address of shareholder]

Re: Notice of special meeting to consider a merger of [name of corporation A] with [name of corporation B]

Dear Shareholder:

On [date of board approval], the Board of Directors of [name of corporation A] [adopted by unanimous written consent/approved at a meeting of the Board of Directors] a proposal (the "Plan of Merger"), in substantially the form attached hereto as Exhibit A, to merge with [name of corporation B], and directed that the proposal be set before the shareholders for consideration.

On [date of shareholder meeting], at [time of meeting] central time, a special meeting of shareholders will be held at [location of meeting] to consider and vote on the Plan of Merger. [Name of corporation A]'s Board of Directors has fixed the close of business on [record date] as the record date for the determination of shareholders entitled to notice of, and to vote at, the

meeting or any adjournments or postponements of that meeting. Only shareholders of record at the close of business on **[record date]** are entitled to notice of, and to vote at, such meeting.

If approved, the merger would be effective on the filing and effectiveness of the certificate of merger of **[name of corporation A]**, and the merger would be conducted in compliance with the Texas Business Organizations Code (the "BOC"). The shareholders of **[name of corporation A]** have the right of dissent and appraisal as set forth in the BOC, under which the shareholder may obtain a fair value of its ownership interest through an appraisal in compliance with the procedures set forth in the Plan of Merger and chapter 10, subchapter H, of the BOC. A copy of BOC chapter 10, subchapter H, is attached as Exhibit B. Any shareholder who delivers a written notice to perfect its right of dissent and appraisal pursuant to section 10.356(b)(3) of the BOC must provide the notice to the principal executive offices of **[name of corporation A]**, which are located at **[address of principal executive offices of corporation A]**.

Include the following statement if the meeting is held by means of remote communication. Tex. Bus. Orgs. Code § 21.353(c) states that "[i]f a meeting is held by means of remote communication, the notice of the meeting must include information on how to access the list of shareholders entitled to vote at the meeting required by Section 21.372."

[Describe how to access the list of shareholders to vote at the meeting.]

Continue with the following.

By order of the Board of Directors,

[Name of officer], [title]

Attach the plan of merger as Exhibit A and a copy of chapter 10, subchapter H, of the Texas Business Organizations Code as Exhibit B.

Form 20-1

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Conversion of a Corporation Converting to a General
Partnership
(SOS Form 631)**

Form 20-1

Form 631—General Information
(Certificate of Conversion of a Corporation Converting to a General Partnership)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A corporation may convert into a general partnership by adopting a plan of conversion in accordance with section 10.101 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, conversion means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type. As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form should be used when a domestic for-profit or professional corporation is the converting entity and a foreign or domestic general partnership will be the converted entity.

Formation of the Partnership: If a Texas general partnership is formed under a plan of conversion, the existence of the partnership as a partnership begins when the conversion takes effect. The owners or members designated to become the partners under the plan of conversion become partners when the conversion takes effect (BOC § 10.107).

Registration as a Limited Liability Partnership: A Texas general partnership created by conversion may file for registration to become a limited liability partnership by complying with sections 152.803 and 152.804 of the BOC and filing an application for registration with the secretary of state in accordance with section 152.802.

Instructions for Form

- **Converting Entity Information:** The certificate of conversion is filed by the converting entity and should set forth the legal name of the converting entity as part of the certificate. It is recommended that the date of its formation and the file number assigned by the secretary of state be provided in order to facilitate processing of the document.
- **Converted Entity Information:** The entity following the conversion is the converted entity. The certificate of conversion should set forth the legal name of the converted entity and its jurisdiction of formation.
- **Plan of Conversion:** Unless the converting entity opts to complete the Alternative Statements section of this form, a plan of conversion conforming to the requirements of section 10.103 of the BOC should be attached to the certificate of conversion.
- **Alternative Statements in Lieu of Plan:** As an alternative to attaching the complete plan of conversion, the converting entity may opt to certify and complete the alternative statements in the form.
- **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by (1) the laws of the jurisdiction of formation

and (2) the governing documents of the converting entity. Section 21.453 of the BOC sets forth the requirements for approval of the plan of conversion by a Texas for-profit or professional corporation.

- **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a converting Texas filing entity will be shown as “conversion” on the records of the secretary of state.

- **Tax Certificate:** The secretary of state may not accept a certificate of conversion for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that the converting entity is in good standing having no franchise tax reports or payments due. The certificate of account status must be valid through the effective date of filing of the conversion. Please note that the Comptroller issues many different types of certificates of account status. *A certificate of account status for purposes of conversion obtained from the Comptroller’s web site will be accepted only when the converted entity is subject to franchise tax under Texas law.*

A general partnership, other than a limited liability partnership, comprised solely of individuals is not liable for franchise tax. *If the converted entity will not be liable for franchise tax you will need to attach form #05-329, which is obtained directly from a Comptroller of Public Accounts representative.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section of the Comptroller of Public Accounts, Austin, Texas 78744-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact tax.help@cpa.state.tx.us.

In lieu of a tax certificate, the certificate of conversion may provide that the converted entity is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the BOC to act on behalf of the converting entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of conversion filed by a corporation should be signed by an officer of the corporation, but it does not need to be notarized (BOC § 20.001).

However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of conversion converting a Texas for-profit or professional corporation to a general partnership is **\$300**.

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Approval of the Plan of Conversion

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is accepted and filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____
The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

- Attached hereto is a certificate from the comptroller of public accounts that certifies that the converting entity is in good standing for purposes of conversion.
- In lieu of providing the tax certificate, the general partnership as the converted entity is liable for the payment of any franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or type name of authorized person

Form 20-2

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Conversion of a Corporation Converting to a
Limited Liability Company
(SOS Form 632)**

Form 20-2

Form 632—General Information

(Certificate of Conversion of a Corporation Converting to a Limited Liability Company)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. *This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.*

Commentary

A corporation may convert into a limited liability company by adopting a plan of conversion in accordance with section 10.101 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, conversion means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type. As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form should be used when a corporation is the converting entity and the converted entity is a limited liability company.

Instructions for Form

- **Converting Entity Information:** The certificate of conversion is filed by the converting entity and should set forth the legal name of the converting entity and its jurisdiction of organization as part of the certificate. It is recommended that the date of formation and file number, if any, assigned by the secretary of state be provided to facilitate processing of the document.
- **Plan of Conversion/Alternative Statements:** A plan of conversion conforming to the requirements of section 10.103 of the BOC should be attached to the certificate of conversion. As an alternative to attaching the complete plan of conversion, the converting entity may opt to certify and complete the alternative statements in the form.
- **Converted Entity Name:** If the converted entity is a Texas filing entity, the name of the converted entity will be checked for availability in accordance with section 5.053 of the BOC. If the converted entity name is the same as, deceptively similar to, or similar to the name of an existing domestic or foreign filing entity, or any name reservation or name registration filed with the secretary of state, the document cannot be filed. However, if the conflicting entity name is the name of the converting entity and the converting entity is currently in existence with the secretary of state, the converted entity name will be accepted irrespective of the conflict with the entity name in use by the converting entity.
- **Certificate of Formation for the Converted Entity:** The certificate of formation of the converted entity must be filed with the certificate of conversion if the converted entity is a Texas filing entity. If the plan of conversion is attached to the certificate of conversion, the certificate of formation should be included as part of the plan of conversion or as an exhibit to the plan. If the converting entity opts to set forth the alternative statements in lieu of providing the complete plan of conversion, the certificate of formation for the limited liability company must be attached to the certificate of conversion.
 - The certificate of formation of a limited liability company formed under a plan of conversion must include a statement to that effect. In addition, the certificate of formation must provide the

- name, address, date of formation, prior form of organization and the jurisdiction of formation of the converting entity.
- If the certificate of formation of the Texas limited liability company fails to comply with the requirements of sections 3.005 and 3.010 of the BOC, the certificate of conversion cannot be filed.
 - If the converted entity is a foreign limited liability company, the foreign entity must register as a foreign filing entity under chapter 9 of the BOC before the transaction of any business in Texas.
 - **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by (1) the laws of the jurisdiction of formation and (2) the governing documents of the converting entity.
 - Section 21.453 of the BOC sets forth the requirements for approval of the plan of conversion by a Texas for-profit or professional corporation.
 - A foreign entity that is the converting entity must comply with the laws of the jurisdiction of its formation.
 - **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a converting Texas filing entity will be shown as “conversion” and the status of a converted Texas filing entity will be shown as “in existence” on the records of the secretary of state.

- **Tax Certificate:** When a Texas for-profit corporation, professional corporation, or a foreign corporation that has registered under chapter 9 of the BOC is the converting entity, the certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that all taxes under title 2 of the Tax Code have been paid and that the entity is in good standing for the purpose of conversion. Please note that the Comptroller issues many different types of certificates of account status. *Do not attach a certificate or print-out obtained from the Comptroller's web site as this does not meet statutory requirements.* You need to attach form #05-305, which is obtained directly from a Comptroller of Public Accounts representative.

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, of the Texas Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600; toll-free (800) 252-1381; (TDD) (800) 248-4099. You also may contact tax.help@cpa.state.tx.us.

In lieu of the tax certificate, the certificate of conversion may provide that the converted entity is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the code to act on behalf of the converting entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of conversion filed by a corporation should be signed by an officer of the corporation, but it does not need to be notarized (BOC § 20.001).

However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of conversion is **\$300 plus the fee for filing the certificate of formation when the converted entity is a domestic filing entity.**
 - The fee for conversion of a Texas or foreign corporation to a Texas limited liability company is **\$600** (\$300 for the certificate of conversion and \$300 for the certificate of formation for the limited liability company).
 - The fee for conversion of a Texas corporation into a foreign limited liability company is **\$300** for the certificate of conversion. There is no certificate of formation filed on behalf of the foreign entity. However, if the foreign entity is a foreign filing entity transacting business in Texas and is required to register in Texas under chapter 9 of the BOC, the foreign filing entity must register and pay the applicable fee for registration under chapter 9.

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Form 632
(Revised 05/11)

Return in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512 463-5709

Filing Fee: See instructions



This space reserved for office use.

**Certificate of Conversion
 of a
 Corporation Converting
 to a
 Limited Liability Company**

Converting Entity Information

The name of the converting corporation is: _____

The jurisdiction of formation of the corporation is: _____

The date of formation of the corporation is: _____

The file number, if any, issued to the corporation by the secretary of state, is: _____

Plan of Conversion—Alternative Statements

The corporation named above is converting to a limited liability company. The name of the limited liability company is: _____

The limited liability company will be formed under the laws of : _____

The plan of conversion is attached.

If the plan of conversion is not attached, the following statements must be completed.

Instead of attaching the plan of conversion, the corporation certifies to the following statements:

A signed plan of conversion is on file at the principal place of business of the corporation, the converting entity. The address of the principal place of business of the corporation is:

Street or Mailing Address City State Country Zip Code

A signed plan of conversion will be on file after the conversion at the principal place of business of the limited liability company, the converted entity. The address of the principal place of business of the limited liability company is:

Street or Mailing Address City State Country Zip Code

A copy of the plan of conversion will be furnished on written request without cost by the converting entity before the conversion or by the converted entity after the conversion to any owner or member of the converting or converted entity.

Certificate of Formation for the Converted Entity

The converted entity is a Texas limited liability company. The certificate of formation of the Texas limited liability company is attached to this certificate either as an attachment or exhibit to the plan of conversion, or as an attachment or exhibit to this certificate of conversion if the plan has not been attached to the certificate of conversion.

Approval of the Plan of Conversion

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is accepted and filed by the secretary of state.
 - B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
 - C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____
- The following event or fact will cause the document to take effect in the manner described below:
- _____
- _____

Tax Certificate

- Attached hereto is a certificate from the comptroller of public accounts that all taxes under title 2, Tax Code, have been paid by the corporation.
- In lieu of providing the tax certificate, the limited liability company as the converted entity is liable for the payment of any franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: _____

Signature and title of authorized person on behalf of the converting entity

Form 20-3

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Conversion of a Corporation Converting to a
Limited Partnership
(SOS Form 633)**

Form 20-3

Form 633—General Information (Certificate of Conversion of a Corporation Converting to a Limited Partnership)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A corporation may convert into a limited partnership by adopting a plan of conversion in accordance with section 10.101 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, conversion means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type. As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form should be used when a for-profit or professional corporation is the converting entity and the converted entity is a limited partnership.

Registration as a Limited Liability Partnership: A Texas limited partnership created by conversion may file for registration to become a limited liability partnership by complying with sections 152.803 and 152.804 of the BOC and filing an application for registration with the secretary of state in accordance with section 152.802.

Instructions for Form

- **Converting Entity Information:** The certificate of conversion is filed by the converting entity and should set forth the legal name of the converting entity and its jurisdiction of organization as part of the certificate. It is recommended that the date of formation and file number, if any, assigned by the secretary of state be provided to facilitate processing of the document.
- **Converted Entity Information:** The entity following the conversion is the converted entity. The certificate of conversion should set forth the legal name of the converted entity and its jurisdiction of formation.
- **Converted Entity Name:** If the converted entity is a Texas filing entity, the name of the converted entity will be checked for availability in accordance with section 5.053 of the BOC. If the converted entity name is the same as, deceptively similar to, or similar to the name of an existing domestic or foreign filing entity, or any name reservation or name registration filed with the secretary of state, the document cannot be filed. However, if the conflicting entity name is the name of the converting entity and the converting entity is currently in existence with the secretary of state, the converted entity name will be accepted irrespective of the conflict with the entity name in use by the converting entity.
- **Plan of Conversion:** Unless the converting entity opts to complete the Alternative Statements section of this form, a plan of conversion conforming to the requirements of section 10.103 of the BOC should be attached to the certificate of conversion.
- **Alternative Statements in Lieu of Plan:** As an alternative to attaching the complete plan of conversion, the converting entity may opt to certify and complete the alternative statements in the form.

- **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by (1) the laws of the jurisdiction of formation and (2) the governing documents of the converting entity.
 - Section 21.453 of the BOC sets forth the requirements for approval of the plan of conversion by a Texas for-profit or professional corporation.
 - A foreign entity that is the converting entity must comply with the laws of the jurisdiction of its formation.
- **Certificate of Formation for the Converted Entity:** The certificate of formation of the converted entity must be filed with the certificate of conversion if the converted entity is a Texas filing entity. If the plan of conversion is attached to the certificate of conversion, the certificate of formation should be included as part of the plan of conversion. If the converting entity opts to set forth the alternate statements in lieu of providing the complete plan of conversion, the certificate of formation for the limited partnership must be attached to the certificate of conversion.
 - The certificate of formation of a limited partnership formed under a plan of conversion must include a statement to that effect. In addition, the certificate of formation must provide the name, address, date of formation, prior form of organization and the jurisdiction of formation of the converting entity.
 - If the certificate of formation of the Texas limited partnership fails to comply with the requirements of sections 3.005 and 3.011 of the BOC, the certificate of conversion cannot be filed.
 - If the converted entity is a foreign limited partnership, the foreign entity must register as a foreign filing entity under chapter 9 of the BOC before the transaction of any business in Texas.
- **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a converting Texas filing entity will be shown as "conversion" and the status of a converted Texas filing entity will be shown as "in existence" on the records of the secretary of state.

- **Tax Certificate:** The secretary of state may not accept a certificate of conversion for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that the converting entity is in good standing having no franchise tax reports or payments due. The certificate of account status must be valid through the effective date of filing of the conversion. Please note that the Comptroller issues many different types of certificates of account status. *A certificate of account status for purposes of conversion obtained from the Comptroller's web site will be accepted only when the converted entity is subject to franchise tax under Texas law.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section of the Comptroller of Public Accounts, Austin, Texas 78744-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact tax.help@cpa.state.tx.us.

In lieu of a tax certificate, the certificate of conversion may provide that the converted entity is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the BOC to act on behalf of the converting entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of conversion filed by a corporation should be signed by an officer of the corporation, but it does not need to be notarized (BOC § 20.001).

However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of conversion is **\$300 plus the fee for filing the certificate of formation when the converted entity is a domestic filing entity.**
 - The fee for conversion of a Texas or foreign corporation to a Texas limited partnership is **\$1050** (\$300 for the certificate of conversion and \$750 for the certificate of formation for the limited partnership).
 - The fee for conversion of a Texas corporation into a foreign limited partnership is **\$300** for the certificate of conversion. There is no certificate of formation filed on behalf of the foreign entity. However, if the foreign entity is a foreign filing entity transacting business in Texas and required to register in Texas under chapter 9 of the BOC, the foreign filing entity must register and pay the applicable fee for registration under chapter 9.

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

<p>Form 633 (Revised 05/11)</p> <p>Return in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX: 512 463-5709</p> <p>Filing Fee: See instructions</p>	<p style="text-align: right;">This space reserved for office use.</p> <div style="text-align: center;">  <p>Certificate of Conversion of a Corporation Converting to a Limited Partnership</p> </div>
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Converting Entity Information

The name of the converting corporation is:

The jurisdiction of formation of the corporation is: _____

The date of formation of the corporation is: _____

The file number, if any, issued to the corporation by the secretary of state is: _____

Converted Entity Information

The corporation named above is converting to a limited partnership. The name of the limited partnership is:

The limited partnership will be formed under the laws of: _____

Plan of Conversion

The plan of conversion is attached.

If the plan of conversion is not attached, the following section must be completed.

Alternative Statements

In lieu of providing the plan of conversion, the converting corporation certifies that:

1. A signed plan of conversion is on file at the principal place of business of the corporation, the converting entity. The address of the principal place of business of the corporation is:

Street or Mailing Address *City* *State* *Country* *Zip Code*

2. A signed plan of conversion will be on file after the conversion at the principal place of business of the limited partnership, the converted entity. The address of the principal place of business of the limited partnership is:

Street or Mailing Address *City* *State* *Country* *Zip Code*

3. A copy of the plan of conversion will be furnished on written request without cost by the converting entity before the conversion or by the converted entity after the conversion to any owner or member of the converting or converted entity.

Certificate of Formation for the Converted Entity

If the converted entity is a Texas limited partnership, the certificate of formation of the Texas limited partnership must be attached to this certificate either as an attachment or exhibit to the plan of conversion, or as an attachment or exhibit to this certificate of conversion if the plan has not been attached to the certificate of conversion.

Approval of the Plan of Conversion

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is accepted and filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____
The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

- Attached hereto is a certificate from the comptroller of public accounts that certifies that the converting entity is in good standing for purposes of conversion.
- In lieu of providing the tax certificate, the limited partnership as the converted entity is liable for the payment of any franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code, or other law applicable to and governing the converting entity, to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person

Form 20-4

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Conversion of a Corporation Converting to a Real
Estate Investment Trust
(SOS Form 634)**

Form 20-4

Form 634—General Information

(Certificate of Conversion of a Corporation Converting to a Real Estate Investment Trust)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A corporation may convert into a real estate investment trust (hereinafter REIT) by adopting a plan of conversion in accordance with section 10.101 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, conversion means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type. As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form should be used when a domestic for-profit or professional corporation is the converting entity and the converted entity is a domestic or foreign REIT.

Formation of the REIT: If a Texas REIT is formed under a plan of conversion, the certificate of conversion, along with the certificate of formation of the REIT, must also be filed with the county clerk of the county in Texas in which the principal place of business of the REIT is located (BOC § 10.155(c)).

Instructions for Form

- **Converting Entity Information:** The certificate of conversion is filed by the converting entity and should set forth the legal name of the converting entity as part of the certificate. It is recommended that the date of formation and file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Plan of Conversion/Alternative Statements:** A plan of conversion conforming to the requirements of section 10.103 of the BOC should be attached to the certificate of conversion. As an alternative to attaching the complete plan of conversion, the converting entity may opt to certify and complete the alternative statements in the form.
- **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity. Section 21.453 of the BOC sets forth the requirements for approval of the plan of conversion by a Texas for-profit or professional corporation.
- **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a

statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a converting Texas filing entity will be shown as "conversion" on the records of the secretary of state.

- **Tax Certificate:** When a Texas for-profit corporation or a professional corporation is the converting entity, the certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that all taxes under title 2 of the Tax Code have been paid and that the entity is in good standing for the purpose of conversion. Please note that the Comptroller issues many different types of certificates of account status. *Do not attach a certificate or print-out obtained from the Comptroller's web site as this does not meet statutory requirements.* You need to attach form #05-305, which is obtained directly from a Comptroller of Public Accounts representative.

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600; toll-free (800) 252-1381; (TDD) (800) 248-4099. You also may contact *tax.help@cpa.state.tx.us*.

In lieu of the tax certificate, the certificate of conversion may provide that the converted entity is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the BOC to act on behalf of the converting entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of conversion filed by a corporation should be signed by an officer of the corporation, but it does not need to be notarized (BOC § 20.001).

However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of conversion of a corporation into a REIT is **\$300**.

Fees may be paid by personal checks, money orders, LegalEase debit cards or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax,

credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

<p>Form 634 (Revised 05/11)</p> <p>Return in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX: 512 463-5709</p> <p>Filing Fee: \$300</p>	<p style="text-align: right;">This space reserved for office use.</p> <div style="text-align: center;">  <p>Certificate of Conversion of a Corporation Converting to a Real Estate Investment Trust</p> </div>
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Converting Entity Information

The name of the converting corporation is: _____

The jurisdiction of formation of the corporation is Texas.

The date of formation of the corporation is: _____

The file number issued to the corporation by the secretary of state is: _____

Plan of Conversion—Alternative Statements

The corporation named above is converting to a real estate investment trust. The name of the real estate investment trust is: _____

The real estate investment trust will be formed under the laws of: _____

The plan of conversion is attached.

If the plan of conversion is not attached, the following statements must be completed.

Instead of attaching the plan of conversion, the corporation certifies to the following statements:
A signed plan of conversion is on file at the principal place of business of the corporation, the converting entity. The address of the principal place of business of the corporation is:

<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>
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A signed plan of conversion will be on file after the conversion at the principal place of business of the real estate investment trust, the converted entity. The address of the principal place of business of the real estate investment trust is:

<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>
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A copy of the plan of conversion will be furnished on written request without cost by the converting entity before the conversion or by the converted entity after the conversion to any owner or member of the converting or converted entity.

Approval of the Plan of Conversion

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

Effectiveness of Filing (Select either A, B, or C.)

A. This document becomes effective when the document is accepted and filed by the secretary of state.

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

Attached hereto is a certificate from the comptroller of public accounts that all taxes under title 2, Tax Code, have been paid by the corporation.

In lieu of providing the tax certificate, the real estate investment trust as the converted entity is liable for the payment of any franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: _____

Signature and title of authorized person on behalf of the converting entity

Form 20-5

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Conversion of a Limited Liability Company
Converting to a General Partnership
(SOS Form 635)**

Form 20-5

Form 635—General Information

(Certificate of Conversion of a Limited Liability Company Converting to a General Partnership)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A limited liability company may convert into a general partnership by adopting a plan of conversion in accordance with section 10.101 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, conversion means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type. As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form should be used when a domestic limited liability company is the converting entity and a foreign or domestic general partnership will be the converted entity.

Formation of the Partnership: If a Texas general partnership is formed under a plan of conversion, the existence of the partnership as a partnership begins when the conversion takes effect. The owners or members designated to become the partners under the plan of conversion become partners when the conversion takes effect (BOC § 10.107).

Registration as a Limited Liability Partnership: A Texas general partnership created by conversion may file for registration to become a limited liability partnership by complying with sections 152.803 and 152.804 of the BOC and filing an application for registration with the secretary of state in accordance with section 152.802.

Instructions for Form

- **Converting Entity Information:** The certificate of conversion is filed by the converting entity and should set forth the legal name of the converting entity as part of the certificate. It is recommended that the date of its formation and the file number assigned by the secretary of state be provided in order to facilitate processing of the document.
- **Converted Entity Information:** The entity following the conversion is the converted entity. The certificate of conversion should set forth the legal name of the converted entity and its jurisdiction of formation.
- **Plan of Conversion:** Unless the converting entity opts to complete the Alternative Statements section of this form, a plan of conversion conforming to the requirements of section 10.103 of the BOC should be attached to the certificate of conversion.
- **Alternative Statements in Lieu of Plan:** As an alternative to attaching the complete plan of conversion, the converting entity may opt to certify and complete the alternative statements in the form.
- **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by (1) the laws of the jurisdiction of formation

and (2) the governing documents of the converting entity. Section 101.356(c) of the BOC sets forth the requirements for approval of the plan of conversion by a Texas limited liability company.

- **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a converting Texas filing entity will be shown as “conversion” on the records of the secretary of state.

- **Tax Certificate:** The secretary of state may not accept a certificate of conversion for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that the converting entity is in good standing having no franchise tax reports or payments due. The certificate of account status must be valid through the effective date of filing of the conversion. Please note that the Comptroller issues many different types of certificates of account status. *A certificate of account status for purposes of conversion obtained from the Comptroller’s web site will be accepted only when the converted entity is subject to franchise tax under Texas law.*

A general partnership, other than a limited liability partnership, comprised solely of individuals is not liable for franchise tax. *If the converted entity will not be liable for franchise tax you will need to attach form #05-329, which is obtained directly from a Comptroller of Public Accounts representative.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section of the Comptroller of Public Accounts, Austin, Texas 78744-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact tax.help@cpa.state.tx.us.

In lieu of a tax certificate, the certificate of conversion may provide that the converted entity is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the BOC to act on behalf of the converting entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of conversion filed by a limited liability company should be signed by an authorized manager if the company has managers. If the company does not have managers and is managed by its members, an authorized managing-member must sign the certificate of conversion.

The certificate of conversion need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of conversion converting a Texas limited liability company to a general partnership is **\$300**.

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Form 635
(Revised 05/11)

Return in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512 463-5709

Filing Fee: \$300



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**Certificate of Conversion
 of a
 Limited Liability Company
 Converting to a
 General Partnership**

Converting Entity Information

The name of the converting limited liability company is:

The jurisdiction of formation of the limited liability company is Texas.

The date of formation of the limited liability company is: _____

The file number issued to the limited liability company by the secretary of state is: _____

Converted Entity Information

The limited liability company named above is converting to a general partnership. The name of the general partnership is:

The general partnership will be formed under the laws of: _____

Plan of Conversion

The plan of conversion is attached.

If the plan of conversion is not attached, the following section must be completed.

Alternative Statements

In lieu of providing the plan of conversion, the converting corporation certifies that:

1. A signed plan of conversion is on file at the principal place of business of the limited liability company, the converting entity. The address of the principal place of business of the limited liability company is:

Street or Mailing Address City State Country Zip Code

2. A signed plan of conversion will be on file after the conversion at the principal place of business of the general partnership, the converted entity. The address of the principal place of business of the general partnership is:

Street or Mailing Address City State Country Zip Code

3. A copy of the plan of conversion will be furnished on written request without cost by the converting entity before the conversion or by the converted entity after the conversion to any owner or member of the converting or converted entity.

Approval of the Plan of Conversion

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

Effectiveness of Filing (Select either A, B, or C.)

A. This document becomes effective when the document is accepted and filed by the secretary of state.

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

Attached hereto is a certificate from the comptroller of public accounts that certifies that the converting entity is in good standing for purposes of conversion.

In lieu of providing the tax certificate, the general partnership as the converted entity is liable for the payment of any franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person

Form 20-6

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Conversion of a Limited Liability Company
Converting to a Corporation
(SOS Form 636)**

Form 20-6**Form 636—General Information****(Certificate of Conversion of a Limited Liability Company Converting to a Corporation)**

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A limited liability company may convert into a corporation by adopting a plan of conversion in accordance with section 10.101 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, conversion means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type. As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form should be used when a limited liability company is the converting entity and the converted entity is a for-profit corporation, professional corporation or nonprofit corporation.

Instructions for Form

- **Converting Entity Information:** The certificate of conversion is filed by the converting entity and should set forth the legal name of the converting entity and its jurisdiction of organization as part of the certificate. It is recommended that the date of formation and file number, if any, assigned by the secretary of state be provided to facilitate processing of the document.
- **Plan of Conversion/Alternative Statements:** A plan of conversion conforming to the requirements of section 10.103 of the BOC should be attached to the certificate of conversion. As an alternative to attaching the complete plan of conversion, the converting entity may opt to certify and complete the alternative statements in the form.
- **Converted Entity Name:** If the converted entity is a Texas filing entity, the name of the converted entity will be checked for availability in accordance with section 5.053 of the BOC. If the converted entity name is the same as, deceptively similar to, or similar to the name of an existing domestic or foreign filing entity, or any name reservation or name registration filed with the secretary of state, the document cannot be filed. However, if the conflicting entity name is the name of the converting entity and the converting entity is currently in existence with the secretary of state, the converted entity name will be accepted irrespective of the conflict with the entity name in use by the converting entity.
- **Certificate of Formation for the Converted Entity:** The certificate of formation of the converted entity must be filed with the certificate of conversion if the converted entity is a Texas filing entity. If the plan of conversion is attached to the certificate of conversion, the certificate of formation should be included as part of the plan of conversion or as an exhibit to the plan. If the converting entity opts to set forth the alternative statements in lieu of providing the complete plan of conversion, the certificate of formation for the corporation must be attached to the certificate of conversion.
 - The certificate of formation of a corporation formed under a plan of conversion must include a statement to that effect. In addition, the certificate of formation must provide the name, address,

date of formation, prior form of organization and the jurisdiction of formation of the converting entity.

- If the certificate of formation of the Texas corporation fails to comply with the applicable provisions of chapter 3 of the BOC, the certificate of conversion cannot be filed.
- If the converted entity is a foreign corporation, the foreign entity must register as a foreign filing entity under chapter 9 of the BOC before the transaction of any business in Texas.
- **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by (1) the laws of the jurisdiction of formation and (2) the governing documents of the converting entity.
 - Section 101.356(c) of the BOC sets forth the requirements for approval of the plan of conversion by a Texas limited liability company.
 - A foreign entity that is the converting entity must comply with the laws of the jurisdiction of its formation.
- **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a converting Texas filing entity will be shown as “conversion” and the status of a converted Texas filing entity will be shown as “in existence” on the records of the secretary of state.

- **Tax Certificate:** When a Texas limited liability company, or a foreign limited liability company that has registered under chapter 9 of the BOC is the converting entity, the certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that all taxes under title 2 of the Tax Code have been paid and that the entity is in good standing for the purpose of conversion. Please note that the Comptroller issues many different types of certificates of account status. *Do not attach a certificate or print-out obtained from the Comptroller’s web site as this does not meet statutory requirements.* You need to attach form #05-305, which is obtained directly from a Comptroller of Public Accounts representative.

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, of the Texas Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600; toll-free (800) 252-1381; (TDD) (800) 248-4099. You also may contact tax.help@cpa.state.tx.us.

In lieu of the tax certificate, the certificate of conversion may provide that the converted entity is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the BOC to act on behalf of the converting entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of conversion filed by a limited liability company should be signed by an authorized manager if the company has managers. If the company does not have managers and is managed by its members, an authorized managing-member must sign the certificate of conversion.

The certificate of conversion need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of conversion is **\$300 plus the fee for filing the certificate of formation when the converted entity is a domestic filing entity.**
 - The fee for conversion of a Texas or foreign limited liability company to either a Texas for-profit corporation or to a professional corporation is **\$600** (\$300 for the certificate of conversion and \$300 for the certificate of formation for the corporation).
 - The fee for conversion of a Texas or foreign limited liability company to a Texas nonprofit corporation is **\$325** (\$300 for the certificate of conversion and \$25 for the certificate of formation for the nonprofit corporation).
 - The fee for conversion of a Texas limited liability company into a foreign corporation is **\$300** for the certificate of conversion. There is no certificate of formation filed on behalf of the foreign entity. However, if the foreign entity is a foreign filing entity transacting business in Texas and is required to register in Texas under chapter 9 of the BOC, the foreign filing entity must register and pay the applicable fee for registration under chapter 9.

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Form 636
(Revised 05/11)

Return in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512 463-5709

Filing Fee: See Instructions



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**Certificate of Conversion
of a
Limited Liability Company
Converting
to a
Corporation**

Converting Entity Information

The name of the converting limited liability company is:

The jurisdiction of formation of the limited liability company is : _____

The date of formation of the limited liability company is: _____

The file number, if any, issued to the limited liability company by the secretary of state is: _____

Plan of Conversion—Alternative Statements

The limited liability company named above is converting to a: for-profit corporation
 professional corporation nonprofit corporation. The name of the corporation is:

The corporation will be formed under the laws of : _____

The plan of conversion is attached.

If the plan of conversion is not attached, the following statements must be completed.

Instead of attaching the plan of conversion, the limited liability company certifies to the following statements:

A signed plan of conversion is on file at the principal place of business of the limited liability company, the converting entity. The address of the principal place of business of the limited liability company is:

Street or Mailing Address City State Country Zip Code

A signed plan of conversion will be on file after the conversion at the principal place of business of the corporation, the converted entity. The address of the principal place of business of the corporation is:

Street or Mailing Address City State Country Zip Code

A copy of the plan of conversion will be furnished on written request without cost by the converting

entity before the conversion or by the converted entity after the conversion to any owner or member of the converting or converted entity.

Certificate of Formation for the Converted Entity

The converted entity is a Texas corporation. The certificate of formation of the Texas corporation is attached to this certificate either as an attachment or exhibit to the plan of conversion, or as an attachment or exhibit to this certificate of conversion if the plan has not been attached to the certificate of conversion.

Approval of the Plan of Conversion

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is accepted and filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____
The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

- Attached hereto is a certificate from the comptroller of public accounts that all taxes under title 2, Tax Code, have been paid by the limited liability company.
- In lieu of providing the tax certificate, the corporation as the converted entity is liable for the payment of any franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: _____

Signature and title of authorized person on behalf of the converting entity

Form 20-7

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Conversion of a Limited Liability Company
Converting to a Limited Partnership
(SOS Form 637)**

Form 20-7

Form 637—General Information (Certificate of Conversion of a Limited Liability Company Converting to a Limited Partnership)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A limited liability company may convert into a limited partnership by adopting a plan of conversion in accordance with section 10.101 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, conversion means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type. As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form should be used when a limited liability company is the converting entity and the converted entity is a limited partnership.

Registration as a Limited Liability Partnership: A Texas limited partnership created by conversion may file for registration to become a limited liability partnership by complying with sections 152.803 and 152.804 of the BOC and filing an application for registration with the secretary of state in accordance with section 152.802 of the BOC.

Instructions for Form

- **Converting Entity Information:** The certificate of conversion is filed by the converting entity and should set forth the legal name of the converting entity and its jurisdiction of organization as part of the certificate. It is recommended that the date of formation and file number, if any, assigned by the secretary of state be provided to facilitate processing of the document.
- **Converted Entity Information:** The entity following the conversion is the converted entity. The certificate of conversion should set forth the legal name of the converted entity and its jurisdiction of formation.
- **Converted Entity Name:** If the converted entity is a Texas filing entity, the name of the converted entity will be checked for availability in accordance with section 5.053 of the BOC. If the converted entity name is the same as, deceptively similar to, or similar to the name of an existing domestic or foreign filing entity, or any name reservation or name registration filed with the secretary of state, the document cannot be filed. However, if the conflicting entity name is the name of the converting entity and the converting entity is currently in existence with the secretary of state, the converted entity name will be accepted irrespective of the conflict with the entity name in use by the converting entity.
- **Plan of Conversion:** Unless the converting entity opts to complete the Alternative Statements section of this form, a plan of conversion conforming to the requirements of section 10.103 of the BOC should be attached to the certificate of conversion.
- **Alternative Statements in Lieu of Plan:** As an alternative to attaching the complete plan of conversion, the converting entity may opt to certify and complete the alternative statements in the form.
- **Certificate of Formation for the Converted Entity:** The certificate of formation of the converted entity must be filed with the certificate of conversion if the converted entity is a Texas filing entity.

If the plan of conversion is attached to the certificate of conversion, the certificate of formation should be included as part of the plan of conversion. If the converting entity opts to set forth the alternate statements in lieu of providing the complete plan of conversion, the certificate of formation for the limited partnership must be attached to the certificate of conversion.

- The certificate of formation of a limited partnership formed under a plan of conversion must include a statement to that effect. In addition, the certificate of formation must provide the name, address, date of formation, prior form of organization and the jurisdiction of formation of the converting entity.
- If the certificate of formation of the Texas limited partnership fails to comply with the requirements of sections 3.005 and 3.011 of the BOC, the certificate of conversion cannot be filed.
- If the converted entity is a foreign limited partnership, the foreign entity must register as a foreign filing entity under chapter 9 of the BOC before the transaction of any business in Texas.
- **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by (1) the laws of the jurisdiction of formation and (2) the governing documents of the converting entity.
 - 101.356(c) of the BOC sets forth the requirements for approval of the plan of conversion by a Texas limited liability company.
 - A foreign entity that is the converting entity must comply with the laws of the jurisdiction of its formation.
- **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a converting Texas filing entity will be shown as “conversion” and the status of a converted Texas filing entity will be shown as “in existence” on the records of the secretary of state.

- **Tax Certificate:** The secretary of state may not accept a certificate of conversion for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that the converting entity is in good standing having no franchise tax reports or payments due. The certificate of account status must be valid through the effective date of filing of the conversion. Please note that the Comptroller issues many different types of certificates of account status. *A certificate of account status for purposes of conversion obtained from the Comptroller’s web site will be accepted only when the converted entity is subject to franchise tax under Texas law.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section of the Comptroller of Public Accounts, Austin, Texas 78744-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact tax.help@cpa.state.tx.us.

In lieu of a tax certificate, the certificate of conversion may provide that the converted entity is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the BOC to act on behalf of the converting entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of conversion filed by a limited liability company should be signed by an authorized manager if the company has managers. If the company does not have managers and is managed by its members, an authorized managing-member must sign the certificate of conversion.

The certificate of conversion need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of conversion is **\$300 plus the fee for filing the certificate of formation when the converted entity is a domestic filing entity.**
 - The fee for conversion of a Texas or foreign limited liability company to a Texas limited partnership is **\$1050** (\$300 for the certificate of conversion and \$750 for the certificate of formation for the limited partnership).
 - The fee for conversion of a Texas limited liability company into a foreign limited partnership is **\$300** for the certificate of conversion. There is no certificate of formation filed on behalf of the foreign entity. However, if the foreign entity is a foreign filing entity transacting business in Texas and required to register in Texas under chapter 9 of the BOC, the foreign filing entity must register and pay the applicable fee for registration under chapter 9.

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

<p>Form 637 (Revised 05/11)</p> <p>Return in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX: 512 463-5709</p> <p>Filing Fee: See instructions</p>	<p style="text-align: right;">This space reserved for office use.</p> <div style="text-align: center;">  <p>Certificate of Conversion of a Limited Liability Company Converting to a Limited Partnership</p> </div>
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Converting Entity Information

The name of the converting limited liability company is: _____

The jurisdiction of formation of the limited liability company is: _____

The date of formation of the limited liability company is: _____

The file number, if any, issued to the company by the secretary of state is: _____

Converted Entity Information

The limited liability company named above is converting to a limited partnership. The name of the limited partnership is: _____

The limited partnership will be formed under the laws of: _____

Plan of Conversion

The plan of conversion is attached.

If the plan of conversion is not attached, the following section must be completed.

Alternative Statements

In lieu of providing the plan of conversion, the converting limited liability company certifies that:

1. A signed plan of conversion is on file at the principal place of business of the limited liability company, the converting entity. The address of the principal place of business of the limited liability company is:

Street or Mailing Address *City* *State* *Country* *Zip Code*

2. A signed plan of conversion will be on file after the conversion at the principal place of business of the limited partnership, the converted entity. The address of the principal place of business of the limited partnership is:

Street or Mailing Address *City* *State* *Country* *Zip Code*

3. A copy of the plan of conversion will be furnished on written request without cost by the converting entity before the conversion or by the converted entity after the conversion to any owner or member of the converting or converted entity.

Certificate of Formation for the Converted Entity

If the converted entity is a Texas limited partnership, the certificate of formation of the Texas limited partnership must be attached to this certificate either as an attachment or exhibit to the plan of conversion, or as an attachment or exhibit to this certificate of conversion if the plan has not been attached to the certificate of conversion.

Approval of the Plan of Conversion

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is accepted and filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____
The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

- Attached hereto is a certificate from the comptroller of public accounts that certifies that the converting entity is in good standing for purposes of conversion.
- In lieu of providing the tax certificate, the limited partnership as the converted entity is liable for the payment of any franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code, or other law applicable to and governing the converting entity, to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person

Form 20-8

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Conversion of a Limited Liability Company
Converting to a Real Estate Investment Trust
(SOS Form 638)**

Form 20-8
Form 638—General Information
(Certificate of Conversion of a Limited Liability Company Converting to a
Real Estate Investment Trust)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A limited liability company may convert into a real estate investment trust (hereinafter REIT) by adopting a plan of conversion in accordance with section 10.101 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, conversion means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type. As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form should be used when a domestic limited liability company is the converting entity and the converted entity is a domestic or foreign REIT.

Formation of the REIT: If a Texas REIT is formed under a plan of conversion, the certificate of conversion, along with the certificate of formation of the REIT, must also be filed with the county clerk of the county in Texas in which the principal place of business of the REIT is located (BOC § 10.155(c)).

Instructions for Form

- **Converting Entity Information:** The certificate of conversion is filed by the converting entity and should set forth the legal name of the converting entity as part of the certificate. It is recommended that the date of formation and file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Plan of Conversion/Alternative Statements:** A plan of conversion conforming to the requirements of section 10.103 of the BOC should be attached to the certificate of conversion. As an alternative to attaching the complete plan of conversion, the converting entity may opt to certify and complete the alternative statements in the form.
- **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity. Section 101.356(c) of the BOC sets forth the requirements for approval of the plan of conversion by a Texas limited liability company.
- **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a

statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a converting Texas filing entity will be shown as "conversion" on the records of the secretary of state.

- **Tax Certificate:** When a Texas limited liability company is the converting entity, the certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that all taxes under title 2 of the Tax Code have been paid and that the entity is in good standing for the purpose of conversion. Please note that the Comptroller issues many different types of certificates of account status. *Do not attach a certificate or print-out obtained from the Comptroller's web site as this does not meet statutory requirements.* You need to attach form #05-305, which is obtained directly from a Comptroller of Public Accounts representative.

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600; toll-free (800) 252-1381; (TDD) (800) 248-4099. You also may contact tax.help@cpa.state.tx.us.

In lieu of the tax certificate, the certificate of conversion may provide that the converted entity is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the BOC to act on behalf of the converting entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of conversion filed by a limited liability company should be signed by an authorized manager if the company has managers. If the company does not have managers and is managed by its members, an authorized managing-member must sign the certificate of conversion.

The certificate of conversion need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of conversion of a limited liability company into a REIT is **\$300**.

Fees may be paid by personal checks, money orders, LegalEase debit cards or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl

Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Form 638
(Revised 05/11)

Return in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512 463-5709

Filing Fee: \$300



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**Certificate of Conversion
of a
Limited Liability Company
Converting
to a
Real Estate Investment Trust**

Converting Entity Information

The name of the converting limited liability company is:

The jurisdiction of formation of the limited liability company is Texas.

The date of formation of the limited liability company is: _____

The file number issued to the limited liability company by the secretary of state is: _____

Plan of Conversion—Alternative Statements

The limited liability company named above is converting to a real estate investment trust. The name of the real estate investment trust is:

The real estate investment trust will be formed under the laws of: _____

The plan of conversion is attached.

If the plan of conversion is not attached, the following statements must be completed.

Instead of attaching the plan of conversion, the limited liability company certifies to the following statements:

A signed plan of conversion is on file at the principal place of business of the limited liability company, the converting entity. The address of the principal place of business of the limited liability company is:

Street or Mailing Address *City* *State* *Country* *Zip Code*

A signed plan of conversion will be on file after the conversion at the principal place of business of the real estate investment trust, the converted entity. The address of the principal place of business of the real estate investment trust is:

Street or Mailing Address *City* *State* *Country* *Zip Code*

A copy of the plan of conversion will be furnished on written request without cost by the converting entity before the conversion or by the converted entity after the conversion to any owner or member of the converting or converted entity.

Approval of the Plan of Conversion

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

Effectiveness of Filing (Select either A, B, or C.)

A. This document becomes effective when the document is accepted and filed by the secretary of state.

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

Attached hereto is a certificate from the comptroller of public accounts that all taxes under title 2, Tax Code, have been paid by the limited liability company.

In lieu of providing the tax certificate, the real estate investment trust as the converted entity is liable for the payment of any franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: _____

Signature and title of authorized person on behalf of the converting entity

Form 20-9

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Conversion of a Limited Partnership Converting to a
General Partnership
(SOS Form 641)**

Form 20-9
Form 641—General Information
(Certificate of Conversion of a Limited Partnership Converting to a General Partnership)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A limited partnership may convert into a general partnership by adopting a plan of conversion in accordance with section 10.101 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, conversion means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type. As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form should be used when a domestic limited partnership is the converting entity and a foreign or domestic general partnership will be the converted entity.

Formation of the Partnership: If a Texas general partnership is formed under a plan of conversion, the existence of the partnership as a partnership begins when the conversion takes effect. The owners or members designated to become the partners under the plan of conversion become partners when the conversion takes effect (BOC § 10.107).

Withdrawal of Registration as a Limited Liability Partnership: On conversion, a limited partnership that has registered as a limited liability partnership should file a withdrawal notice to terminate the status of the partnership as a limited liability partnership (BOC § 152.802(f)).

Registration as a Limited Liability Partnership: A Texas general partnership created by conversion may file for registration to become a limited liability partnership by complying with sections 152.803 and 152.804 of the BOC and filing an application for registration with the secretary of state in accordance with section 152.802.

Instructions for Form

- **Converting Entity Information:** The certificate of conversion is filed by the converting entity and should set forth the legal name of the converting entity, its organizational form, and jurisdiction of formation as part of the certificate. It is recommended that the date of its formation and the file number assigned by the secretary of state be provided in order to facilitate processing of the document.
- **Converted Entity Information:** The entity following the conversion is the converted entity. The certificate of conversion should set forth the legal name of the converted entity and its jurisdiction of formation.
- **Plan of Conversion:** Unless the converting entity opts to complete the Alternative Statements section of this form, a plan of conversion conforming to the requirements of section 10.103 of the BOC should be attached to the certificate of conversion.

- **Alternative Statements in Lieu of Plan:** As an alternative to attaching the complete plan of conversion, the converting entity may opt to certify and complete the alternative statements in the form.
- **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by (1) the laws of the jurisdiction of formation and (2) the governing documents of the converting entity. A domestic limited partnership that is converting must approve the plan of conversion in the manner provided in its partnership agreement (BOC § 10.107(c)).
- **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a converting Texas filing entity will be shown as “conversion” on the records of the secretary of state.

- **Tax Certificate:** The secretary of state may not accept a certificate of conversion for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that the converting entity is in good standing having no franchise tax reports or payments due. The certificate of account status must be valid through the effective date of filing of the conversion. Please note that the Comptroller issues many different types of certificates of account status. *A certificate of account status for purposes of conversion obtained from the Comptroller’s web site will be accepted only when the converted entity is subject to franchise tax under Texas law.*

A general partnership, other than a limited liability partnership, comprised solely of individuals is not liable for franchise tax. *If the converted entity will not be liable for franchise tax you will need to attach form #05-329, which is obtained directly from a Comptroller of Public Accounts representative.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section of the Comptroller of Public Accounts, Austin, Texas 78744-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact tax.help@cpa.state.tx.us.

In lieu of a tax certificate, the certificate of conversion may provide that the converted entity is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the BOC to act on behalf of the converting entity in regard to the filing

instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of conversion filed by a limited partnership should be signed by a general partner of the partnership, but it does not need to be notarized.

However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of conversion converting a Texas limited partnership to a general partnership is **\$300**.

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Form 641
(Revised 05/11)

Return in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512 463-5709

Filing Fee: \$300



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**Certificate of Conversion
of a
Limited Partnership Converting
to a
General Partnership**

Converting Entity Information

The name of the converting limited partnership is:

The jurisdiction of formation of the limited partnership is Texas.

The date of formation of the limited partnership is: _____

The file number issued to the limited partnership by the secretary of state is: _____

Converted Entity Information

The limited partnership named above is converting to a general partnership. The name of the general partnership is:

The general partnership will be formed under the laws of: _____

Plan of Conversion

The plan of conversion is attached.

If the plan of conversion is not attached, the following section must be completed.

Alternative Statements

In lieu of providing the plan of conversion, the converting limited partnership certifies that:

1. A signed plan of conversion is on file at the principal place of business of the limited partnership, the converting entity. The address of the principal place of business of the limited partnership is:

Street or Mailing Address *City* *State* *Country* *Zip Code*

2. A signed plan of conversion will be on file after the conversion at the principal place of business of the general partnership, the converted entity. The address of the principal place of business of the general partnership is:

Street or Mailing Address *City* *State* *Country* *Zip Code*

3. A copy of the plan of conversion will be furnished on written request without cost by the converting entity before the conversion or by the converted entity after the conversion to any owner or member of the converting or converted entity.

Approval of the Plan of Conversion

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

Effectiveness of Filing (Select either A, B, or C.)

A. This document becomes effective when the document is accepted and filed by the secretary of state.

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

Attached hereto is a certificate from the comptroller of public accounts that certifies that the converting entity is in good standing for purposes of conversion.

In lieu of providing the tax certificate, the general partnership as the converted entity is liable for the payment of any franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person

Form 20-10

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Conversion of a Limited Partnership Converting to a
Limited Liability Company
(SOS Form 642)**

Form 20-10

Form 642—General Information

(Certificate of Conversion of a Limited Partnership Converting to a Limited Liability Company)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A limited partnership may convert into a limited liability company by adopting a plan of conversion in accordance with section 10.101 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, conversion means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type. As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form should be used when a limited partnership is the converting entity and the converted entity is a limited liability company.

Withdrawal of Registration as a Limited Liability Partnership: On conversion, a limited partnership that has registered as a limited liability partnership should file a withdrawal notice to terminate the status of the partnership as a limited liability partnership (BOC § 152.802(f)).

Instructions for Form

- **Converting Entity Information:** The certificate of conversion is filed by the converting entity and should set forth the legal name of the converting entity, its organizational form and jurisdiction of organization as part of the certificate. It is recommended that the date of its formation and file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Converted Entity Information:** The entity following the conversion is the converted entity. The certificate of conversion should set forth the legal name of the converted entity and its jurisdiction of formation.
- **Converted Entity Name:** If the converted entity is a Texas filing entity, the name of the converted entity will be checked for availability in accordance with section 5.053 of the BOC. If the converted entity name is the same as, deceptively similar to, or similar to the name of an existing domestic or foreign filing entity, or any name reservation or name registration filed with the secretary of state, the document cannot be filed. However, if the conflicting entity name is the name of the converting entity and the converting entity is currently in existence with the secretary of state, the converted entity name will be accepted irrespective of the conflict with the entity name in use by the converting entity.
- **Plan of Conversion:** Unless the converting entity opts to complete the Alternative Statements section of this form, a plan of conversion conforming to the requirements of section 10.103 of the BOC should be attached to the certificate of conversion.
- **Alternative Statements in Lieu of Plan:** As an alternative to attaching the complete plan of conversion, the converting entity may opt to certify and complete the alternative statements in the form.

- **Certificate of Formation for the Converted Entity:** The certificate of formation of the converted entity must be filed with the certificate of conversion if the converted entity is a Texas filing entity. If the plan of conversion is attached to the certificate of conversion, the certificate of formation should be included as part of the plan of conversion or as an exhibit to the plan. If the converting entity opts to set forth the alternative statements in lieu of providing the complete plan of conversion, the certificate of formation for the limited liability company must be attached to the certificate of conversion.
 - The certificate of formation of a limited liability company formed under a plan of conversion must include a statement to that effect. In addition, the certificate of formation must provide the name, address, date of formation, prior form of organization and the jurisdiction of formation of the converting entity.
 - If the certificate of formation of the Texas limited liability company fails to comply with the requirements of sections 3.005 and 3.010 of the BOC, the certificate of conversion cannot be filed.
 - If the converted entity is a foreign limited liability company, the foreign entity must register as a foreign filing entity under chapter 9 of the BOC before the transaction of any business in Texas.
- **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by (1) the laws of the jurisdiction of formation and (2) the governing documents of the converting entity.
 - A domestic limited partnership that is converting must approve the plan of conversion in the manner provided in its partnership agreement (BOC § 10.107(c)).
 - A foreign entity that is the converting entity must comply with the laws of the jurisdiction of its formation.
- **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a converting Texas filing entity will be shown as “conversion” and the status of a converted Texas filing entity will be shown as “in existence” on the records of the secretary of state.

- **Tax Certificate:** The secretary of state may not accept a certificate of conversion for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that the converting entity is in good standing having no franchise tax reports or payments due. The certificate of account status must be valid through the effective date of filing of the

conversion. Please note that the Comptroller issues many different types of certificates of account status. *A certificate of account status for purposes of conversion obtained from the Comptroller's web site will be accepted only when the converted entity is subject to franchise tax under Texas law.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, of the Texas Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact *tax.help@cpa.state.tx.us*.

In lieu of the tax certificate, the certificate of conversion may provide that the converted entity is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the BOC to act on behalf of the converting entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of conversion filed by a limited partnership should be signed by a general partner of the partnership, but it does not need to be notarized.

However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of conversion is **\$300 plus the fee for filing the certificate of formation when the converted entity is a domestic filing entity.**
 - The fee for conversion of a Texas or foreign limited partnership to a Texas limited liability company is **\$600** (\$300 for the certificate of conversion and \$300 for the certificate of formation for the limited liability company).
 - The fee for conversion of a Texas limited partnership into a foreign limited liability company is **\$300** for the certificate of conversion. There is no certificate of formation filed on behalf of the foreign entity. However, if the foreign entity is a foreign filing entity transacting business in Texas and is required to register in Texas under chapter 9 of the BOC, the foreign filing entity must register and pay the applicable fee for registration under chapter 9.

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Certificate of Formation for the Converted Entity

If the converted entity is a Texas limited liability company, the certificate of formation of the Texas limited liability company must be attached to this certificate either as an attachment or exhibit to the plan of conversion, or as an attachment or exhibit to this certificate of conversion if the plan has not been attached to the certificate of conversion.

Approval of the Plan of Conversion

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is accepted and filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____
The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

- Attached hereto is a certificate from the comptroller of public accounts that certifies that the converting entity is in good standing for purposes of conversion.
- In lieu of providing the tax certificate, the limited liability company as the converted entity is liable for the payment of any franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person

Form 20-11

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Conversion of a Limited Partnership Converting to a
Corporation
(SOS Form 643)**

Form 20-11

Form 643—General Information

(Certificate of Conversion of a Limited Partnership Converting to a Corporation)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A limited partnership may convert into a corporation by adopting a plan of conversion in accordance with section 10.101 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, conversion means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type. As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form should be used when a limited partnership is the converting entity and the converted entity is a for-profit corporation, professional corporation, or a nonprofit corporation.

Withdrawal of Registration as a Limited Liability Partnership: On conversion, a limited partnership that has registered as a limited liability partnership should file a withdrawal notice to terminate the status of the partnership as a limited liability partnership (BOC § 152.802(f)).

Instructions for Form

- **Converting Entity Information:** The certificate of conversion is filed by the converting entity and should set forth the legal name of the converting entity, its organizational form and jurisdiction of organization as part of the certificate. It is recommended that the date of its formation and file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Converted Entity Information:** The entity following the conversion is the converted entity. The certificate of conversion should set forth the legal name of the converted entity and its jurisdiction of formation.
- **Converted Entity Name:** If the converted entity is a Texas filing entity, the name of the converted entity will be checked for availability in accordance with section 5.053 of the BOC. If the converted entity name is the same as, deceptively similar to, or similar to the name of an existing domestic or foreign filing entity, or any name reservation or name registration filed with the secretary of state, the document cannot be filed. However, if the conflicting entity name is the name of the converting entity and the converting entity is currently in existence with the secretary of state, the converted entity name will be accepted irrespective of the conflict with the entity name in use by the converting entity.
- **Plan of Conversion:** Unless the converting entity opts to complete the Alternative Statements section of this form, a plan of conversion conforming to the requirements of section 10.103 of the BOC should be attached to the certificate of conversion.
- **Alternative Statements in Lieu of Plan:** As an alternative to attaching the complete plan of conversion, the converting entity may opt to certify and complete the alternative statements in the form.
- **Certificate of Formation for the Converted Entity:** The certificate of formation of the converted entity must be filed with the certificate of conversion if the converted entity is a Texas filing entity.

If the plan of conversion is attached to the certificate of conversion, the certificate of formation should be included as part of the plan of conversion. If the converting entity opts to set forth the alternate statements in lieu of providing the complete plan of conversion, the certificate of formation for the corporation must be attached to the certificate of conversion.

- The certificate of formation of a corporation formed under a plan of conversion must include a statement to that effect. In addition, the certificate of formation must provide the name, address, date of formation, prior form of organization and the jurisdiction of formation of the converting entity.
- If the certificate of formation of the Texas corporation fails to comply with the applicable provisions of chapter 3 of the BOC, the certificate of conversion cannot be filed.
- If the converted entity is a foreign corporation, the foreign entity must register as a foreign filing entity under chapter 9 of the BOC before the transaction of any business in Texas.
- **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by (1) the laws of the jurisdiction of formation and (2) the governing documents of the converting entity.
 - A domestic limited partnership that is converting must approve the plan of conversion in the manner provided in its partnership agreement (BOC § 10.107(c)).
 - A foreign entity that is the converting entity must comply with the laws of the jurisdiction of its formation.
- **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a converting Texas filing entity will be shown as “conversion” and the status of a converted Texas filing entity will be shown as “in existence” on the records of the secretary of state.

- **Tax Certificate:** The secretary of state may not accept a certificate of conversion for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that the converting entity is in good standing having no franchise tax reports or payments due. The certificate of account status must be valid through the effective date of filing of the conversion. Please note that the Comptroller issues many different types of certificates of account status. *A certificate of account status for purposes of conversion obtained from the Comptroller’s web site will be accepted only when the converted entity is subject to franchise tax under Texas law.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, of the Texas Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact tax.help@cpa.state.tx.us.

In lieu of the tax certificate, the certificate of conversion may provide that the converted entity is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the BOC to act on behalf of the converting entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of conversion filed by a limited partnership should be signed by a general partner of the partnership, but it does not need to be notarized.

However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of conversion is **\$300 plus the fee for filing the certificate of formation when the converted entity is a domestic filing entity.**
 - The fee for conversion of a Texas or foreign limited partnership to either a Texas for-profit corporation or professional corporation is **\$600** (\$300 for the certificate of conversion and \$300 for the certificate of formation for the corporation).
 - The fee for conversion of a Texas or foreign limited partnership to a Texas nonprofit corporation is **\$325** (\$300 for the certificate of conversion and \$25 for the certificate of formation for the nonprofit corporation).
 - The fee for conversion of a Texas limited partnership into a foreign corporation is **\$300** for the certificate of conversion. There is no certificate of formation filed on behalf of the foreign entity. However, if the foreign entity is a foreign filing entity transacting business in Texas and required to register in Texas under chapter 9 of the BOC, the foreign filing entity must register and pay the applicable fee for registration under chapter 9.

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Form 643
(Revised 05/11)

Return in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512 463-5709

Filing Fee: See instructions



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Certificate of Conversion
of a
Limited Partnership
Converting
to a
Corporation

Converting Entity Information

The name of the converting limited partnership is: _____

The jurisdiction of formation of the limited partnership is: _____

The date of formation of the limited partnership is: _____

The file number, if any, issued to the limited partnership by the secretary of state is: _____

Converted Entity Information

The limited partnership named above is converting to a corporation. The name of the corporation is: _____

The corporation will be formed under the laws of: _____

Plan of Conversion

The plan of conversion is attached.

If the plan of conversion is not attached, the following section must be completed.

Alternative Statements

In lieu of providing the plan of conversion, the converting limited partnership certifies that:

1. A signed plan of conversion is on file at the principal place of business of the limited partnership, the converting entity. The address of the principal place of business of the limited partnership is:

Street or Mailing Address *City* *State* *Country* *Zip Code*

2. A signed plan of conversion will be on file after the conversion at the principal place of business of the corporation, the converted entity. The address of the principal place of business of the corporation is:

Street or Mailing Address *City* *State* *Country* *Zip Code*

3. A copy of the plan of conversion will be furnished on written request without cost by the converting entity before the conversion or by the converted entity after the conversion to any owner or member of the converting or converted entity.

Certificate of Formation for the Converted Entity

If the converted entity is a Texas corporation, the certificate of formation of the Texas corporation must be attached to this certificate either as an attachment or exhibit to the plan of conversion, or as an attachment or exhibit to this certificate of conversion if the plan has not been attached to the certificate of conversion.

Approval of the Plan of Conversion

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

Effectiveness of Filing (Select either A, B, or C.)

A. This document becomes effective when the document is accepted and filed by the secretary of state.

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

Attached hereto is a certificate from the comptroller of public accounts that certifies that the converting entity is in good standing for purposes of conversion.

In lieu of providing the tax certificate, the corporation as the converted entity is liable for the payment of any franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code, or other law applicable to and governing the converting entity, to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person

Form 20-12

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Conversion of a Limited Partnership Converting to a
Real Estate Investment Trust
(SOS Form 644)**

Form 20-12

Form 644—General Information

(Certificate of Conversion of a Limited Partnership Converting to a Real Estate Investment Trust)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A limited partnership may convert into a real estate investment trust (hereinafter REIT) by adopting a plan of conversion in accordance with section 10.101 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, conversion means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type. As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form should be used when a domestic limited partnership is the converting entity and the converted entity is a domestic or foreign REIT.

Withdrawal of Registration as a Limited Liability Partnership: On conversion, a limited partnership that has registered as a limited liability partnership should file a withdrawal notice to terminate the status of the partnership as a limited liability partnership (BOC § 152.802(f)).

Formation of the REIT: If a Texas REIT is formed under a plan of conversion, the certificate of conversion, along with the certificate of formation of the REIT, must also be filed with the county clerk of the county in Texas in which the principal place of business of the REIT is located (BOC § 10.155(c)).

Instructions for Form

- **Converting Entity Information:** The certificate of conversion is filed by the converting entity and should set forth the legal name of the converting entity, its organizational form and jurisdiction of organization as part of the certificate. It is recommended that the date of its formation and file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Converted Entity Information:** The entity following the conversion is the converted entity. The certificate of conversion should set forth the legal name of the converted entity and its jurisdiction of formation.
- **Plan of Conversion:** Unless the converting entity opts to complete the Alternative Statements section of this form, a plan of conversion conforming to the requirements of section 10.103 of the BOC should be attached to the certificate of conversion.
- **Alternative Statements in Lieu of Plan:** As an alternative to attaching the complete plan of conversion, the converting entity may opt to certify and complete the alternative statements in the form.
- **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity. A domestic limited partnership that is converting

must approve the plan of conversion in the manner provided in its partnership agreement (BOC § 10.107(c)).

- **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a converting Texas filing entity will be shown as "conversion" on the records of the secretary of state.

- **Tax Certificate:** The secretary of state may not accept a certificate of conversion for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that the converting entity is in good standing having no franchise tax reports or payments due. The certificate of account status must be valid through the effective date of filing of the conversion. Please note that the Comptroller issues many different types of certificates of account status. *A certificate of account status for purposes of conversion obtained from the Comptroller's web site will be accepted only when the converted entity is subject to franchise tax under Texas law.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, of the Texas Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact tax.help@cpa.state.tx.us.

In lieu of the tax certificate, the certificate of conversion may provide that the converted entity is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the BOC to act on behalf of the converting entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of conversion filed by a limited partnership should be signed by a general partner of the partnership, but it does not need to be notarized.

However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of conversion of a limited partnership into a REIT is **\$300**.

Fees may be paid by personal checks, money orders, LegalEase debit cards or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Form 644
(Revised 05/11)

Return in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512 463-5709

Filing Fee: \$300



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**Certificate of Conversion
 of a
 Limited Partnership Converting
 to a
 Real Estate Investment Trust**

Converting Entity Information

The name of the converting limited partnership is: _____

The jurisdiction of formation of the limited partnership is Texas.

The date of formation of the limited partnership is: _____

The file number issued to the limited partnership by the secretary of state is: _____

Converted Entity Information

The limited partnership named above is converting to a real estate investment trust. The name of the real estate investment trust is: _____

The real estate investment trust will be formed under the laws of: _____

Plan of Conversion

The plan of conversion is attached.

If the plan of conversion is not attached, the following section must be completed.

Alternative Statements

In lieu of providing the plan of conversion, the converting limited partnership certifies that:

1. A signed plan of conversion is on file at the principal place of business of the limited partnership, the converting entity. The address of the principal place of business of the limited partnership is:

Street or Mailing Address City State Country Zip Code

2. A signed plan of conversion will be on file after the conversion at the principal place of business of the real estate investment trust, the converted entity. The address of the principal place of business of the real estate investment trust is:

Street or Mailing Address City State Country Zip Code

3. A copy of the plan of conversion will be furnished on written request without cost by the converting entity before the conversion or by the converted entity after the conversion to any owner or member of the converting or converted entity.

Approval of the Plan of Conversion

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

Effectiveness of Filing (Select either A, B, or C.)

A. This document becomes effective when the document is accepted and filed by the secretary of state.

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

Attached hereto is a certificate from the comptroller of public accounts that certifies that the converting entity is in good standing for purposes of conversion.

In lieu of providing the tax certificate, the real estate investment trust as the converted entity is liable for the payment of any franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code to execute the filing instrument.

Date: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person

Form 20-13

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Conversion of a Professional Association Converting
to a Professional Limited Liability Company
(SOS Form 645)**

Form 20-13
Form 645—General Information
(Certificate of Conversion of a Professional Association
Converting to a Professional Limited Liability Company)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

Important: If either the professional association or the professional limited liability company is a foreign or out-of-state entity, the conversion must be permitted by the laws of the foreign or out-of-state jurisdiction. BOC §§ 10.101(d), 10.102(c). It is up to the submitter to determine whether a conversion involving a foreign or out-of-state entity is permitted by the laws of the foreign or out-of-state jurisdiction. Additional filings may be required in the foreign or out-of-state jurisdiction. This form is not drafted for use in other jurisdictions.

A professional association may convert into a professional limited liability company by adopting a plan of conversion in accordance with section 10.101 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, conversion means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type. As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form may be used when a professional association is the converting entity and the converted entity is a professional limited liability company.

Instructions for Form

- **Converting Entity Information:** The certificate of conversion is filed by the professional association and must set forth the legal name of the professional association and its jurisdiction of organization as part of the certificate. It is recommended that the date of formation and file number, if any, assigned by the secretary of state be provided to facilitate processing of the document.
- **Converted Entity Information:** As the entity following the conversion, the professional limited liability company is the converted entity. The certificate of conversion must set forth the legal name of the professional limited liability company and its jurisdiction of formation.
- **Converted Entity Name:** If the professional limited liability company is a Texas professional limited liability company, the name of the professional limited liability company will be checked for availability in accordance with section 5.053 of the BOC. If the professional limited liability company name is the same as, deceptively similar to, or similar to the name of an existing domestic or foreign filing entity, or any name reservation or name registration filed with the secretary of state, the document cannot be filed. However, if the conflicting entity name is the name of the converting professional association, the professional limited liability company name will be accepted.
- **Plan of Conversion:** Unless the professional association opts to complete the Alternative Statements section of the form, a plan of conversion conforming to the requirements of section 10.103 of the BOC must be attached to the certificate of conversion.

- **Alternative Statements in Lieu of Plan:** As an alternative to attaching the complete plan of conversion, the professional association may opt to certify and complete the alternative statements in the form.
- **Certificate of Formation for the Professional Limited Liability Company:** The certificate of formation of the professional limited liability company must be filed with the certificate of conversion if the company is a Texas entity. If the plan of conversion is attached to the certificate of conversion, the certificate of formation may be included as part of the plan of conversion or as an exhibit to the plan. If the professional association opts to set forth the alternative statements in lieu of providing the complete plan of conversion, the certificate of formation must be attached to the certificate of conversion.
 - The certificate of formation for the Texas professional limited liability company must include a statement that it is formed under a plan of conversion. In addition, the certificate of formation must provide the name, address, date of formation, prior form of organization and the jurisdiction of formation of the converting professional association.
 - If the certificate of formation of a Texas professional limited liability company fails to comply with the requirements of sections 3.005, 3.010 and 3.014 of the BOC, the certificate of conversion cannot be filed.
 - If the professional limited liability company is not a Texas entity, it must register under chapter 9 of the BOC before the transaction of any business in Texas.
- **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by (1) the laws of the jurisdiction of formation and (2) the governing documents of the professional association.
 - Pursuant to the applicability provisions of section 302.001 of the BOC, section 21.453 sets forth the requirements for approval of the plan of conversion by a Texas professional association.
 - A foreign entity that is the professional association must comply with the laws of the jurisdiction of its formation.
- **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a converting Texas professional association will be shown as “conversion” and the status of a converted Texas professional limited liability company will be shown as “in existence” on the records of the secretary of state.

- **Tax Certificate:** The secretary of state may not accept a certificate of conversion for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that the professional association is in good standing having no franchise tax reports or payments due. The certificate of account status must be valid through the effective date of filing of the conversion. Please note that the Comptroller issues many different types of certificates of account status. *A certificate of account status for purposes of conversion obtained from the Comptroller's web site will be accepted.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section of the Comptroller of Public Accounts, Austin, Texas 78744-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact tax.help@cpa.state.tx.us.

In lieu of a tax certificate, the certificate of conversion may provide that the professional limited liability company is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the code to act on behalf of the professional association in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of conversion filed by a Texas professional association must be signed by an officer, but does not need to be notarized (BOC § 20.001).

However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of conversion is **\$300 plus the fee for filing the certificate of formation when the professional limited liability company is a Texas professional limited liability company.**
 - The fee for conversion of a Texas or foreign professional association to a Texas professional limited liability company is **\$600** (\$300 for the certificate of conversion and \$300 for the certificate of formation).
 - The fee for conversion of a Texas professional association into a foreign professional limited liability company is **\$300** for the certificate of conversion. There is no certificate of formation filed on behalf of the foreign entity. However, if the foreign professional limited liability company transacts business in Texas, the company must register and pay the applicable fee for registration under chapter 9.

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Form 645
(Revised 05/11)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512 463-5709
Filing Fee: See instructions



This space reserved for office use.

**Certificate of Conversion
of a Professional Association
Converting to a Professional
Limited Liability Company**

Converting Entity Information

The name of the converting professional association is:

The jurisdiction of formation of the professional association is: _____

The date of formation of the professional association is: _____

The file number, if any, issued to the entity by the secretary of state is: _____

Converted Entity Information

The professional association named above is converting to a professional limited liability company.
The name of the professional limited liability company is:

The professional limited liability company will be formed under the laws of: _____

Plan of Conversion

The plan of conversion is attached.

If the plan of conversion is not attached, the following statements must be completed.

Alternative Statements

In lieu of providing the plan of conversion, the professional association certifies that:

1. A signed plan of conversion is on file at the principal place of business of the professional association, the converting entity. The address of the principal place of business of the professional association is:

Street or Mailing Address *City* *State* *Country* *Zip Code*

2. A signed plan of conversion will be on file after the conversion at the principal place of business of the professional limited liability company, the converted entity. The address of the principal place of business of the professional limited liability company is:

Street or Mailing Address *City* *State* *Country* *Zip Code*

3. A copy of the plan of conversion will be furnished on written request without cost by the converting entity before the conversion or by the converted entity after the conversion to any owner or member of the converting or converted entity.

Certificate of Formation for the Professional Limited Liability Company

If the professional limited liability company is a Texas entity, the certificate of formation must be attached to this certificate either as an attachment or exhibit to the plan of conversion, or as an attachment or exhibit to this certificate of conversion if the plan has not been attached to the certificate of conversion.

Approval of the Plan of Conversion

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

Effectiveness of Filing (Select either A, B, or C.)

A. This document becomes effective when the document is accepted and filed by the secretary of state.

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

Attached hereto is a certificate from the comptroller of public accounts that certifies that the professional association, the converting entity, is in good standing for purposes of conversion.

In lieu of providing the tax certificate, the professional limited liability company as the converted entity is liable for the payment of any franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code, or other law applicable to and governing the professional association, to execute the filing instrument.

Date: _____

Signature of an authorized person of the professional association

Typed or printed name of signer and title

Form 20-14

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Conversion of a Texas General Partnership
Converting to a Texas Filing Entity
(SOS Form 646)**

Form 20-14
Form 646—General Information
(Certificate of Conversion of a Texas General Partnership
Converting to a Texas Filing Entity)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

A Texas general partnership, including a Texas general partnership registered as a limited liability partnership, may convert into a different type of domestic entity by adopting a plan of conversion in accordance with sections 10.101 and 10.107 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, “conversion” means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type.

Purpose of Form: As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form may be used when a Texas general partnership is the converting entity and the resulting entity, the converted entity, is a domestic filing entity formed with the secretary of state under the BOC, namely, a Texas for-profit, nonprofit, or professional corporation, professional association, limited liability company, or limited partnership.

The conversion of a Texas general partnership into a foreign entity of any type does not require the filing of a certificate of conversion with the secretary of state. BOC § 10.154(a). A certificate of conversion that converts a Texas general partnership into a Texas real estate investment trust (REIT) would be filed with the county clerk. BOC § 4.009(a).

Withdrawal of Partnership’s Registration as a Limited Liability Partnership: The filing of a conversion by a Texas general partnership that has registered as a limited liability partnership does not automatically terminate the partnership’s registration. The partnership must separately file a withdrawal notice to terminate its limited liability partnership registration. BOC § 152.802(f). See Form 704 for more information.

Instructions for Form

- **Converting Entity Information:** The certificate of conversion must set forth the legal name of the converting general partnership.
- **Converted Entity Information:** The entity following the conversion is the converted entity. The certificate of conversion must set forth the legal name of the converted entity. You must identify the organizational form of the converted entity by checking the box of one of the entity types listed. The jurisdiction of formation of the converted entity is included as a pre-printed statement.
- **Converted Entity Name:** The name of the Texas filing entity that is the converted entity will be checked for availability in accordance with section 5.053 of the BOC. If the converted entity name is the same as, deceptively similar to, or similar to the name of an existing domestic or foreign filing entity, or any name reservation or name registration filed with the secretary of state, the document cannot be filed.

- **Plan of Conversion:** Unless the general partnership opts to complete the Alternative Statements section of this form, a plan of conversion conforming to the requirements of section 10.103 of the BOC must be attached to the certificate of conversion.
- **Alternative Statements in Lieu of Plan:** As an alternative to attaching the complete plan of conversion, the general partnership may opt to certify and complete the alternative statements in the form.
- **Certificate of Formation for the Converted Entity:** The certificate of formation of the converted entity must be filed with the certificate of conversion. If the plan of conversion is attached to the certificate of conversion, the certificate of formation may be included as part of the plan of conversion or as an exhibit to the plan. If the general partnership opts to set forth the alternative statements in lieu of providing the complete plan of conversion, the certificate of formation for the Texas converted entity must be attached to the certificate of conversion.
 - The certificate of formation of a Texas filing entity formed under a plan of conversion must include a statement to that effect. In addition, the certificate of formation must provide the name, address, date of formation, prior form of organization and the jurisdiction of formation of the converting general partnership. BOC § 3.005(a)(7).
 - If the certificate of formation of the Texas filing entity fails to comply with the requirements applicable to the entity under subchapter A of chapter 3 of the BOC, the certificate of conversion cannot be filed.
- **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by (1) the laws of the jurisdiction of formation and (2) the governing documents of the general partnership. The partnership agreement of the general partnership must contain provisions that authorize the conversion provided for in the plan of conversion. BOC § 10.107(b).
 - A Texas general partnership must approve a plan of conversion in the manner provided in its partnership agreement. BOC § 10.107(c).
- **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a converting Texas filing entity will be shown as “conversion” and the status of a converted Texas filing entity will be shown as “in existence” on the records of the secretary of state.
- **Tax Certificate:** A general partnership, other than a limited liability partnership, that is comprised solely of individuals is not liable for franchise taxes. However, the secretary of state may not accept a certificate of conversion for filing if the required franchise taxes have not been paid. BOC § 10.156. The certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that the general partnership is in good standing

having no franchise tax reports or payments due. The certificate of account status must be valid through the effective date of filing of the conversion. Please note that the comptroller issues many different types of certificates of account status. *A certificate of account status for purposes of conversion obtained from the comptroller's web site will be accepted.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, of the Texas Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact *tax.help@cpa.state.tx.us*.

In lieu of the tax certificate, the certificate of conversion may provide that the converted entity is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the BOC to act on behalf of the general partnership in regard to the filing instrument.

A certificate of conversion filed by a general partnership must be signed by a partner of the partnership. If the partner is an organized entity, such as a corporation or limited liability, the execution field should include the legal name of the partner and be signed by an authorized governing person or managerial official of the organized entity.

The certificate of conversion does not need to be notarized; however, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The fee for conversion of a Texas general partnership is **\$300, plus the formation filing fee of the domestic converted entity**. Total fees are shown below:
 - If converting to a Texas for-profit or professional corporation--**\$600**
 - If converting to a Texas professional association--**\$1050**
 - If converting to a Texas non-profit corporation--**\$325**
 - If converting to a Texas limited liability company--**\$600**
 - If converting to a Texas limited partnership--**\$1050**

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

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Certificate of Formation for the Converted Entity

The certificate of formation of the Texas filing entity must be attached to this certificate either as an attachment or exhibit to the plan of conversion, or as an attachment or exhibit to this certificate of conversion if the plan has not been attached to the certificate of conversion.

Approval of the Plan of Conversion

The plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

Effectiveness of Filing (Select either A, B, or C.)

A. This document becomes effective when the document is accepted and filed by the secretary of state.

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

Attached hereto is a certificate from the comptroller of public accounts that certifies that the general partnership is in good standing for purposes of conversion.

In lieu of providing the tax certificate, the converted entity is liable for the payment of any franchise taxes.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code to execute the filing instrument.

Date: _____

By: _____
Printed or typed name of general partner

Signature of general partner (See instructions)

Form 20-15

Effective June 1, 2018, the name a filing entity seeks to use must be “distinguishable in the records of the secretary of state” from names used by existing entities. *See* Tex. Bus. Orgs. Code § 5.053; Acts 2017, 85th Leg., R.S., ch. 503, § 3 (H.B. 2856), eff. June 1, 2018. Instructions that accompany this form have not been updated to reflect this new standard as of the publication date of the latest edition of this manual. See sections 3.1 and 5.3 in this manual for more information on entity name availability.

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state’s website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Information on Converting a Foreign Entity to a
Texas Filing Entity
(SOS Form 647)**

Form 20-15



Information on Converting a Foreign Entity to a Texas Filing Entity

This information is not a substitute for the advice and services of an attorney and tax specialist.

The Texas Business Organizations Code ("BOC") requires filing with the Texas secretary of state to convert, or "re-domesticate," a foreign or out-of-state entity to any of the following Texas entity types:

- corporation (for profit, nonprofit, professional)
- limited liability company (including professional LLC and series LLC)
- limited partnership
- professional association
- cooperative association

To convert a foreign entity to any of the above Texas entity types, the converting entity must adopt a plan of conversion that complies with BOC §10.103 and file with the Texas secretary of state (1) a certificate of conversion that complies with BOC § 10.154, along with (2) a certificate of formation for the converted Texas entity that complies with BOC chapter 3, including the additional statements for entities formed by conversion required by § 3.005(a)(7) (not included on secretary of state forms).

Important: Not all jurisdictions permit conversions. For a cross-jurisdiction conversion to be effective, the law of both jurisdictions must permit the transaction and be followed. This document provides information about the Texas requirements; the entity's governing documents and the law of the other jurisdiction must also be consulted. If the jurisdiction of formation of the converting entity permits the conversion, additional filings may be required there.

Converted Entity Name: The converted (Texas) entity name must be available under BOC § 5.053. If the converted entity name is the same as, deceptively similar to, or similar to the name of an existing domestic or foreign filing entity, or any name registration or reservation filed with the secretary of state, the conversion cannot be filed. However, the name of the converting entity is not cause for rejection.

Tax Clearance: Evidence that the required franchise taxes have been paid or that the converted (Texas) entity is liable for the payment of required franchise taxes must be included. This requirement may be satisfied by either: (1) a certificate of account status from the Texas Comptroller of Public Accounts indicating that the converting entity is in good standing having no franchise tax reports or payments due (must be valid through effective date of conversion); or (2) a statement in the certificate of conversion that the converted entity is liable for payment of the required franchise taxes.

For tax certificates or questions on tax status, contact the Tax Assistance Section of the Texas Comptroller of Public Accounts at (512) 463-4600, (800) 252-1381 or tax.help@cpa.state.tx.us.

Automatic Withdrawal of Registration: Upon conversion to any of the above Texas entity types by a foreign entity registered to transact business in Texas, the foreign entity registration is automatically withdrawn. Include the secretary of state file number for the registration in the certificate of conversion.

Fees: The filing fee for a certificate of conversion is **\$300** (\$50 for nonprofit corporation or cooperative association) **plus the fee for filing the certificate of formation** (typically \$300; \$25 for nonprofit corporation or cooperative association; \$750 for professional association or limited partnership).

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable to the secretary of state through a U.S. bank or financial institution. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Delivery Instructions: Submit the certificate of conversion and certificate of formation in duplicate along with the filing fee by mail to P.O. Box 13697, Austin, Texas 78711-3697; fax to (512) 463-5709; or delivery to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the conversion, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Checklist of Requirements for Texas Certificate of Conversion Converting A Foreign Entity to A Texas Filing Entity

1. Either

A. Plan attached to certificate of conversion.

Plan includes certificate of formation for converted (Texas) entity.

Plan complies with BOC § 10.103.

OR

B. Certificate of conversion includes information below and certificate of formation is attached.

the name, organizational form, and jurisdiction of formation of the *converting* entity.

the name, organizational form, and jurisdiction of formation (Texas) of the *converted* entity.

statement that a signed plan of conversion *is on file* at the principal place of business of the *converting* entity, and the address of the principal place of business.

statement that a signed plan of conversion *will be on file* after the conversion at the principal place of business of the *converted* entity, and the address of the principal place of business.

statement that a copy of the plan of conversion will be on written request furnished without cost by the *converting entity before the conversion* or by the *converted entity after the conversion* to any owner or member of the converting entity or the converted entity.

2. Certificate of formation for converted (Texas) entity includes statement that the entity is formed under a plan of conversion and the name, address, date of formation, prior form of organization, and jurisdiction of formation of the converting entity in accordance with BOC § 3.005(7). (*Statement must be added if using secretary of state form for certificate of formation.*)

3. Certificate of conversion signed on behalf of the converting entity.

4. Certificate of conversion includes statement that plan of conversion has been approved as required by the laws of the jurisdiction of formation and the converting entity's governing documents.

5. Tax clearance or statement that converted entity is liable for payment of franchise taxes.

6. Texas secretary of state file number for converting entity, if any.

7. Fees for both the certificate of conversion and the certificate of formation.

8. Two copies of all documents for submission to secretary of state (optional, for return of file stamped copy).

Form 20-16

See Tex. Bus. Orgs. Code §§ 10.101–109 addressing conversions. Specifically, see section 10.103 for the required provisions of a plan of conversion. Also, sections 10.1025 and 10.109 address conversion and continuance. For more information about filing a corresponding certificate of conversion, see Tex. Bus. Orgs. Code §§ 10.154–.156 and SOS Form 631 (form 20-1 in this manual). For special provisions applying to partnership conversions, see Tex. Bus. Orgs. Code § 10.107.

Plan of Conversion
[Corporation to General Partnership]

This Plan of Conversion (the “Plan”) is adopted and approved by the board of directors and shareholders of [name of corporation], a Texas corporation, pursuant to chapter 10, subchapter C, of the Texas Business Organizations Code (the “BOC”).

1. The name of the converting entity is [name of converting entity].
2. The name of the converted entity is [name of converted entity].
3. The converting entity is continuing its existence in the organizational form of the converted entity.
4. The converted entity will be a general partnership formed under the laws of the state of Texas.

See Tex. Bus. Orgs. Code §§ 10.1025; 10.109 regarding conversion and continuance.

Include the following if applicable.

5. The manner and basis of converting the shares of capital stock of the converting entity into partnership interests in the converted entity are as follows:
 - a. On the effectiveness of the conversion under this Plan, each outstanding share of common stock will be converted into a partnership interest in the

converted entity having a [percent] percent [sharing ratio/ownership interest/ interest in the capital] as a general partner of the converted entity.

- b. On the effectiveness of the conversion under this Plan, (1) the shareholders of the converting entity will deliver the stock certificates representing all shares of common stock that were outstanding immediately before the conversion to the converted entity, and (2) the stock certificates will no longer represent any outstanding shares of common stock or any ownership of the converted entity. The ownership of the converted entity will be evidenced only by the converted entity's [include if applicable: general] partnership agreement and its records.

The Texas Business Organizations Code requires the inclusion of the "certificate of formation or similar organizational document" of a nonfiling entity such as a general partnership. See Tex. Bus. Orgs. Code § 10.103(a)(7).

Continue with the following.

6. The [include if applicable: general] partnership agreement of the converted entity is attached hereto as Exhibit A.

See Tex. Bus. Orgs. Code §§ 10.1025, 10.109 regarding conversion and continuance.

Include the following if applicable.

7. The converting entity is electing to continue its existence as a corporation formed under the laws of the state of Texas.

Continue with the following.

8. The conversion will be effective as of the filing of a corresponding certificate of conversion with the secretary of state of Texas under section 10.155(a) of the BOC.

9. In accordance with the requirements of the BOC, a copy of this Plan will be maintained in the records of the converting entity and of the converted entity, and a copy of this Plan will be provided without charge, on written request, to any shareholder of the converting entity before the conversion is effective or to any general partner of the converted entity after the conversion is effective.

Dated: [date].

CONVERTING ENTITY:

[Name of officer], [title]

Attach Exhibit A.

Form 20-17

See Tex. Bus. Orgs. Code §§ 10.101–.109 addressing conversions. Specifically, see section 10.103 for the required provisions of a plan of conversion. Also, sections 10.1025 and 10.109 address conversion and continuance. For more information about filing a corresponding certificate of conversion, see Tex. Bus. Orgs. Code §§ 10.154–.156 and SOS Form 632 (form 20-2 in this manual).

Plan of Conversion
[Corporation to Limited Liability Company]

This Plan of Conversion (the “Plan”) is adopted and approved by the board of directors and shareholders of [name of corporation], a Texas corporation, pursuant to chapter 10, subchapter C, of the Texas Business Organizations Code (the “BOC”).

1. The name of the converting entity is [name of converting entity].
2. The name of the converted entity is [name of converted entity].
3. The converting entity is continuing its existence in the organizational form of the converted entity.
4. The converted entity will be a limited liability company formed under the laws of the state of Texas.

See Tex. Bus. Orgs. Code §§ 10.1025, 10.109 regarding
conversion and continuance.

Include the following if applicable.

5. The manner and basis of converting the shares of capital stock of the converting entity into membership interests in the converted entity are as follows:
 - a. On the effectiveness of the conversion under this Plan, each outstanding share of common stock will be converted into [describe conversion].

- b. On the effectiveness of the conversion under this Plan, (1) the shareholders of the converting entity will deliver the stock certificates representing all shares of common stock that were outstanding immediately before the conversion to the converted entity [**include if applicable:** in exchange for [**describe exchange**]], and (2) the stock certificates will no longer represent any outstanding shares of common stock or any ownership of the converted entity.

See Tex. Bus. Orgs. Code §§ 3.005, 3.010 respectively for general filing requirements and additional requirements for a certificate of formation of a limited liability company.

Include the following if applicable.

6. The certificate of formation of the converted entity is attached hereto as Exhibit A.

See Tex. Bus. Orgs. Code §§ 10.1025, 10.109 regarding conversion and continuance.

Include the following if applicable.

7. The converting entity is electing to continue its existence as a corporation formed under the laws of the state of Texas.

Continue with the following.

8. The conversion will be effective as of the filing of a corresponding certificate of conversion with the secretary of state of Texas under section 10.155(a) of the BOC.

9. In accordance with the requirements of the BOC, a copy of this Plan will be maintained in the records of the converting entity and of the converted entity, and a copy of this Plan will be provided without charge, on written request, to any shareholder of the converting entity before the conversion is effective or to any member of the converted entity after the conversion is effective.

Dated: [date].

CONVERTING ENTITY:

[Name of officer], [title]

Attach Exhibit A if applicable.

Form 20-18

See Tex. Bus. Orgs. Code §§ 10.101–109 addressing conversions. Specifically, see section 10.103 for the required provisions of a plan of conversion. Also, sections 10.1025 and 10.109 address conversion and continuance. For more information about filing a corresponding certificate of conversion, see Tex. Bus. Orgs. Code §§ 10.154–156 and SOS Form 633 (form 20-3 in this manual). For special provisions applying to partnership conversions, see Tex. Bus. Orgs. Code § 10.107.

Plan of Conversion
[Corporation to Limited Partnership]

This Plan of Conversion (the “Plan”) is adopted and approved by the board of directors and shareholders of [name of corporation], a Texas corporation, pursuant to chapter 10, subchapter C, of the Texas Business Organizations Code (the “BOC”).

1. The name of the converting entity is [name of converting entity].
2. The name of the converted entity is [name of converted entity].
3. The converting entity is continuing its existence in the organizational form of the converted entity.
4. The converted entity will be a limited partnership formed under the laws of the state of Texas.

See Tex. Bus. Orgs. Code §§ 10.1025, 10.109 regarding conversion and continuance.

Include the following if applicable.

5. The manner and basis of converting the shares of capital stock of the converting entity into partnership interests in the converted entity are as follows:
 - a. On the effectiveness of the conversion under this Plan, each outstanding share of common stock will be converted into [describe conversion].

- b. On the effectiveness of the conversion under this Plan, (1) the shareholders of the converting entity will deliver the stock certificates representing all shares of common stock that were outstanding immediately before the conversion to the converted entity [**include if applicable:** in exchange for [**describe exchange**]], and (2) the stock certificates will no longer represent any outstanding shares of common stock or any ownership of the converted entity.

See Tex. Bus. Orgs. Code §§ 3.005, 3.011 respectively for general filing requirements and additional requirements for a certificate of formation of a limited partnership.

Include the following if applicable.

6. The certificate of formation of the converted entity is attached hereto as Exhibit A.

See Tex. Bus. Orgs. Code §§ 10.1025, 10.109 regarding conversion and continuance.

Include the following if applicable.

7. The converting entity is electing to continue its existence as a corporation formed under the laws of the state of Texas.

Continue with the following.

8. The conversion will be effective as of the filing of a corresponding certificate of conversion with the secretary of state of Texas under section 10.155(a) of the BOC.

9. In accordance with the requirements of the BOC, a copy of this Plan will be maintained in the records of the converting entity and of the converted entity, and a copy of this Plan will be provided without charge, on written request, to any shareholder of the converting entity before the conversion is effective or to any partner of the converted entity after the conversion is effective.

Dated: [date].

CONVERTING ENTITY:

[Name of officer], [title]

Attach Exhibit A if applicable.

Form 20-19

See Tex. Bus. Orgs. Code §§ 10.101–.109 addressing conversions. Specifically, see section 10.103 for the required provisions of a plan of conversion. Also, sections 10.1025 and 10.109 address conversion and continuance. For more information about filing a corresponding certificate of conversion, see Tex. Bus. Orgs. Code §§ 10.154–.156 and SOS Form 634 (form 20-4 in this manual).

Plan of Conversion

[Corporation to Real Estate Investment Trust]

This Plan of Conversion (the “Plan”) is adopted and approved by the board of directors and the shareholders of [name of corporation], a Texas corporation, pursuant to chapter 10, subchapter C, of the Texas Business Organizations Code (the “BOC”).

1. The name of the converting entity is [name of converting entity].
2. The name of the converted entity is [name of converted entity].
3. The converting entity is continuing its existence in the organizational form of the converted entity.
4. The converted entity will be a real estate investment trust formed under the laws of the state of Texas.

See Tex. Bus. Orgs. Code §§ 10.1025, 10.109 regarding conversion and continuance.

Include the following if applicable.

5. The manner and basis of converting the shares of capital stock of the converting entity into shares of the converted entity are as follows:
 - a. On the effectiveness of the conversion under this Plan, each outstanding share of common stock will be converted into [number] share[s] of the converted entity.

- b. On the effectiveness of the conversion under this Plan, (1) the shareholders of the converting entity will deliver the stock certificates representing all shares of common stock that were outstanding immediately before the conversion to the converted entity in exchange for certificates representing the corresponding shares of the converted entity, and (2) the stock certificates will no longer represent any outstanding shares of common stock but will represent only the right to receive certificates representing the corresponding shares of the converted entity.

See Tex. Bus. Orgs. Code §§ 3.005, 3.012 respectively for general filing requirements and additional requirements for a certificate of formation of a real estate investment trust.

If a real estate investment trust is the converted entity, the certificate of formation must be filed in the county of the entity's principal place of business. Tex. Bus. Orgs. Code § 10.155(c).

Continue with the following.

6. The declaration of trust of the converted entity is attached hereto as Exhibit A.

See Tex. Bus. Orgs. Code §§ 10.1025, 10.109 regarding conversion and continuance.

Include the following if applicable.

7. The converting entity is electing to continue its existence as a corporation formed under the laws of the state of Texas.

Continue with the following.

8. The conversion will be effective on the later of the filing of a corresponding certificate of conversion, together with the declaration of trust of the converted entity, with the secretary of state of Texas under section 10.155(a) of the BOC and the filing of a corresponding certificate of conversion, together with the declaration of trust of the converted entity, with the

county clerk of [county] County, Texas, in which the converted entity's principal place of business is located, under section 10.155(c) of the BOC.

9. In accordance with the requirements of the BOC, a copy of this Plan will be maintained in the records of the converting entity and of the converted entity, and a copy of this Plan will be provided without charge, on written request, to any shareholder of the converting entity before the conversion is effective or to any shareholder of the converted entity after the conversion is effective.

Dated: [date].

CONVERTING ENTITY:

[Name of officer], [title]

Attach Exhibit A.

Form 21-1

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Termination of a Domestic Entity
(SOS Form 651)**

Form 21-1

**Form 651—General Information
(Certificate of Termination of a Domestic Entity)**

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. The form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

When the owners, members or governing authority of a domestic entity have determined that the existence of the entity should terminate, or there is an occurrence of an event requiring the winding up or termination of the entity, the entity should wind up its business and affairs in the manner provided by chapter 11 of the Texas Business Organizations Code (BOC). On completion of the winding up process, a filing entity must file a certificate of termination with the secretary of state.

Do not use this form if the entity is a nonprofit corporation or cooperative association. See Form 652.

Instructions for Form

- **Items 1-4—Entity Information:** The certificate of termination must contain the legal name of the entity. It is recommended that the entity type, date of formation, and file number assigned by the secretary of state be provided to facilitate processing. *This form may not be used for the termination of a nonprofit corporation or cooperative association.*
- **Item 5—Governing Persons:** The certificate of termination must set forth the name and address of each of the entity’s governing persons. If the governing person is an organization, set forth its legal name. An address is required for each governing person. In general, the following would be considered the governing persons of a domestic entity.

Domestic Entity Type	Governing Person
For-profit Corporation or Professional Corporation	A director. For a close corporation managed by shareholders, provide the name and address of each shareholder.
Professional Association	A director or executive committee member.
Limited Liability Company	A manager, if managers manage the company. If the company is managed by its members, provide each managing-member.
Limited Partnership	A general partner of the partnership.

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

Item 6—Event Requiring Winding Up: The certificate of termination must state the nature of the event requiring winding up of the entity. Sections 11.051 to 11.059 of the BOC relate to the winding up of a domestic entity. Section 11.051 provides that winding up of a domestic entity is required on the approval of a voluntary decision to wind up the entity (option A), the expiration of the entity’s period of duration as specified in its certificate of formation (option B), the occurrence of an event specified in the governing documents requiring winding up (option C), the occurrence of an event specified by the BOC requiring winding up (option D), or a decree by a court requiring winding up or termination of the entity under the BOC or other law (option E).

Select the applicable event requiring the winding up or termination of the entity. *The secretary of state will reject a certificate of termination if item 6 is not completed.*

- **Statement Regarding Completion of Winding Up:** The certificate of termination must provide that the entity has complied with the provisions of the BOC governing its winding up. Please review the winding up procedures in subchapter B of chapter 11 of the BOC and any supplemental winding up procedures that may apply to the entity.
- **Effectiveness of Filing:** A certificate of termination may become effective when filed by the secretary of state (option A); on a date not more than ninety (90) days from the date the certificate is signed (option B); or on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the certificate to take effect and the date of the 90th day after signing. For the certificate to take effect under option C, the entity must, within ninety (90) days of filing the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date (option B) or condition (option C), the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. At the time of filing, the status of the entity will change to “voluntarily terminated” on the records of the secretary of state.

- **Tax Certificate:** The certificate of termination must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that all taxes under title 2 of the Tax Code have been paid and that the entity is in good standing for the purpose of termination. (Comptroller Form 05-305). The certificate of account status must be good through the date of filing with the secretary of state. Please note that the comptroller issues many different types of certificates of account status. *Do not attach a certificate or print-out obtained from the comptroller’s web site as this does not meet statutory requirements.*

Requests for tax certificates or questions on tax status should be directed to the comptroller’s Tax Assistance Section at (512) 463-4600, (800) 252-1381, or tax.help@cpa.state.tx.us.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of termination must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument.

A certificate of termination for a corporation must be signed by an officer (BOC § 20.001). Include the name of the terminating corporation in the “name of entity” line on the form.

A certificate of termination for a professional association must be signed by an officer of the association. If the association does not have any living officers, the certificate of termination should be signed by the legal representative of the last surviving officer of the association (BOC § 302.013). Include the name of the terminating association in the “name of entity” line on the form.

A certificate of termination for a limited liability company should be signed by an authorized manager if the company has managers, or by an authorized managing-member if member-managed. If the person signing the form is an entity, put the name of the signing entity in the “name of entity” line on the form. Otherwise, put the name of the terminating LLC on the “name of entity” line.

A certificate of termination for a limited partnership must be signed by all general partners participating in the winding up (BOC § 153.553). If no general partners are winding up the business, the certificate should be signed by all nonpartner liquidators or, if the limited partners are winding up the business, by a majority-in-interest of the limited partners. The execution of a certificate by a general partner is an oath or affirmation, under penalty of perjury, that to the best of the executing party’s knowledge and belief, the facts in the certificate are true and correct (BOC § 153.553(c)). If the person signing the form is an entity, put the name of the signing entity in the “name of entity” line on the form. Otherwise, put the name of the terminating LP on the “name of entity” line.

The certificate of termination need not be notarized, but review the form carefully before signing. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of termination is **\$40**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee and certificate of account status. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. Credit card information must accompany fax transmissions (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

<p>Form 651 (Revised 05/11) Submit in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX: 512 463-5709 Filing Fee: \$40</p>	 <p>Certificate of Termination of a Domestic Entity</p>	<p>This space reserved for office use.</p>
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Entity Information

1. The name of the domestic entity is: _____
2. The entity is organized as a _____ under the laws of Texas.
e.g., for-profit corporation, limited partnership, etc.
3. The date of formation of the entity is: _____
mm/dd/yyyy
4. The file number issued to the entity by the secretary of state is: _____

Governing Persons

5. The names and addresses of each of the entity's governing persons are: (see Item 5 instructions)

GOVERNING PERSON 1					
Name: _____					
Address: _____					
<small>Street or Mailing Address</small>	<small>City</small>	<small>State</small>	<small>Country</small>	<small>Zip Code</small>	

GOVERNING PERSON 2					
Name: _____					
Address: _____					
<small>Street or Mailing Address</small>	<small>City</small>	<small>State</small>	<small>Country</small>	<small>Zip Code</small>	

GOVERNING PERSON 3					
Name: _____					
Address: _____					
<small>Street or Mailing Address</small>	<small>City</small>	<small>State</small>	<small>Country</small>	<small>Zip Code</small>	

GOVERNING PERSON 4					
Name: _____					
Address: _____					
<small>Street or Mailing Address</small>	<small>City</small>	<small>State</small>	<small>Country</small>	<small>Zip Code</small>	

Event Requiring Winding Up
(See Item 6 instructions.)

6. The nature of the event requiring winding up is set forth below: (You must select either A, B, C, D, or E.)

- A. A voluntary decision to wind up the entity has been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.
 - B. The period of duration specified in the governing documents of the entity has expired.
 - C. The occurrence of an event specified in the governing documents of the entity that requires the winding up, dissolution, or termination of the entity
 - D. The occurrence of an event specified in the Texas Business Organizations Code that requires the winding up, dissolution, or termination of the entity
- OR
- E. A court decree requiring the winding up, dissolution, or termination of the entity has been rendered under the provisions of the Texas Business Organizations Code or other law.

Completion of Winding Up

7. The filing entity has complied with the provisions of the Texas Business Organizations Code governing its winding up.

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
mm/dd/yyyy
- C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____
mm/dd/yyyy

The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate
(Required)

Attached hereto is a certificate from the comptroller of public accounts that all taxes under title 2, Tax Code, have been paid.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____
Name of entity (see Execution instructions)

Signature of authorized individual (see Execution instructions)

Printed or typed name of authorized individual

Form 21-2

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Termination of a Domestic Nonprofit Corporation or
Cooperative Association
(SOS Form 652)**

Form 21-2
Form 652—General Information
(Certificate of Termination of a Domestic Nonprofit Corporation or Cooperative Association)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. *This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.*

Commentary

When the owners, members or governing authority of a domestic entity have determined that the existence of an entity should terminate, or there is an occurrence of an event specified in the governing documents requiring the winding up, dissolution or termination of a domestic entity, the entity should follow the procedures for winding up the business and affairs of the entity in the manner provided in chapter 11 of the Texas Business Organizations Code (BOC). On completion of the winding up process, a filing entity must file a certificate of termination with the secretary of state. *This form is only applicable to the termination of a nonprofit corporation or a cooperative association.*

Instructions for Form

- **Items 1-4—Entity Information:** The certificate of termination must contain the legal name of the entity and the file number assigned by the secretary of state. It is recommended that the entity type and date of formation be provided to facilitate processing of the document. *Note that this form should only be used for the termination of a nonprofit corporation or a cooperative association.*
- **Item 5—Governing Persons:** The certificate of termination must set forth the name and address of each of the filing entity's governing persons. In general, a nonprofit corporation must have at least three directors, and a cooperative association must have three liquidating trustees. Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.). An address is always required for each governing person.

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Item 6—Event Requiring Winding Up:** The certificate of termination must state the nature of the event requiring winding up of the entity. Sections 11.051 to 11.059 of the BOC contain provisions relating to the winding up of a domestic entity. Section 11.051 provides that winding up of a domestic entity is required on the approval of a voluntary decision to wind up the entity (option A); the expiration of the entity's period of duration as specified in its certificate of formation (option B), the occurrence of an event specified in the governing documents requiring winding up (option C), the occurrence of an event specified by the BOC requiring winding up (option D), or a decree by a court requiring winding up or dissolution of the entity rendered under the BOC or other law (option E).

Select the applicable event requiring the winding up or termination of the entity. *The secretary of state will reject a certificate of termination if item 6 is not completed.*

- **Statement Regarding Completion of Winding Up:** The certificate of termination must provide that the filing entity has complied with the provisions of the BOC governing its winding up. Please review the winding up procedures in subchapter B of chapter 11 of the BOC and any supplemental winding up procedures that may apply to the filing entity.
- **Supplemental Information Required for a Nonprofit Corporation:** The certificate of termination of a nonprofit corporation must contain a statement that:
 - (1) Any property of the nonprofit corporation has been transferred, conveyed, applied, or distributed in accordance with chapters 11 and 22 of the BOC.
 - (2) There is no suit pending against the nonprofit corporation or adequate provision has been made for the satisfaction of any judgment, order or decree that may be entered against the nonprofit corporation in a pending suit.
 - (3) If the nonprofit corporation received and held property permitted to be used only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but the nonprofit corporation did not hold the property on a condition requiring return, transfer, or conveyance because of the winding up and termination, the distribution of that property has been effected in accordance with a plan of distribution adopted in compliance with the BOC for the distribution of that property.
- **Effectiveness of Filing:** A certificate of termination becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the filing entity will be shown as “voluntarily terminated” on the records of the secretary of state.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of termination must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument.

A certificate of termination filed by a nonprofit corporation should be signed by an officer of the corporation (BOC § 20.001).

A certificate of termination filed by a cooperative association should be signed by an officer of the cooperative or by one or more of the persons designated as a liquidating trustee under section 251.401 of the BOC (BOC § 251.402).

A certificate of termination need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the*

person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for a certificate of termination for a nonprofit corporation or cooperative association is \$5. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Form 652
(Revised 05/11)
 Return in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512 463-5709
Filing Fee: \$5



This space reserved for office use.

**Certificate of Termination
 of a Domestic
 Nonprofit Corporation or
 Cooperative Association**

Entity Information

1. The name of the domestic entity is: _____
2. The entity is organized under Texas law as a nonprofit corporation cooperative association.
3. The date of formation of the entity is: _____
4. The file number issued to the entity by the secretary of state is: _____

Governing Persons

5. The names and addresses of each of the entity's governing persons are: (see instructions)

GOVERNING PERSON 1				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country</i> <i>Zip Code</i>

GOVERNING PERSON 2				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country</i> <i>Zip Code</i>

GOVERNING PERSON 3				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country</i> <i>Zip Code</i>

GOVERNING PERSON 4				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country</i> <i>Zip Code</i>

Event Requiring Winding Up
(See instructions.)

6. The nature of the event requiring winding up is set forth below: (Select either A, B, C, D, or E.)

- A. A voluntary decision to wind up the entity has been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.
 - B. The period of duration specified in the governing documents of the entity has expired.
 - C. The occurrence of an event specified in the governing documents of the entity that requires the winding up, dissolution, or termination of the entity
 - D. The occurrence of an event specified in the Texas Business Organizations Code that requires the winding up, dissolution, or termination of the entity
- OR**
- E. A court decree requiring the winding up, dissolution, or termination of the entity has been rendered under the provisions of the Texas Business Organizations Code or other law.

Completion of Winding Up

7. The filing entity has complied with the provisions of the Texas Business Organizations Code governing its winding up.

Supplemental Information Required For a Nonprofit Corporation

The undersigned authorized person acting on behalf of the named nonprofit corporation certifies that:

- 1. Any property of the nonprofit corporation has been transferred, conveyed, applied, or distributed in accordance with chapter 11 and chapter 22 of the Texas Business Organizations Code.
- 2. There is no suit pending against the nonprofit corporation or that adequate provision has been made for the satisfaction of any judgment, order or decree that may be entered against the nonprofit corporation in a pending suit.
- 3. If the nonprofit corporation received and held property permitted to be used only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but the nonprofit corporation did not hold the property on a condition requiring return, transfer, or conveyance because of the winding up and termination, that the distribution of that property has been effected in accordance with a plan of distribution adopted in compliance with the BOC for the distribution of that property.

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____

A person authorized by law to execute the filing instrument
(see instructions)

Printed or typed name of authorized person

Form 21-3

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Certificate of Withdrawal of Resignation
(SOS Form 608)**

Form 21-3
Form 608—General Information
(Certificate of Withdrawal of Registration)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

When a foreign filing entity has ceased to transact business or conduct affairs in this state, the entity may voluntarily withdraw its application for registration. This form is drafted to comply with section 9.011(b) of the Texas Business Organizations Code (BOC).

A foreign entity that has terminated its existence in its jurisdiction of formation because of dissolution, termination, or merger should use **Form 612** rather than this form to terminate its registration. A foreign entity that has filed a merger or conversion in its jurisdiction of formation would use **Form 422** rather than Forms 608 or 612 to transfer its registration to a successor foreign entity.

Instructions for Form

- **Items 1-6—Entity Information:** The certificate of withdrawal must contain the legal name of the entity, the type of organization, the jurisdiction of formation and the entity's principal office. It is recommended that the date of registration and file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Item 7—Service of Process:** The certificate of withdrawal must indicate that the foreign filing entity is no longer transacting business in Texas. Further, the certificate must revoke the authority of the entity's registered agent to accept service or process and consent that service of process may be made on the foreign filing entity by the secretary of state. In addition, the certificate must set forth the address to which the secretary of state may mail of copy of any process against the foreign filing entity served on the secretary of state.
- **Item 8—Money Due to the State:** The certificate of withdrawal must indicate that any money due or accrued to the state has been paid or that adequate provision has been made for the payment of the money.
- **Effectiveness of Filing:** A certificate of withdrawal of registration becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was

conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the filing entity will be shown as “withdrawn” on the records of the secretary of state.

- **Tax Certificate:** If the foreign entity is a taxable entity under Chapter 171 of the Tax Code, the certificate of withdrawal of registration must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that all taxes administered by the Comptroller under Title 2, Tax Code have been paid and that the entity is in good standing for the purpose of withdrawal. Please note that the Comptroller issues many different types of certificates of account status. *Do not attach a certificate or print-out obtained from the Comptroller’s web site as this does not meet statutory requirements.* You need to attach form #05-305, which is obtained directly from a Comptroller of Public Accounts representative.

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact *tax.help@cpa.state.tx.us*.

Please note that a foreign nonprofit corporation is not required to attach a tax certificate.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of withdrawal of registration must be signed by a person authorized to act on behalf of the entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of withdrawal filed by a corporation should be signed by an officer of the corporation (BOC § 20.001).

A certificate of withdrawal filed by a professional association should be signed by an officer of the association.

A certificate of withdrawal filed by a limited liability company should be signed by an authorized manager if the company has managers. If the company does not have managers and is managed by its members, an authorized managing-member must sign the withdrawal.

A certificate of withdrawal filed by a limited partnership must be signed by a general partner. The execution of a certificate by a general partner is an oath or affirmation, under a penalty of perjury, that to the best of the executing party’s knowledge and belief, the facts contained in the certificate are true and correct (BOC § 153.553(c)).

The certificate of withdrawal of registration need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person’s intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of withdrawal of registration is **\$15**, unless the foreign filing entity is a nonprofit corporation or cooperative association. The filing fee for a certificate of withdrawal of registration for a nonprofit corporation or cooperative association is **\$5**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee and appropriate certificate of account status. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

Revised 05/11

Form 608
(Revised 05/11)
 Submit in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512 463-5709
Filing Fee: See instructions



This space reserved for office use.

**Certificate of Withdrawal
 of Registration**

Entity Information

1. The name of the foreign filing entity as registered in this state is:

2. The entity is organized as a: _____

3. The entity is organized under the laws of: _____

4. The date of registration of the foreign filing entity is: _____

5. The file number issued to the entity by the secretary of state is: _____

6. The address of the principal office of the foreign filing entity is:

Street Address *City* *State* *Country* *Zip Code*

Service of Process

7. The foreign filing entity no longer is transacting business or conducting affairs in this state and is surrendering its authority to transact business in Texas. The foreign filing entity:

- revokes the authority of the entity's registered agent in this state to accept service of process; and
- consents that service of process in any action, suit, or proceeding stating a cause of action arising in this state during the time the foreign filing entity was authorized to transact business in this state may be made on the foreign filing entity by serving the secretary of state.

The address to which the secretary of state may mail a copy of any process against the foreign filing entity is:

Mailing Address *City* *State* *Country* *Zip Code*

Money Due to the State

8. Any money due or accrued to the state has been paid or adequate provision has been made for the payment of that money.

Effectiveness of Filing

(Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Tax Certificate

(Required, unless the entity is a foreign nonprofit corporation.)

- Attached hereto is a certificate from the comptroller of public accounts that all taxes under Title 2, Tax Code have been paid.
- The entity is a foreign nonprofit corporation and is not required to provide a tax certificate.

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____

Signature of authorized person

Printed or typed name of authorized person (see instructions)

Form 22-1

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Application for Registration of a Trade or Service Mark
(SOS Form 901)**

Form 22-1

Form 901—Instructions
(Trade or Service Mark Application)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. *The form and the information provided are not substitutes for the advice and services of an attorney.*

General Information

Trade and service marks are commonly referred to as brand names, logos or slogans. Trademarks are used to identify tangible goods. Service marks are used to identify services. The term “mark” is used to refer to both trademarks and service marks.

Trade names not registrable. “Trade names” are terms used only to identify a business organization, rather than to distinguish the goods or services provided by the business. A company name may be viewed to be merely a trade name, instead of a mark, if it is advertised in such a way that it attracts little attention, is used in close proximity to an address or phone number, or is dominated by the presence of another mark. However, a company name may be registered if it is shown to function as a mark.

Effect of registration. The registration of a mark with the secretary of state creates a statewide priority of rights in the mark against any other person who subsequently adopts the same or a confusingly similar mark. Registration also provides “constructive notice” to all persons in the state of Texas of the priority of the registered mark and provides the owner with certain procedural advantages when the owner seeks judicial relief for infringement. For these reasons, it is beneficial for an owner of a mark who does business in Texas to register a mark with the secretary of state.

Applicant should conduct a conflict check. Since identical or confusingly similar marks may not be registered by more than one person, a person planning to use or register a mark should take steps to determine whether others have priority of rights to that mark. Although checking the active registrations on file with the Secretary of State can be a useful step, the absence of a conflicting registration on file does not mean that no one else claims priority of rights in the mark.

Requirements for Registration

Mark Must Be In Use: Registration of marks in Texas is based on actual use of the mark in Texas commerce. For example, before an application can be submitted to the secretary of state, the trademark must be used on a product sold or distributed in Texas, or the service mark must be used in association with services rendered in Texas (during advertising or sale). A proposed mark may not be “reserved” prior to its actual use in Texas commerce or before the submission of a properly completed and filed application. If an application is submitted prior to actual use, registration will be refused, and the processing fee submitted with the application will not be refunded.

Mark Must Be Distinctive: Only distinctive words, names, symbols, devices, or logos are entitled to registration. A designation that is primarily a surname, or that is commonly used in describing the product or service, or that directly describes the qualities or characteristics of a product or service is not distinctive on first use and not entitled to registration. For example, the terms "Food & Beverage On-Line" would not be entitled to registration when used in association with "a news and information service for the food processing industry contained in a database" since such terms would be merely descriptive of such a service. However, sometimes a designation that is not inherently distinctive may acquire distinctiveness through at least five (5) years of continuous and substantially exclusive use.

Instructions for Application

Type or print in black ink in English, subject to the provisions of § 93.31 of 1 Texas Administrative Code Chapter 93. Use of the application form is recommended, but not mandatory. Submit your application along with a drawing, specimens, and filing fee of \$50 per classification:

- by mail to the Secretary of State, PO Box 13697, Austin, Texas 78711-3697;
- fax with credit card information (Form 807) to (512) 463-5709; or
- delivery to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701.

Item 1: The applicant should be the person who owns the mark and controls the use of the mark and the quality of the goods or services. If the applicant is an individual sole proprietor doing business under an assumed name (“d/b/a”), then provide the individual’s name, followed by the assumed name of the business. If the applicant is a general partnership or joint venture, then provide the name of the partnership or joint venture. If the applicant is an organized entity, such as a corporation, limited liability company, or limited partnership, then provide the legal name of the organized entity as shown in its formation document (e.g., ABC Business Company, Inc.)

Item 2: Provide the business address of the applicant. (During the examination process, the secretary of state will send correspondence regarding the application to the submitter address provided in the cover letter, envelope, or enclosed check.)

Item 3: If the applicant named in Item 1 is a corporation, limited liability company, limited partnership, general partnership, or other business entity, identify the type of business organization and the state under whose laws the entity was incorporated or organized. Out-of-state applicants should also submit invoices or other material demonstrating the sale of goods or the rendition of services in Texas commerce.

Item 4: If the applicant is organized as a general or limited partnership, then provide the names of all general partners.

Item 5: *Name and/or Description of the Mark.* Describe the mark exactly as it appears in the samples of use and drawing sheet accompanying the application in Item 5A. The description in Item 5A, the drawing of the mark, and the samples of use provided must match. *Color Claim.* If color is claimed as a feature of the mark, check the “yes” box in 5B. If no color is claimed, check the “no” box in 5B. If the “yes” box is checked, list the color(s) claimed in 5C, and list the location of each color in 5D.

The applicant can seek to register only one mark per application; a single application may not be used to register multiple variations or multiple color combinations.

Item 6: A disclaimer may be included in an original application. Generally, components that are generic or descriptive of the goods or services would be disclaimed (e.g., an outline of the state, a geographic term of origin, or words that are commonly used to describe the goods or services). An applicant cannot disclaim all elements of the proposed mark. A properly worded disclaimer might be: Without waiving any right at common law, no claim is made to the exclusive right to use of _____ apart from the mark as shown.

Item 7: State the number(s) of the class(es) in which the goods or services belong. **Please note, use of this form is recommended for an applicant seeking to register a mark in two or fewer classes.**

For assistance with classifying goods or services, see the chart below or the Acceptable Identification of Goods and Services Manual at www.uspto.gov. If you are unsure of the class, leave this item blank.

Goods

Class 1: Chemicals
 Class 2: Paints
 Class 3: Cosmetics & Cleaning Preparations
 Class 4: Lubricants & Fuels
 Class 5: Pharmaceuticals
 Class 6: Metal Goods
 Class 7: Machinery
 Class 8: Hand Tools
 Class 9: Electrical & Scientific Apparatus
 Class 10: Medical Apparatus
 Class 11: Environmental Control Apparatus
 Class 12: Vehicles
 Class 13: Firearms
 Class 14: Jewelry
 Class 15: Musical Instruments
 Class 16: Paper Goods & Printed Matter
 Class 17: Rubber Goods
 Class 18: Leather Goods
 Class 19: Non-metallic Building Materials
 Class 20: Furniture and articles not otherwise classified

Class 21: Housewares & Glass
 Class 22: Cordage & Fibers
 Class 23: Yarns & Threads
 Class 24: Fabrics
 Class 25: Clothing
 Class 26: Fancy Goods (e.g., buttons, ribbons)
 Class 27: Floor Coverings
 Class 28: Toys & Sporting Goods
 Class 29: Meats & Processed Foods
 Class 30: Staple Foods (e.g., coffee, sugar)
 Class 31: Natural Agricultural Products
 Class 32: Light Beverages
 Class 33: Wine & Spirits
 Class 34: Smokers' Articles

Services

Class 35: Advertising & Business
 Class 36: Insurance & Financial
 Class 37: Building Construction & Repair
 Class 38: Telecommunications
 Class 39: Transportation & Storage
 Class 40: Treatment of Materials
 Class 41: Education & Entertainment
 Class 42: Computer, scientific and legal
 Class 43: Hotels and restaurants
 Class 44: Medical, beauty and agricultural
 Class 45: Personal

For each class listed on the application, describe clearly and concisely the goods or the services currently sold or provided by the applicant on or in connection with which the mark is being used. Limit the description of goods or services to those goods or services under the same class heading.

For each class listed on the application, accurately state the date on which the mark was first publicly used to identify the goods or services being marketed. Both dates of first use "Anywhere" and "in Texas" must be indicated on the application. (If the first use was in Texas, both dates will be the same). State the month, day and year for each date of first use, e.g., "11/30/1983." It is insufficient to note the month and the year without the date, if the application is submitted within the same month.

Item 8 An applicant must fully disclose whether the applicant or the applicant's predecessor in interest has filed an application to register the mark, or a portion or composite of the mark, with the United States Patent and Trademark Office.

- Item 9** List the manner in which the mark is used or communicated to the consuming public, such as tags or labels attached to goods; or newspapers, brochures or signs advertising services. If the application is for more than one (1) class, list the manner in which the mark is used in each class.
- Item 10** *Specimen.* Three (3) specimens supporting the goods/services described in Item 7 and supporting the manner in which the mark is used in Item 9 must be attached to the application. In Item 10, check the box for each type of specimen included. Include at least one (1) specimen for each class. If color is claimed as a feature of the mark, include at least one specimen showing the mark in color.

Appropriate Specimens (samples of use)

Trademarks: Acceptable specimens include actual labels or tags affixed to, or containers used with, the goods. A photograph of an actual display that appears in immediate proximity to the goods ("point-of-sale" display) is also an acceptable specimen. Brochures that advertise the product are not sufficient.

Service marks: Acceptable specimens include actual materials used in selling or advertising the services, such as menus, newspaper advertisements, coupons and the like. To serve as specimens, advertising materials (including letterhead or business cards) must contain some understandable reference to the services described in the application.

Drawing: Include the mark exactly as it appears in the samples of use accompanying the application and exactly as it is described in Item 5 of the application. Do not include other words that are not part of the mark.

If the mark consists only of a word, letter or numeral, or a combination thereof, and is not depicted in a special form, type or print the mark in capital letters on the drawing sheet. If the mark is not only words, letters or numerals, or a combination thereof, and also includes a design, the entire design must appear on the drawing sheet.

If the mark includes a color claim, it may either appear in color or black and white. If the mark appears in color, it must match the color(s) described in the color statement.

The drawing must depict only one mark, and the drawing must fit within the 3.15 inches by 3.15 inches drawing box. The drawing must be an exact reproduction of the mark sought to be registered. If desired, the drawing may be taped to the drawing sheet.

A black and white reproduction of the mark in the drawing box will appear on the certificate issued, so an electronic reproduction of the mark is recommended.

Signature: The registrant named in Item 1 must sign and date the application. An application made by a business entity must be signed by an authorized person. The application must be signed and verified before a notary public or other person authorized to administer oaths and should not be executed before the date of first use of the mark.

Before signing, carefully review the application. An application or registration procured by fraud is subject to cancellation pursuant to Chapter 16, Business & Commerce Code.

Fee: The application fee (\$50 per class) may be paid by personal check, money order, LegalEase debit card, cashier's check, or American Express, Discover, MasterCard, or Visa credit card. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees. The fee is not refundable regardless of whether the mark is registered, denied, or abandoned.

Examination Process

An application for trade or service mark registration undergoes an examination process similar to the federal registration process. A "trademark examiner" reviews the application to ascertain whether the proposed mark proposed is registrable under Section 16.051, Business & Commerce Code. Texas law, federal statutory law (upon which the Texas trademark statute is based), federal case law, and examining procedures similar to those used by the United States Patent and Trademark Office (USPTO) are used by the secretary of state to examine applications. The Examiner also compares the proposed mark with marks previously registered in Texas and with the USPTO to determine whether the proposed mark will cause a likelihood of confusion.

During the course of the examination process, the trademark examiner may require the applicant to disclaim an unregistrable component of a mark that is otherwise registrable. The purpose of a disclaimer is to permit the registration of a mark that is registrable as a whole but contains matter that would not be registrable standing alone. A disclaimer amounts merely to a statement that, in so far as the particular registration is concerned, no rights are being asserted in the disclaimed component standing alone, but rights are asserted in the mark as a whole. Generally, components that are generic or descriptive of the goods or services would be disclaimed (e.g., an outline of the state, a geographic term of origin, or words that are commonly used to describe the goods or services). A disclaimer may be included in an original application or may be added by amendment. An applicant cannot disclaim all elements of the proposed mark.

If the application for registration is approved, we will return a certificate of registration. Not all applications submitted to the secretary of state are approved for registration. If an application is rejected, we will notify the submitter of the objections to registration. The applicant is given ninety (90) days within which to amend the application, to provide the information requested, or to respond to the denial. Failure to respond within the time specified will terminate the examination process and will result in abandonment of the application. Upon receipt of the applicant's response, the trademark examiner will reexamine the application. The examination procedures described may be repeated until the application is registered, finally denied, or abandoned by the applicant.

The trademark examiners cannot provide legal advice with regard to trademark law applicable to a particular circumstance. Because trademark law is quite complex, the secretary of state recommends that persons seeking to register a mark consult with a private attorney.

Revised 05/13

<p>Form 901 (Revised 05/13)</p> <p>Submit to: Secretary of State PO Box 13697 Austin, TX 78711-3697 512 463-9760 FAX: 512 463-5709 Application Fee: \$50 per class</p>	 <p>Application for Registration of a Trade or Service Mark</p>	<p style="font-size: small;">This space reserved for office use.</p>
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<p>1. NAME OF APPLICANT (owner of mark—individual, corporation, or other entity applying for registration):</p>									
<p>2. BUSINESS ADDRESS OF APPLICANT:</p>									
City:	State:	Zip Code:	Country:						
<p>3. BUSINESS STRUCTURE OF APPLICANT (Check One and Complete)</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; padding: 5px;"> <input type="checkbox"/> Corporation (State of Incorporation): _____ </td> <td style="width: 50%; padding: 5px;"> <input type="checkbox"/> General Partnership (State of Organization): _____ </td> </tr> <tr> <td style="padding: 5px;"> <input type="checkbox"/> Limited Liability Company (State of Organization): _____ </td> <td style="padding: 5px;"> <input type="checkbox"/> Sole Proprietor </td> </tr> <tr> <td style="padding: 5px;"> <input type="checkbox"/> Limited Partnership (State of Organization): _____ </td> <td style="padding: 5px;"> <input type="checkbox"/> Other (Describe): _____ </td> </tr> </table>				<input type="checkbox"/> Corporation (State of Incorporation): _____	<input type="checkbox"/> General Partnership (State of Organization): _____	<input type="checkbox"/> Limited Liability Company (State of Organization): _____	<input type="checkbox"/> Sole Proprietor	<input type="checkbox"/> Limited Partnership (State of Organization): _____	<input type="checkbox"/> Other (Describe): _____
<input type="checkbox"/> Corporation (State of Incorporation): _____	<input type="checkbox"/> General Partnership (State of Organization): _____								
<input type="checkbox"/> Limited Liability Company (State of Organization): _____	<input type="checkbox"/> Sole Proprietor								
<input type="checkbox"/> Limited Partnership (State of Organization): _____	<input type="checkbox"/> Other (Describe): _____								
<p>4. NAMES OF GENERAL PARTNERS, IF APPLICANT IS A PARTNERSHIP (attach additional sheet if necessary):</p>									
<p>5A. NAME AND/OR DESCRIPTION OF MARK (For design, provide a brief written description that can be pictured in the mind without reference to the specimens. Do not draw the design on the application. Attach a drawing of the mark.):</p>									

<p>5B. COLOR CLAIM. Is a claim made to color?</p> <p><input type="checkbox"/> Yes (go to 5C and 5D)</p> <p><input type="checkbox"/> No (go to 6)</p>	<p>5C. If yes, claim is made to the following colors:</p> <p>_____</p> <p>_____</p> <p>_____</p>		
<p>5D. COLOR LOCATION STATEMENT. Please include the location of each color (e.g., a red balloon with a yellow ribbon):</p> <p>_____</p> <p>_____</p>			
<p>6. DISCLAIMER (If Applicable) No claim is made to the exclusive right to use the term:</p> <p>_____</p> <p>_____</p>			
<p>7A. CLASS NUMBER(S)</p>	<p>Class #1: _____ (go to 7B)</p>	<p>Class #2: _____ (go to 7C)</p>	
<p>7B. CLASS #1: If a trademark, list specific goods. If a service mark, list specific services:</p> <p>_____</p> <p>_____</p>			
<p>Date the mark was first used in Texas:</p>		<p>Date the mark was first used anywhere:</p>	
<p>7C. CLASS #2: If a trademark, list specific goods. If a service mark, list specific services:</p> <p>_____</p> <p>_____</p>			
<p>Date the mark was first used in Texas:</p>		<p>Date the mark was first used anywhere:</p>	
<p>8. USPTO TRADEMARK REGISTRATION/APPLICATION. Complete the following if the applicant or a predecessor in interest has filed an application to register the mark or portions of the mark with the United States Patent and Trademark Office.</p>			
<p>Filing Date _____</p>	<p>Serial/File No. _____</p>	<p>Status of Application _____</p>	
<p>If Refused, Why? _____</p>			
<p><input type="checkbox"/> Check here if this item does not apply.</p>			
<p>9. MANNER IN WHICH THE MARK IS USED (If more than one (1) class, list the manner in which the mark is used in each class):</p> <p>_____</p> <p>_____</p> <p>_____</p>			

10. SPECIMENS (Check the applicable boxes below and enclose three (3) original specimens supporting the goods/services described in Item 7. Include at least one (1) specimen for each class)

<p>For Trademarks Only</p> <p><input type="checkbox"/> Actual Labels</p> <p><input type="checkbox"/> Actual Tags</p> <p><input type="checkbox"/> Photographs of Goods/Containers Showing the Mark</p> <p><input type="checkbox"/> Front Panels of a Paper Container Bearing the Mark</p> <p><input type="checkbox"/> Other: _____</p>	<p>For Service Marks Only</p> <p><input type="checkbox"/> Advertising Leaflets</p> <p><input type="checkbox"/> Advertising Brochures</p> <p><input type="checkbox"/> Menus Showing the Mark</p> <p><input type="checkbox"/> Business Cards that Reference Services</p> <p><input type="checkbox"/> Other: _____</p>
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11. DECLARATION OF OWNERSHIP

Applicant declares that the applicant is the owner of the mark, that the mark is in use, and that to the knowledge of the person verifying the application, no other person has registered the mark, either federally or in this state, or is entitled to use the mark in this state, either in the identical form used by the applicant or in a form that is likely, when used on or in connection with the goods or services of the other person, to cause confusion or mistake, or to deceive, because of its resemblance to the mark.

12. SIGNATURE AND VERIFICATION

DATE

SIGNATURE OF AUTHORIZED PERSON

TYPE OR PRINT NAME AND TITLE

TO BE COMPLETED BY A NOTARY PUBLIC:

STATE OF _____)
COUNTY _____)

On _____, _____ personally appeared before me, and being first duly sworn declared that he/she signed this application in the capacity designated, if any, above application and the statements therein contained are true and and further stated that he/she has read the above application and the statements therein are true and correct.

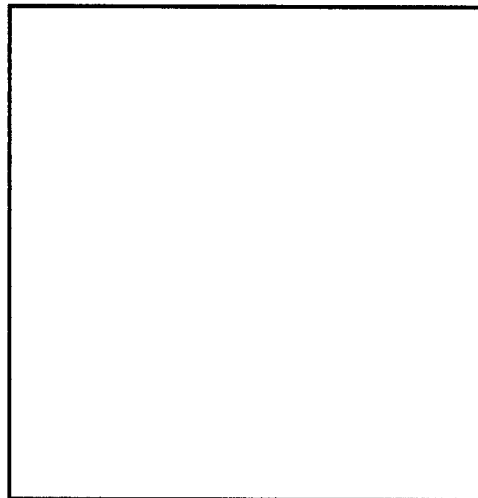
(seal)

NOTARY PUBLIC SIGNATURE

TRADEMARK DRAWING SHEET

Instructions: Include the mark exactly as it appears in the samples of use accompanying the application and exactly as it is described in item 5 of the application. Do not include other words that are not part of the mark.

- If the mark consists only of a word, letter or numeral, or a combination thereof, and is not depicted in a special form, type or print the mark in capital letters on the drawing sheet.
- If the mark is not only words, letters or numerals, or a combination thereof, and also includes a design, the entire design must appear on the drawing sheet.
- The drawing *must*
 - Depict only one mark
 - Fit within the box (3.15 in (8 cm) high by 3.15 in (8 cm) long)
 - Be an exact reproduction of the mark
- A mark including a color claim must either
 - Appear in color and match the color(s) described in the color statement.
 - Appear in black and white
- If desired, you may tape a drawing of the mark to this drawing sheet.
- **A black and white reproduction of the mark in the drawing box will appear on the certificate issued, so an electronic reproduction of the mark is recommended.**



Form 22-2

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Renewal Application of a Trade or Service Mark
(SOS Form 902)**

Form 22-2
Form 902—Instructions
(Renewal Application of Trade or Service Mark)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. The form and the information provided are not substitutes for the advice and services of an attorney.

General Information

Texas trademark registrations last for five years and may be renewed for additional five year periods using this form. A registration may be renewed during the six months immediately preceding the expiration date of the current term of registration. Renewal applications must be received on or before the current term of registration expires. *If the renewal application is not received before the registration term expires, a new application for registration must be made.*

A renewal must include the goods and/or services recited in the current registration on or in connection with which the mark is still in use in Texas. If the renewal application covers less than all the goods and/or services in the current registration, a list of the particular goods and/or services to be renewed must be included.

If either the mark or the classification of the goods or services has substantially changed from the previous registration, a new registration for the altered mark or new classification must be made.

If the renewal application is refused, the application may be amended in response to the refusal, but a response must be received during the period provided for response and before the current term of registration expires. If the renewal application cannot be filed before the registration term expires, a new application for registration must be made.

Instructions for Renewal Application

Type or print in black ink in English, subject to the provisions of 1 Texas Administrative Code Chapter 93. Use of the renewal application form is recommended, but not mandatory. Submit your renewal application along with at least one (1) specimen supporting use of the mark in each class.

- Item 1:** Only the registrant of record may file a renewal. If ownership of the mark has been assigned or transferred, or the name of the registrant has changed, the assignment, transfer, or change must be filed with the renewal application. Please see Forms 903 and 904.
- Item 2:** Provide the business address of the registrant.
- Item 3:** In the space provided for the description of the mark, describe the mark exactly as it appears in the specimens of use. The mark must be the same mark as was previously registered. The registration number, original date of registration, class numbers, and dates of first use may be obtained from the original Certificate of Registration.
- Item 4:** If the registrant is a corporation, limited liability company, limited partnership, general partnership, or other business entity, identify the type of business organization and the state under whose laws the entity was incorporated or organized.

Item 5: If the registrant is organized as a general or limited partnership, provide the names of all general partners.

Specimen: A registration cannot be renewed if the mark is no longer in use in Texas commerce. A specimen supporting use of the mark in each class must be included. In Item 7, check the box for each type of specimen included. A drawing sheet is not an acceptable specimen.

Appropriate Specimens (samples of use)

Trademarks: Acceptable specimens include actual labels or tags affixed to, or containers used with, the goods. A photograph of an actual display that appears in immediate proximity to the goods ("point-of-sale" display) is also an acceptable specimen. Brochures that advertise the product are not sufficient.

Service marks: Acceptable specimens include actual materials used in selling or advertising the services, such as menus, newspaper advertisements, coupons and the like. To serve as specimens, advertising materials must contain some understandable reference to the services described in the application.

Fee: The renewal fee (\$25 per class) may be paid by personal check, money order, LegalEase debit card, cashier's check, or American Express, Discover, MasterCard, or Visa credit card. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Signature: The registrant named in Item 1 must sign and date the application. A renewal made by a business entity must be signed by an authorized person. The renewal must be signed and verified before a notary public or other person authorized to administer oaths.

Before signing, carefully review the application. An application or registration procured by fraud is subject to cancellation pursuant to Chapter 16, Business & Commerce Code.

Submission: Submit your renewal application and filing fee of \$25:

- by mail to the Secretary of State, PO Box 13697, Austin, Texas 78711-3697;
- by fax with credit card information (Form 807) to (512) 463-5709; or
- by delivery to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701.

On filing, we will return to the remitter a Certificate of Registration for the new term of registration. The secretary of state will send correspondence regarding the renewal to the submitter address provided in the cover letter, envelope, or enclosed check.

This is a sample form and is promulgated by the secretary of state to obtain the minimum information required for a renewal application. It is advisable to seek the assistance of legal counsel in preparing any legal document. *The secretary of state makes no warranties, express or implied, regarding the use of this form.*

Revised 09/13

Form 902 (Revised 09/13) Submit to: Secretary of State PO Box 13697 Austin, TX 78711-3697 512 463-9760 FAX: 512 463-5709 Fee: \$25 per class	<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">  </div> <div style="text-align: right; font-size: small;"> This space reserved for office use. </div> </div> <p style="text-align: center; font-weight: bold; margin-top: 10px;"> Renewal Application of a Trade or Service Mark </p>
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1. Name of Registrant (owner of mark—individual, corporation, or other entity renewing registration):			
2. Business Address of Registrant:			
City:	State:	Zip Code:	Country:
3. Description of the Mark (include <i>complete description of the mark</i> as it appears in the attached specimen of use, including any design elements):			
Registration No: _____ Original Date of Registration: _____ Class Numbers: _____ Date of First Use Anywhere: _____; Date of First Use in Texas: _____			
4. Business Structure of Registrant (must check one and complete state of formation)			
<input type="checkbox"/> Corporation (State of Incorporation): _____		<input type="checkbox"/> General Partnership (State of Organization): _____	
<input type="checkbox"/> Limited Liability Company (State of Organization): _____		<input type="checkbox"/> Sole Proprietor	
<input type="checkbox"/> Limited Partnership (State of Organization): _____		<input type="checkbox"/> Other (Describe): _____	
5. Names of General Partners if Registrant is a Partnership (attach additional sheet if necessary)			
6. The Following Must Be Included With Your Renewal:			
		<input type="checkbox"/> Specimen(s)	<input type="checkbox"/> Fee
		(see item 7)	(\$25 per class)
7. Specimens: (Check the applicable box below and enclose one (1) original specimen for each class supporting the goods/services for which the renewal of registration is sought).			

For Trademarks Only <input type="checkbox"/> Actual Labels <input type="checkbox"/> Actual Tags <input type="checkbox"/> Photographs of Goods/Containers Showing the Mark <input type="checkbox"/> Front Panels of a Paper Container Bearing the Mark <input type="checkbox"/> Other: _____	For Service Marks Only <input type="checkbox"/> Advertising Leaflets <input type="checkbox"/> Advertising Brochures <input type="checkbox"/> Menus Showing the Mark <input type="checkbox"/> Business Cards that Reference Services <input type="checkbox"/> Other: _____
<p>The mark has been and is still in use within the State of Texas by the registrant in the form and manner specified in the present application. I certify under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.</p>	
<p>Signature and Verification</p> <p>_____</p> <p>Date _____</p>	
<p>Signature of Authorized Person</p>	<p>Type or Print Name and Title of Officer, Partner, or Other Authorized Person</p>
<p>TO BE COMPLETED BY A NOTARY PUBLIC:</p> <p>STATE OF _____)</p> <p>COUNTY OF _____)</p> <p>On _____, _____ personally appeared before me, and being first duly sworn declared that he/she signed this application in the capacity designated, if any, and further stated that he/she has read the above application and the statements therein are true and correct.</p> <p>(scal)</p> <p style="text-align: center;">_____ NOTARY PUBLIC SIGNATURE</p>	

Form 22-3

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Assignment of a Trade or Service Mark
(SOS Form 903)**

Form 22-3
Form 903—Instructions
(Assignment of a Trade or Service Mark)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. The form and the information provided are not substitutes for the advice and services of an attorney.

General Information

A trademark or service mark registered in Texas is assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of, and symbolized by, the mark. The assignment of registered marks is accomplished under the authority of section 16.061, Texas Business and Commerce Code. An assignment may be made only by a duly executed written instrument.

Assignment Void if not Recorded. The assignment of a registered mark registered is void against a purchaser who purchases the mark for valuable consideration after the assignment is made and without notice of it unless the assignment is recorded by the secretary of state:

- (1) not later than the 90th day after the date of the assignment; or
- (2) before the mark is purchased.

Effect of Assignment. When an assignment is properly filed, the secretary of state will issue a certificate of registration in the assignee's name for the remainder of the mark's registration period or last renewal. *If the assignment cannot be filed before the registration term expires, a new application for registration must be made.*

Instructions for Assignment Form

Type or print in black ink in English, subject to the provisions of 1 Texas Administrative Code Chapter 93. Use of the assignment form is recommended, but not mandatory.

- Item 1:** *Name of Assignor.* The assignor should be the registrant of record. If the assignor is not the registrant of record, additional filings may be required before the assignment may be recorded and filed.
- Item 2:** *Business Address.* Provide the business address of the assignor.
- Item 3:** The description of the mark, registration number, and original date of registration may be obtained from the original Certificate of Registration.
- Item 4:** *Name of Assignee.* The assignee should be the person to whom the assignor will assign all right, title and interest in and to the mark and its registration, together with the goodwill of the business with which the mark is used, or that part of the goodwill connected with the use of, and symbolized by, the mark. If the assignee is an individual sole proprietor doing business under an assumed name ("d/b/a"), provide the individual's name, followed by the assumed name of the business. If the assignee is a general partnership or joint venture, provide the name of the partnership or joint venture. If the assignee is an organized entity, such as a corporation, limited liability company, or limited partnership, provide the legal name of the organized entity as shown in its formation document (e.g., ABC Business Company, Inc.).

- Item 5:** *Business Address.* Provide the business address of the assignee.
- Item 6:** If the assignee named in Item 4 is a corporation, limited liability company, limited partnership, general partnership, or other business entity, identify the type of business organization and the state under whose laws the entity was incorporated or organized.
- Item 7:** If the assignee is organized as a general or limited partnership, provide the names of all general partners.
- Signature** The assignor named in Item 1 must sign and date the application. An application made by a business entity must be signed by an authorized person. The application must be signed and acknowledged before a notary public or other person authorized to administer oaths.
- Fee:** The assignment fee (\$25) may be paid by personal check, money order, LegalEase debit card, cashier's check, or American Express, Discover, MasterCard, or Visa credit card. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.
- Submission:** Submit your assignment and filing fee of \$25:
- by mail to the Secretary of State, PO Box 13697, Austin, Texas 78711-3697;
 - by fax with credit card information (Form 807) to (512) 463-5709; or
 - by delivery to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701.
- On filing, we will return a Certificate of Registration for the remainder of the term of registration. The secretary of state will send correspondence regarding the assignment to the submitter address provided in the cover letter, envelope, or enclosed check.

This is a sample form and is promulgated by the secretary of state to obtain the minimum information required for recording an assignment. No such "standard form" can meet the requirements of all transactions. A copy of an originally executed assignment document may be submitted for recording. The information required for recordation may be provided in a cover letter. It is advisable to seek the assistance of legal counsel in preparing any legal document. *The secretary of state makes no warranties, express or implied, regarding the use of this form.*

Revised 09/12

Form 903 (Revised 09/12) Submit to: Secretary of State PO Box 13697 Austin, TX 78711-3697 512 463-9760 FAX: 512 463-5709 Assignment Fee: \$25	<div style="text-align: right; font-size: small;">This space reserved for office use.</div>  Assignment of a Trade or Service Mark
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1. Assignor:			
2. Business Address of Assignor:			
City:	State:	Zip Code:	Country:
3. Mark: _____			
Registration No: _____		Original Date of Registration: _____	
4. Assignee:			
5. Business Address of Assignee:			
City:	State:	Zip Code:	Country:
6. Business Structure of Assignee (check one and complete)			
<input type="checkbox"/> Corporation (State of Incorporation): _____		<input type="checkbox"/> General Partnership (State of Organization): _____	
<input type="checkbox"/> Limited Liability Company (State of Organization): _____		<input type="checkbox"/> Sole Proprietor	
<input type="checkbox"/> Limited Partnership (State of Organization): _____		<input type="checkbox"/> Other (Describe): _____	
7. Names of General Partners if Assignee is a Partnership (attach additional sheet if necessary)			

Assignor assigns to Assignee all right, title and interest in and to the above referenced mark and its registration, together with the goodwill of the business with which the mark is used, or that part of the goodwill connected with the use of, and symbolized by, the mark.

SIGNATURE AND ACKNOWLEDGEMENT

Date

Signature of Assignor

Name and Title of Officer, Partner or
Other Authorized Person

TO BE COMPLETED BY A NOTARY PUBLIC:

STATE OF _____)

COUNTY OF _____)

Before me, _____, on this day personally appeared
(insert the name and title of the officer)
_____, known to me (or proved to me on oath of _____

or through _____) to be the person whose name is subscribed to
(description of identity card or other document)
the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and
considerations therein expressed.

Given under my hand and seal of office this _____ day of _____, _____
(year)

(seal)

NOTARY PUBLIC SIGNATURE

Form 22-4

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Transfer of Trademark Ownership/Change of Registrant's Name
and Request for New Certificate of Trademark Registration
(SOS Form 904)**

Form 22-4



Office of the Secretary of State
Corporations Section
P.O. Box 13697
Austin, Texas 78711-3697

TRANSFER OF TRADEMARK OWNERSHIP/
CHANGE OF REGISTRANT'S NAME
AND REQUEST FOR NEW CERTIFICATE OF
TRADEMARK REGISTRATION

- 1. Applicant is the owner of the following trademark or service mark that is registered with the Secretary of State.
Description of the mark:
Registration Number:
Date of Registration:
Name of Registrant of Record:
Address of Registrant of Record:
2. Check the appropriate item below.
Ownership of the registered mark has been transferred to
The name of the registrant has been changed to
Name:
Address:
3. The instrument identified below that transferred ownership of the mark or changed the registrant's name was filed on the date shown with the filing office indicated. A certified copy of the instrument is attached hereto.
Document:
Date of Filing:
Filing Office:
or
A certified copy of the instrument is not attached because:
The instrument is not required to be filed or recorded.
The instrument is on file with the Secretary of State of Texas.
4. Registrant requests that a new certificate of registration be issued for the remainder of the term of registration.
Yes (Additional fee required) No

(Signature on reverse of form)

Signed on this _____ day of _____, _____

Current Registrant (Typed or Printed Name)

Signature of Current Registrant

INSTRUCTIONS

1. This form is to be used when ownership of a registered trademark or service mark is transferred, or when a registrant's name is changed during the period of registration. Upon request, a new certificate of registration will be issued in the name of the transferee or in the new name of the registrant. The new certificate will be for the remainder of the unexpired term of the mark's registration.
2. The fee for filing this form is \$10.00. If the registrant requests a new certificate of registration by checking "yes" in item 4, an additional fee of \$10.00 must be submitted.
3. This form and a certified copy of the instrument effecting the change of ownership or change of name should be submitted along with the required filing fee to: Secretary of State, Corporations Section, Attn: Trademark Examiner, P.O. Box 13697, Austin, Texas 78711. The delivery address is 1019 Brazos, Austin, Texas 78701.
4. If the document effecting the change is not required to be filed or recorded but it is the type of document which would be filed in the records of the Secretary of State if the registrant was a corporation, a copy of the document should be submitted along with this form.
5. A corporation or other business entity which has filed the document effecting the change with the Secretary of State of Texas must identify the document filed and the date of its filing with the Secretary of State, and need not attach a certified copy of the document.

Form No. 904
Revised 8/99

Form 22-5

Caution: Before using any SOS forms, the attorney should verify their currency by visiting the secretary of state's website at www.sos.state.tx.us or by calling (512) 463-5555. Note that many of these forms may also be filed online through SOSDirect.

**Business Filings & Trademarks Fee Schedule
(SOS Form 806)**

Form 22-5

Form 806
(Revised 09/15)

Credit Cards Accepted:
American Express, Discover,
MasterCard, & Visa



Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709

Business Filings & Trademarks
Fee Schedule

Information Requests, Copies & Certificates	Fee
Certificate of Fact (including Certificate of Existence or Status)	\$15
Long Form Certificate of Existence (Status plus list of filings)	\$25
Certified Copies	\$1 per page plus \$15 per certificate
Plain (Uncertified) Copies	\$0.10 per page
Apostille Related to a Business Entity Filing	\$15
SOSDirect Search	\$1 per search*
* \$1 search fee is not charged when an order or filing is placed on the search results	
Business Organizations & Nonprofits	Fee
Any instrument for which no express fee is provided (except nonprofit corporation or cooperative association)	\$15
Any instrument for which no express fee is provided for a nonprofit corporation or cooperative association	\$5
Formation & Registration	
Certificate of formation for a Texas entity (except nonprofit corporation, cooperative association, PA or LP) (Forms 201, 203, 205, 206)	\$300
Certificate of formation for a Texas professional association or limited partnership (Forms 204, 207)	\$750
Certificate of formation for a Texas nonprofit corporation (Form 202) or cooperative association	\$25
Registration or renewal as a Texas limited liability partnership or LLLP (Forms 701, 703)	\$200 per partner
Foreign entity application for registration (except nonprofit corporation, LLP, cooperative association or credit union) (Forms 301, 303, 304, 305, 306, 309, 311, 312, 313)	\$750*
* A foreign entity that has transacted business in Texas for more than ninety days without registering is subject to a late filing fee. The late filing fee is equal to the registration fee for each full or partial calendar year that the foreign entity transacted business in Texas without being registered.	
Foreign nonprofit corporation, cooperative association, or credit union application for registration (Forms 302, 309)	\$25*
* A foreign entity that has transacted business in Texas for more than ninety days without registering is subject to a late filing fee. The late filing fee is equal to the registration fee for each full or partial calendar year that the foreign entity transacted business in Texas without being registered.	
Foreign limited liability partnership application for registration or renewal (Forms 307, 308)	\$200 per partner in Texas, but not less than \$200 nor more than \$750*
* A foreign entity that has transacted business in Texas for more than ninety days without registering is subject to a late filing fee. The late filing fee is equal to the registration fee for each full or partial calendar year that the foreign entity transacted business in Texas without being registered.	
Name registration or renewal for foreign entity not qualified to transact business in Texas (Forms 502, 505)	\$40
Withdrawal of name registration of foreign entity not qualified to transact business in Texas (Form 508)	\$15

Correction or Abandonment of Filings, Delayed Effective Date	
Certificate of correction (Form 403)	\$15
Certificate of abandonment of a filing instrument that has not taken effect (except nonprofit corporation or cooperative association) (Form 427)	\$15
Certificate of abandonment of a filing instrument that has not taken effect for nonprofit corporation or cooperative association (Form 427)	\$5
Statement of event or fact required to effect a filing instrument delayed on the occurrence of a future event or fact (except nonprofit corporation or cooperative association) (Form 805)	\$15
Statement of event or fact required to effect a filing instrument delayed on the occurrence of a future event or fact for nonprofit corporation or cooperative association (Form 805)	\$5
Amendment, Merger & Conversion	
Certificate of amendment for Texas entity (except nonprofit corporation or cooperative association) (Form 424)	\$150
Certificate of amendment for Texas nonprofit corporation or cooperative association (Form 424)	\$25
Amendment to registration as a Texas limited liability partnership or LLLP (Form 722)	\$10 plus \$200 per partner added by amendment
Restated certificate of formation for a Texas entity (except nonprofit corporation or cooperative association) (Forms 414, 415)	\$300
Restated certificate of formation for a Texas nonprofit corporation or cooperative association (Forms 414, 415)	\$50
Texas for-profit corporation restriction on the transfer of shares (Form 425)	\$15
Texas for-profit corporation resolution relating to a series of shares (Form 426)	\$15
Foreign entity amendment to registration (except nonprofit corporation, LLP, cooperative association or credit union) (Forms 406, 411, 412)	\$150
Foreign nonprofit corporation, cooperative association or credit union amendment to registration (Forms 406, 411)	\$25
Foreign limited liability partnership amendment to registration (Form 407)	\$10 plus \$200 per partner added not to exceed \$750
Foreign entity transfer of registration to successor entity after merger or conversion (except nonprofit corporation or cooperative association) (Form 422)	\$150
Foreign nonprofit corporation or cooperative association transfer of registration to successor entity after merger or conversion (Form 422)	\$25
Certificate of merger (except nonprofit corporation or cooperative association) (Forms 621, 622, 623, 624)	\$300*
* Fees must include filing fee for the formation of any Texas filing entity created by the transaction.	
Certificate of merger for nonprofit corporation or cooperative association (Forms 621, 622, 623, 624)	\$50*
* Fees must include filing fee for the formation of any Texas filing entity created by the transaction.	
Certificate of conversion (except nonprofit corporation or cooperative association) (Forms 631, 632, 633, 634, 635, 636, 637, 638, 641, 642, 643, 644)	\$300*
* Fees must include filing fee for the formation of any Texas filing entity created by the transaction.	
Certificate of conversion where converting entity is nonprofit corporation or cooperative association (Forms 631, 632, 633, 634, 635, 636, 637, 638, 641, 642, 643, 644)	\$50*
* Fees must include filing fee for the formation of any Texas filing entity created by the transaction.	

Conversion & continuance (except nonprofit corporation or cooperative association) * Fees must include filing fee for the formation of any Texas filing entity created by the transaction.	\$300*
Conversion & continuance where converting entity is nonprofit corporation or cooperative association * Fees must include filing fee for the formation of any Texas filing entity created by the transaction.	\$50*
Certificate of exchange	\$300
Registered Agent Filings	
Change of registered agent and/or registered office by entity (except nonprofit corporation or cooperative association) (Form 401)	\$15
Change of registered agent and/or registered office by nonprofit corporation or cooperative association (Form 401)	\$5
Consent of registered agent to appointment (except nonprofit corporation or cooperative association) (Form 401-A)	\$15
Consent of registered agent to appointment for nonprofit corporation or cooperative association, (Form 401-A)	\$5
Rejection of appointment by registered agent (Form 428)	\$0
Change of registered office by registered agent (Form 408) * For changes to multiple entities, the fee is the number of entities of a certain type times the filing fee, up to a maximum fee identified below for each entity type: For-profit corporations \$750 Limited liability companies \$750 Limited partnerships \$750 Professional corporations \$750 Professional associations \$750 Nonprofit corporations and cooperative associations \$250	\$15 per entity*
Resignation of registered agent (Form 402)	\$0
Termination and Withdrawal, Reinstatement	
Certificate of termination for a Texas entity (except nonprofit corporation or cooperative association) (Form 651)	\$40
Certificate of termination for a Texas nonprofit corporation or cooperative association (Form 652)	\$5
Withdrawal of registration as a Texas limited liability partnership or limited liability limited partnership (Form 704)	\$15
Withdrawal or termination of registration to transact business in Texas (except nonprofit corporation or credit union) (Forms 608, 609, 612)	\$15
Withdrawal or termination of registration to transact business in Texas for nonprofit corporation or credit union (Forms 608, 612)	\$5
Application for reinstatement and request to set aside tax forfeiture (except nonprofit corporation or cooperative association) (Form 801)	\$75
Application for reinstatement and request to set aside tax forfeiture for nonprofit corporation or cooperative association (Form 801)	\$0
Application for reinstatement after voluntary termination (except nonprofit corporation or cooperative association) (Form 811)	\$15
Application for reinstatement after voluntary termination of nonprofit corporation or cooperative association (Form 811)	\$5
Application for reinstatement after involuntary termination or revocation (except nonprofit corporation or cooperative association) (Form 811)	\$75
Application for reinstatement after involuntary termination or revocation of nonprofit corporation or cooperative association (Form 811)	\$5

Reports	
Nonprofit corporation periodic report (Form 802) * Periodic Report after forfeiture of right to do business: \$5 plus late fee Periodic report late fee is the greater of \$5 or \$1 for each month that the report remains unfiled, not to exceed \$25. Periodic Report after involuntary termination: \$25	\$5*
Annual statement of a professional association (Form 803)	\$35
Limited partnership periodic report (Form 804) * Periodic Report after forfeiture of right to do business: \$50 plus late fee Periodic Report Late Fee: \$25/month, not to exceed \$100 Periodic Report after involuntary termination/revocation: \$225	\$50*
Close Corporations	
Statement of operation as a close corporation (Form 812)	\$15
Termination of close corporation status (Form 813)	\$15
Name Reservations and Assumed Name Certificates	
Name reservation (120 days) or renewal (Form 501)	\$40
Assumed name certificate (Form 503)	\$25
Abandonment of assumed name (Form 504)	\$10
Transfer of name reservation (Form 506)	\$15
Withdrawal of name reservation (Form 507)	\$0
Appointment of Agent by Financial Institution, Unincorporated Association, or Foreign Corporate Fiduciary	
Texas financial institution appointment of statutory agent (Form 706)	\$25
Texas financial institution amendment to appointment of statutory agent (Form 707)	\$15
Texas financial institution cancellation of appointment of statutory agent (Form 709)	\$15
Unincorporated nonprofit association appointment of statutory agent (Form 706)	\$25
Unincorporated nonprofit association amendment to or cancellation of appointment of statutory agent (Forms 707, 709)	\$5
Defense base development authority appointment of, amendment to, or cancellation of appointment of statutory agent (Forms 706, 707, 709)	\$0
Resignation of statutory agent for a Texas financial institution, unincorporated nonprofit association, or defense base development authority (Form 708)	\$0
Foreign corporate fiduciary filing to comply with § 105A, Texas Probate Code (Form 908)	\$0
Expedite & Preclearance Services	
Expedited processing of a document submitted for filing	\$25
Expedited Processing of a request for a certified copy or certificate of status or fact	\$10
Preclearance of any filing instrument	\$50
Bulk Orders (Business Entity Bulk Data Purchases)	
Previous Master Unload	\$1,350
Previous Master Unload By Entity Description	\$175
New Master Unload	\$1,750
Master Unload By Entity Description	\$200

List by Entity Description (comma-delimited format)	\$200
Daily Filing Update/Replacement (Subscription)	\$60
Daily Filing Update/Replacement (One-Time Request)	\$65
Weekly Filing Update/Replacement (Subscription)	\$20
Weekly Filing Update/Replacement (One-Time Request)	\$22
Weekly Subscription New Filings (Sunday through Saturday, comma-delimited format)	\$20
Trademarks	Fee
Application for Registration (Form 901)	\$50 per class
Renewal of Registration (Form 902)	\$25 per class
Assignment of Registration (Form 903)	\$25
Transfer of Ownership/Change in Registrant Name (Form 904)	\$10
Change of Registrant Address	\$0
Voluntary Cancellation of Registration	\$0

Form 23-1**Buy-Sell Agreement**

This buy-sell agreement (“Agreement”), effective as of [date], is entered into by [name of limited liability company], a Texas limited liability company (“Company”), and the undersigned Members (individually, “Member,” and collectively, “Members”) and is joined in by Members’ spouses (“Spouse” or “Spouses”).

WITNESSETH

WHEREAS, the Company and Members desire to enter into this Agreement for the purposes of limiting the manner and terms by which all units (“Unit” or “Units”) of the Company now and hereafter owned by Members, as well as any interest of Spouses in any such Units, may be transferred and disposed of (both voluntarily and by operation of law) and of providing certain buy-sell rights in favor of the Company and Members;

THEREFORE, for the consideration set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Article 1**Definitions**

Unless otherwise defined in this Agreement or its recitals, the following terms have the following meanings:

- 1.1 “Agreement” means this Agreement and all of its amendments.
- 1.2 “Board” means the board of managers of the Company.

1.3 “Insolvency Event” means (a) the filing of a petition in bankruptcy, receivership, or other proceeding for the discharge or reorganization of indebtedness by a Member, whether under federal or state law; (b) the sufferance by a Member of an involuntary petition of bankruptcy, receivership, or other proceeding for the discharge or reorganization of indebtedness that is not dismissed within thirty days of its filing; or (c) the admission or adjudication of a Member as insolvent.

1.4 “Installment Alternative” means the payment for the exercise of a buy-sell option or obligation under this Agreement in the form of a combination of cash and promissory note of the purchaser. To qualify as valid consideration, payment in the form of the Installment Alternative shall meet the following standards: (a) the cash portion of the total purchase price shall be no less than 20 percent, and (b) the promissory note shall (i) be in the principal amount of the balance of the total purchase price; (ii) bear interest at the Prime Rate plus two percentage points, adjusted quarterly on January 1, April 1, July 1, and October 1, but never exceeding 8 percent from the date of issuance; (iii) not have a maturity greater than five years from the date of issuance; (iv) call for equal installments of principal to be paid monthly, such that the principal balance will be amortized and paid in full on the maturity date (no balloon payments permitted); (v) require that all accrued interest be paid in full on each date that an installment of principal is due; (vi) be secured by a pledge of the Units being purchased; (vii) be full recourse against the maker (who shall also be the purchaser); (viii) contain standard provisions regarding default, acceleration, foreclosure, and collection remedies; and (ix) be subordinate to the Company’s prime lender at the time the note is entered into.

1.5 “Member” means each undersigned holder of Units and, unless the context clearly indicates otherwise, shall also refer to and incorporate by reference each Member’s Spouse for the purpose of binding the Spousal Interest in the Units.

1.6 “Other Members” means, at any time, all undersigned holders of Units other than the Member whose Units are subject to an event discussed in articles 2 and 3 below.

1.7 “Personal Representative” means the executor, administrator, guardian, or conservator of the estate of a deceased or incapacitated Member or Spouse.

1.8 “Prime Rate” means, for any date on which a promissory note is delivered as partial consideration for a purchaser electing the Installment Alternative, the prime rate as is reported on that effective date by the *Wall Street Journal* or, if the *Wall Street Journal* ceases to publish the prime rate on a daily basis, any other nationally recognized daily business publication then publishing the yields of U.S. Treasury bills.

1.9 “Pro Rata” means the number of Units owned by any specific Member divided by the total number of Units owned by Other Members.

1.10 “Spousal Interest” means any interest in the Units owned or claimed by a Spouse pursuant to community property laws, gift, inheritance, partition, or otherwise.

1.11 “Spouse” means the spouse of a Member.

1.12 “Transfer Notice” means the notice referred to in section 2.2 below.

1.13 “Units” means all Units now owned or hereafter acquired (whether directly or indirectly and whether owned in record name or beneficially) by each Member. Attached at Exhibit A hereto and incorporated herein is the ownership of Units at the time of execution of this Agreement. Unless the context clearly indicates otherwise, the term “Units” shall also refer to and incorporate by reference the Spousal Interest.

1.14 “Value” shall be the fair market value of the Company as agreed on by the parties as periodically advised by their certified public accounting firm or other outside independent business valuation professionals or, if the parties cannot agree, the value determined by the appraisal procedures set forth in section 3.3 below. Notwithstanding the foregoing, in no event shall the value be less than the value of insurance, if any, owned by the Company on the life of a deceased Member whose Units are the subject of purchase under this Agreement.

Notwithstanding the foregoing, in the event of a sale of the Company, whether by sale of a majority of the outstanding membership interests or sale of substantially all of the assets of the business, within twelve months of the death or disability of a Member as defined in sections 3.1(b) and (c) below (“Look Back Period”), there will be a deemed look back or earn-out provision pursuant to which the Value paid during the Look Back Period pursuant to section 3.1(b) below shall be adjusted (“Adjustment”) in accordance with this provision. The Adjustment will be equal to the amount determined by multiplying Deceased Member’s ownership percentage of the total outstanding membership interests of the Company by the net proceeds from any such sale transaction (less reasonable selling expenses incurred by the Company) added to the net insurance proceeds received by the Company and paid to Deceased Member’s estate pursuant to the foregoing paragraph, if any. Any amount from this calculation that is greater than the amounts otherwise advanced or paid to Deceased Member’s estate, pursuant to the procedures set forth in section 3.1 of this Agreement, shall be deemed an earn-out and be paid by the Company or the surviving Member as a final payment for the purchase of the Units pursuant to this Agreement. In no event shall the Adjustment provided for in this paragraph be effected to cause Deceased Member’s estate to receive less than what was previously received pursuant to section 3.1(b) below.

Article 2

Restrictions on Transfer of Units

2.1 *Restrictions on Transfer of Units.* A Member shall not sell, assign, transfer, pledge, encumber, subject to lien, or otherwise dispose of any Units except in accordance with this Agreement. Each Member understands that the Company may refuse to transfer the Units when the transfer would not be in compliance with the terms of this Agreement and that any

attempted disposition of any Units in violation of this Agreement shall be null and void and of no force and effect.

2.2 *Preferential Right of Purchase.* If a Member desires to sell, transfer, assign, hypothecate, pledge, subject to lien, encumber, or otherwise dispose of any Units, or any right or interest therein, whether voluntarily or by operation of law or by gift or otherwise, the Member shall give written notice (“Transfer Notice”) of that desire to the Company and the Members not selling (“Other Members”) at least thirty days before such disposition stating the following:

- a. the nature of the proposed transfers (e.g., sale, gift, pledge, lien, encumbrance, transfer by operation of law) and the number of Units affected;
- b. the name, address, telephone number, Social Security or federal tax identification number of the proposed purchaser, creditor, lienholder, donee, or other transferee;
- c. the economic terms of the proposed transfer or other disposition, including, without limitation, the amount of the per-Unit purchase price, whether cash, indebtedness, or other property; the amount of any loan and the interest and repayment terms; and whether the Units will be pledged or serve as collateral for the loan;
- d. the date the proposed transfer is expected to occur; and
- e. any special arrangements between the disposing Member and the proposed transferee, such as options, buy-back rights, voting arrangements, and all other contractual arrangements.

The Company and the Other Members shall have the option to purchase no less than all of the Units that the Member proposes to sell at the purchase price and on the terms set forth

in the Transfer Notice, and if that option is exercised by the Company or the Other Members, the disposing Member shall be obligated and bound to sell the Units to the Company or the Other Members on those terms. As between the Company and the Other Members who have a right to purchase the Units, the Company shall have the first and prior right to purchase all or any portion of the Units, and the Other Members shall have the right to purchase no less than all of the remaining Units not purchased by the Company on a Pro Rata basis or as the Other Members may otherwise agree among themselves. Notice of exercise or nonexercise of the option granted pursuant to this section 2.2 shall be given to the disposing Member within thirty days of the date on which written notice from the Company was obtained by the disposing Member in accordance with this section 2.2. If and to the extent that the Company and the Other Members do not purchase all Units, the disposing Member may dispose of the Units but only to the transferee and on the terms described in the Transfer Notice.

Article 3

Buy-Sell Agreement

3.1 *Buy-Sell Agreement.* The occurrence of any of the events relating to the Member or Spouse specified in subsections (a) through (f) of this section 3.1 shall give rise to the rights and obligations set forth in, and will be governed by, the provisions of this article 3. Any amounts paid to a Member pursuant to the terms of this section 3.1 shall be net of any amounts owed by the Member to the Company.

- a. *Insolvency Event.* If the Member or Spouse (collectively, the “Insolvent Member”) shall become subject to an Insolvency Event, the Company and the Other Members shall have the exclusive right and option to purchase all or any number of the Units at the purchase price and on the terms specified in section 3.2 below, and the Insolvent Member (or the trustee, receiver, or other fiduciary, as the case may be) shall be obligated and bound to sell all Units to

the Company and the Other Members on those terms. As between the Company and the Other Members who have a right to purchase the Units, the Company shall have the first and prior right to purchase all or any portion of the Units, and the Other Members shall have the right to purchase all or any portion of the remaining Units not purchased by the Company on a Pro Rata basis or as the Other Members may otherwise agree among themselves.

Notice of the exercise or nonexercise of the option granted pursuant to this section 3.1(a) shall be given to the Insolvent Member within ninety days of the date on which the Company obtains knowledge of the Insolvency Event. If and to the extent that the Company and the Other Members do not purchase all Units, the estate or fiduciary of the Insolvent Member may dispose of the Units as ordered or permitted by the court, provided, however, that any transfer of the Units to a subsequent transferee shall not be valid until the transferee and any spouse of the transferee execute and become a party to this Agreement.

- b. *Death of Member.* Upon the death of a Member (“Deceased Member”), Deceased Member’s personal representatives, the identity of which shall be determined by the Board in good faith (“Deceased Member’s Representatives”), shall give notice of the death (“Death Notice”) to the remaining Members within sixty days following the death of Deceased Member. If Deceased Member’s Representatives fail to provide the Death Notice within sixty days of death of Deceased Member, the Death Notice shall be deemed given to and received by the Company on the latter of fifteen days after the death of Deceased Member or sixty days after the Company has actual knowledge of the death of Deceased Member. Upon actual or constructive receipt of the Death Notice by the remaining Members, the Company shall be deemed to have been granted an option to purchase all of the interest in the

Company of Deceased Member (“Deceased Member’s Units”) for the price and on the terms specified in section 3.2 below. Within thirty days after its receipt of the Death Notice, if any, the Company shall notify Deceased Member’s Representatives of that portion of Deceased Member’s Units that the Company desires to purchase, provided, however, that the Company must purchase not less than all of Deceased Member’s Units. If the Company does not elect to purchase all of Deceased Member’s Units, Deceased Member’s Units may pass in accordance with Deceased Member’s estate plan or according to the laws of intestacy.

- c. *Disability of Member.* A “Permanent Disability” means a disability that prohibits a person from being able to be in the employment of the Company for at least one year in the role or position previously occupied. Upon the Permanent Disability of a Member (“Incapacitated Member”), the Incapacitated Member’s personal representatives (“Incapacitated Member’s Representatives”) shall give notice of the disability (“Incapacity Notice”) to the Board within twenty days following the determination of Permanent Disability at the end of one year of being unable to be in the employment of the Company. The Incapacitated Member’s Representatives, by giving the Incapacity Notice, shall be deemed to have granted to the Company an option to purchase all of the interest in the Company of the Incapacitated Member (“Incapacity Units”) for the price and on the terms specified in section 3.2 below. Within thirty days after its receipt of the Incapacity Notice, the Board shall notify the Incapacitated Member’s Representatives of that portion of the Incapacity Units that the Company desires to purchase. The Company will have the right to purchase all or any portion of the Incapacity Units. To the extent not otherwise fully covered by disability insurance, the Company will pay to the Incapacitated Member in accordance with the Company’s normal

payroll practices, the base monthly salary of the Incapacitated Member for the first year during which the Incapacitated Member is not able to work in the employment of the Company.

- d. *Termination of Employment.* If the employment of a Member is terminated or the Member voluntarily leaves the employment of the Company for any reason other than death or Permanent Disability, that termination shall create in the Company an option (“Continuing Purchase Option”) to purchase any portion, and the terminated Member will have the obligation to sell up to the entire amount, of the Member’s Units (including any Units the Member transferred to any affiliate, family member, trust, or other entity as permitted by this Agreement). This Continuing Purchase Option shall commence on the date of the termination of the Member’s status as an employee and shall continue for five years after the date of termination or until the renewal of that status or employment, whichever occurs first.
- e. *Divorce of Member and Spouse.* If a Member or Spouse files a petition for divorce or institutes any other legal proceeding to terminate their marriage, the following procedures shall apply:
- i. that Member (“Divorced Member”) and Spouse shall include the Divorced Member’s interest and the Spousal Interest in the Units on their inventories of marital and separate assets at a value not in excess of the purchase price determined under section 3.2 below, and
 - ii. the Divorced Member shall negotiate and seek, and Spouse agrees to accept, an order for the division of marital and separate property such that the Divorced Member receives the entire Spousal Interest in the Units in exchange for awarding to Spouse other marital and separate

assets in which the Divorced Member has an interest that have a value approximately equal to the Spousal Interest (as valued under paragraph 3.1(e)(i) above). If the court in the proceeding enters any order or decree awarding any Units or interest to Spouse, the Divorced Member and Spouse shall each notify the Board and the Other Members in writing of the award ("Divorce Notice"). If the Divorced Member and Spouse fail to provide the Divorce Notice within twenty days of the date the divorce or annulment becomes effective, the Divorce Notice shall be deemed given to and received by the Board on the latter of twenty days after the date the divorce or annulment becomes effective or fifteen days after the Board has actual knowledge of the date the divorce or annulment becomes effective. For a period of ninety days after actual or constructive receipt of the Divorce Notice, the Divorced Member, the Company, and the Other Members shall have the exclusive right and option to purchase all or any portion of the Units awarded to Spouse at the purchase price and on the terms specified in section 3.2 below. Between the Divorced Member, the Company, and the Other Members who have a right to purchase the Units, the Divorced Member, then the Company, shall have the first and prior right to purchase all or any portion of the Units, and the Other Members shall have the right to purchase all or any portion of the remaining Units not purchased by the Divorced Member or the Company on a Pro Rata basis or as the Other Members may otherwise agree among themselves. If and to the extent that the Divorced Member, the Company, and the Other Members do not purchase all Units awarded to Spouse, Spouse may lawfully dispose of the Units, provided, however, that any disposition of the Units to any subsequent transferee shall not be valid until the transferee and any spouse of the

transferee execute and become a party to this Agreement. The Divorced Member and Spouse each agree that the Company may intervene in their divorce proceeding without their objection to enforce the Company's and Other Members' rights under this section 3.1(e).

- f. *Death of Spouse.* Spouse agrees to bequeath by will Spouse's entire Spousal Interest to Member. This agreement is made with Spouse's full knowledge, is made for good and valuable consideration, and constitutes a covenant binding on Spouse's estate, Personal Representative, heirs, and beneficiaries. If Spouse dies and does not leave a valid will admitted to probate bequeathing the entire Spousal Interest to Member, or if any will contest is filed by any person challenging the validity of the bequest of the Spousal Interest to Member, Member and Spouse's Personal Representative shall each notify the Board of the event. For a period of ninety days following the date of the later to occur of (i) the qualification of Spouse's Personal Representative, (ii) the entry of the order of the probate court concluding that Spouse's will does not bequeath the entire Spousal Interest to Member, and (iii) the filing of a will contest suit, Member shall have the exclusive right and option to purchase all or any portion of the Spousal Interest in the Units at the purchase price and on the terms specified in section 3.2 below. If and to the extent that Member does not or cannot purchase the entire Spousal Interest in the Units pursuant to the foregoing provision within ninety days, the Company and the Other Members shall have the exclusive right and option, beginning on the first day after expiration of that ninety-day period and ending one year after the entry of a final order by the probate court disposing of the Spousal Interest in the Units, to purchase all or any portion of the Units not purchased by or awarded to Member at the purchase price and on the terms specified in section 3.2 below. Between the Company and the Other Members, the Company shall

have the first and prior right to purchase all or any portion of the Spousal Interest in the Units, and the Other Members shall have the right to purchase all or any portion of the remaining Spousal Interest in the Units not purchased by the Company on a Pro Rata basis or as the Other Members may otherwise agree among themselves. If and to the extent that the Company and the Other Members do not purchase all Units, the holder of the Units may lawfully dispose of the Units, provided, however, that any disposition of the Units to any subsequent transferee shall not be valid until the transferee and any spouse of the transferee execute and become a party to this Agreement. Each Member and Spouse agree that the Company may intervene in any probate proceeding or will contest applicable to Spouse's estate without their objections for the purpose of enforcing the Company's and the Other Members' rights under this subsection 3.1(f).

- g. *Sale to Other Members.* At any time after this Agreement's effective date, any Member holding at least 15 percent of the Units held by all Members ("Offering Member") may offer to the other Members ("Offeree Members") a cash price for no less than all of the Offeree Members' Interests ("Subject Units") on the following terms and conditions:
- i. The Offering Member will make a written offer ("Offer") to acquire the Subject Units.
 - ii. The Offeree Members will have thirty days from the date of receipt of the Offer to reject or accept the Offer on the terms offered by the Offering Member. Acceptance of the Offer must be in writing and received by the Offering Member before the expiration of the thirty-day period. Any failure to respond within the period will be deemed a rejection of the Offer.

- iii. If the Offeree Members reject or are deemed to reject the Offer, the Offeree Members will purchase all of the Offering Member's Interest on the same terms as contained in the Offer.

The closing of the purchase shall be held at the time and place specified in the Offer within sixty days after the date of the Offer. No Offer shall include a minority discount or control premium.

3.2 *Purchase Price and Terms.* The purchase price per Unit for any Units to be sold pursuant to sections 3.1(a) through (f) of this Agreement shall be the value of the Company as a whole divided by the number of Units outstanding as of the same date the value is determined without regard to the number of Units to be sold. The date of determination of the purchase price under the different sections of this Agreement, unless set forth in those sections, shall be:

- a. *Preferential Right of Purchase (Section 2.2):* the last date on which the Company and all Other Members receive the Transfer Notice.
- b. *Insolvency Event (Section 3.1(a)):* the last day of the calendar month following the date on which the Insolvency Event occurs.
- c. *Death of Member (Section 3.1(b)):* as of the closest calendar month immediately preceding Member's death.
- d. *Disability of Member (Section 3.1(c)):* the last day of the calendar month following the date of the Incapacity Notice.
- e. *Termination of Employment (Section 3.1(d)):* the last day of the calendar month following the date on which Member's employment with the Company is terminated.

- f. *Divorce of Member and Spouse (Section 3.1(e))*: the last day of the calendar month following the date of initial filing of the divorce petition or other legal proceeding seeking dissolution or termination of the marriage.
- g. *Death of Spouse (Section 3.1(f))*: the last day of the calendar month following the date of death of Spouse.

All notices of exercise of buy-sell options shall be in writing and shall be effective when delivered in accordance with the procedures set forth in section 4.9 of this Agreement. The notices shall state the number of Units being purchased, the determination of the purchase price in accordance with this Agreement, the names and addresses of the purchasers, and whether the purchase price will be paid in cash or using the Installment Alternative. The closing of the purchase and sale of a buy-sell option or obligation shall occur within ten days from the date of exercise of a buy-sell right and shall be held at the principal business office of the Company in [county] County, Texas, or at another time and place in the state of Texas mutually agreeable to the purchasers and seller. At the closing, the purchasers shall deliver cash (which shall be in the form of a cashier's check or wire transfer of immediately available funds) or the Installment Alternative. Member, Spouse, or the Personal Representative, as the case may be, shall deliver all certificates evidencing ownership of the Units or the Spousal Interest in the Units, duly endorsed or with a transfer power duly executed and attached.

3.3 *Appraisal*

- a. *General.* If the Company or one or more Members (collectively, the "Purchasing Member") elect to purchase the Units of another Member ("Disposing Member") pursuant to any provision for which the Value is to determine the purchase price, and a dispute arises between the Purchasing Member and the Disposing Member over the Value of the Units to be purchased pursuant to the applicable section ("Subject Units"), or if a dispute arises over the fair

market value of any nonmonetary consideration (“Nonmonetary Consideration”) to be received, the Value shall be determined by the appraisal procedures set forth in this section 3.3.

- b. *Selection of Appraisers.* If the Disposing Member and the Purchasing Member cannot agree on the value of the Subject Units or any Nonmonetary Consideration, either the Purchasing Member or the Disposing Member may, by delivering a written notice to the other (“Appraisal Notice”) within five days following the date on which the Subject Units become eligible for sale, invoke the provisions of this section to determine the value of the Subject Units or the Nonmonetary Consideration, as the case may be. The Members requesting an appraisal pursuant to this section (collectively, the “Submitting Member”) shall, in the Appraisal Notice to the other Members (collectively, the “Receiving Member”) state that the Submitting Member elects to have the value of the Subject Units or the Nonmonetary Consideration, as the case may be, determined by the appraisal procedures set forth herein and the name of its appraiser. Within five days after its receipt of the notice from the Submitting Member, the Receiving Member shall notify the Submitting Member of the name of its appraiser. Upon appointment, the two appraisers shall be sworn to determine the value of the Subject Units or the Nonmonetary Consideration, as the case may be, faithfully, fairly, and within thirty days of the appointment of the second appraiser. The two appraisers shall afford the Submitting Member and the Receiving Member the right to submit evidence for that value and shall, as promptly as practicable, make their determinations in writing and give notice thereof to the Submitting Member and the Receiving Member. If the higher of the two appraisals determined by the two appraisers exceeds the lower appraisal by less than 10 percent, the average of the two shall be controlling and binding on the Submitting Member and the Receiving Member.

ing Member. If the higher of the two appraisals exceeds the lower appraisal by more than 10 percent, the appraisers, within ten days after both of the appraisers have made their determinations, shall appoint in writing a third appraiser and give written notice of the appointment to the Submitting Member and the Receiving Member. If the two appraisers fail to appoint or agree on a third appraiser within the ten-day period, the Submitting Member and the Receiving Member shall select and agree on a third appraiser within a further period of ten days. If no third appraiser is appointed or agreed on within the allotted time, either party may apply to the appropriate court of the state of Texas to appoint the appraiser. The third appraiser shall be sworn to determine faithfully and fully, and independently of the first two appraisals, the value of the Subject Units or the Nonmonetary Consideration, as the case may be. The third appraiser's determination of value shall be controlling unless it is higher than the higher or lower than the lower determination of value of the original two appraisers, in which case the previous high or low determination, respectively, shall be controlling and binding on the Purchasing Member and the Disposing Member. The decision of the appraisers pursuant to this section shall be final and binding on the Purchasing Member and the Disposing Member and shall be specifically enforceable in a court having jurisdiction.

- c. *Appointment of Appraisers.* If (i) the Receiving Member fails to appoint an appraiser within five days after its receipt of the notice from the Submitting Member setting forth the name of its appraiser, or (ii) a third appraiser is not appointed as provided above, or (iii) any person appointed as an appraiser by or on behalf of either the Submitting Member or the Receiving Member dies, fails to act, resigns, or becomes disqualified, and the party by or on behalf of whom the appraiser was appointed fails to appoint a substitute appraiser

within five days after being requested to do so by the other party, the appraiser in question shall be appointed by the appropriate court of the state of Texas, upon application of either the Submitting Member or the Receiving Member.

- d. *Costs of Appraisal.* Each party shall bear and pay the cost of the appraiser appointed by or for that party, and the cost of the third appraiser shall be borne and paid equally by the Submitting Member and the Receiving Member. All appraisal proceedings shall be held in [county] County, Texas. The Submitting Member and the Receiving Member shall be given reasonable advance notice of the time and place of any appraisal proceedings, and both the Purchasing Member and the Disposing Member shall have the right to be present, heard, and represented by counsel. The appraisers shall not have the power to add to, subtract from, or otherwise change the terms and provisions of this Agreement, and their determination shall be consistent and in accordance with the terms and provisions of this Agreement. The appraisers shall give prompt notice of their decision to the Submitting Member and the Receiving Member.

Article 4

Miscellaneous

4.1 *Binding Effect.* This Agreement shall be binding on and inure to the benefit of the undersigned parties and their respective heirs, personal representatives, successors, and assigns, provided that the rights of Member and Spouse under this Agreement may not be assigned without the consent of the Company and Member, and any assignment in violation of this section 4.1 shall be null and void and of no force or effect. The Company's rights and obligations under this Agreement are assignable.

4.2 *Validity.* If any provisions in this Agreement are held to be invalid, determine to result in the Company's loss of its election under subchapter S of the Internal Revenue Code ("S Election"), or against public policy, the remaining provisions shall not be affected. In such event, the parties to this Agreement shall negotiate in good faith to modify this Agreement to effect the original intent of the parties as closely as possible regarding those provisions that were held to be invalid, result in the Company's loss of its S Election, or against public policy.

4.3 *Titles and Headings.* Titles and headings to sections in this Agreement are for the purpose of reference only and shall in no way limit, define, or otherwise affect those provisions.

4.4 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the state of Texas, without regard to its conflict-of-laws principles.

4.5 *Spouse's Community Interest.* The Spouse of each Member hereby joins in the execution of this Agreement to evidence Spouse's knowledge of its existence and content; to acknowledge that this Agreement is fair, equitable, and in their best interests; to bind the Spousal Interest, if any, and the heirs, beneficiaries, administrators, executors, legal representatives, and assigns of Spouse to the Agreement; and to evidence that the community interest of Spouse, if any, in and to any of the Units is covered by and embraced by the terms and provisions of this Agreement in all respects. Spouse further specifically designates Member as manager of all Spousal Interest in the Units (other than interests evidenced by a Units certificate solely in the name of Spouse and owned by Spouse as a Member of the Company) and agrees that Member shall have the sole right to exercise the rights, powers, and privileges granted under this Agreement relating to all Units and the entire Spousal Interest. Spouse acknowledges that Spouse has been advised by the Company and Member to engage separate legal counsel to review this Agreement on Spouse's behalf, that Spouse has been adequately advised about the legal ramifications and effects of entering into this Agreement, and that Spouse is doing so with full knowledge and of Spouse's own free will and volition.

4.6 *Joinder of Future Spouses.* Each Member agrees, promptly upon Member's marriage or remarriage, to use Member's best efforts to have the spouse of that marriage or remarriage execute a counterpart of this Agreement to evidence the spouse's intent to be bound by it.

4.7 *Entire Agreement; Amendment.* This Agreement constitutes the entire agreement among the parties concerning its subject matter. Except as expressly provided herein, this Agreement may be amended only upon the written consent of the Company and a three-quarter vote of Members.

4.8 *Termination.* This Agreement shall terminate upon the first to occur of the following events:

- a. written agreement of the Company and all Members or
- b. bankruptcy, receivership, dissolution, or cessation of the Company to do business.

4.9 *Notices.* All notices and other communications required or permitted under this Agreement shall be in writing and mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand or messenger, including Federal Express or similar courier services, addressed (a) if to Member, at Member's address set forth below, or at another address Member furnished to the Company and all Other Members; (b) if to the Company, to [**name of limited liability company**], Attn: President, or at another address the Company furnished to Member; and (c) if to Spouse, at Spouse's address set forth below until Spouse delivers a written change of address notice to all Members, the Company, and each of the Other Members. Each notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered if delivered personally or, if sent by mail or courier, at the earlier of its receipt or three business days after deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and mailed as above.

4.10 *Dispute Resolution.* Any dispute arising out of or relating to this Agreement or its breach, termination, or validity shall be finally settled by binding arbitration conducted expeditiously in accordance with the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association as in effect from time to time, and judgment on the award rendered by the arbitrators may be entered by any court having jurisdiction. The arbitration shall be held in [county] County, Texas. Notwithstanding anything to the contrary contained herein, the provisions of this section 4.10 shall not apply to any equitable remedies to which the Company or Member may be entitled under this Agreement.

4.11 *Endorsement of Units Certificates.* Any certificates of Units of the Company now owned or that may be acquired by Members shall be endorsed on the back as follows:

By agreement among the Company and its Members, restrictions have been placed on the transfer of the Units represented by this certificate. A copy of the Agreement, which contains a full statement of the restrictions, is on file at the Company's principal place of business and its registered office.

The certificates shall be endorsed on the front as follows:

See restrictions on transfer hereof on reverse side.

IN WITNESS WHEREOF, this Agreement has been executed effective as of the date first set forth above.

Company:

[Name of limited liability company], a Texas
limited liability company

By: _____
[Name], [title]

Spouse:

By: _____
[Name of spouse], spouse of [name of member]

[Address, city, state]

Member:

By: _____
[Name of member]

Repeat as necessary.

Exhibit A
to
Buy-Sell Agreement
for
[Name of limited liability company]

Members	Units
<hr/>	
Total Units	[number]

Form 23-2

Client Services Agreement
[For Service Provider Company]

This agreement (“Agreement”) between [name of client], a Texas [type of entity] (“Client”), and [name of limited liability company], a Texas limited liability company (“Company”), is meant to be fair to both Client and the Company (individually, “Party,” and collectively, “Parties”). By signing this contract, Client agrees to pay for services discussed in this Agreement. In return, the Company agrees to provide consulting services as agreed between the Company and Client.

1. *Company’s Role.* The Company will provide [specify] services to Client as stated in this Agreement and as agreed in the attached Exhibit A hereto and incorporated herein (“Services”). As part of the Services, the Company will deliver to Client all work product (collectively, “Deliverables”) specified in a Statement of Work (“SOW”) in accordance with the specifications and, if applicable, timelines set forth in the SOW. Client engages the Company to provide the Services as an independent contractor. This Agreement shall not be construed as an agreement of fiduciary relationship, partnership, joint venture, or any other form of business arrangement other than as an agreement for independent contractual services. Neither Party shall have the right or authority to bind or obligate the other for anything in any manner, nor shall either Party make any commitments or representations to the other except representations furnished in writing between the Parties. [Include if applicable: The Company may use subcontractors in fulfillment of the Services as deemed necessary in the Company’s sole discretion.]

2. *Limitation of Services.* The Company does not provide [specify] services. The Company does not guarantee any particular results to Client as a result of performing the Services. The Company is not responsible for any Client costs or losses associated with [specify].

3. *Obligation to Provide Accurate Information.* Client agrees to provide the Company with accurate, reliable, and complete information as requested to complete the agreed Services. Client understands that the Company will rely exclusively on the information provided and that Client's failure to provide complete and accurate information may result in errors or omissions during the Services term. Client will provide the Company with access to all [specify, e.g., technical data, computer programs, files, client information, documentation, graphic images, vendor account information,] and other information and resources that may be required to permit the Company to perform the Services in accordance with the terms of this Agreement and as may be further set forth in the applicable SOW (collectively, the "Client Data"). [Include if applicable: To the extent any Client Data is stored on the Company's systems or equipment, Client will, at all times during the Term, maintain the Client Data in strict accordance with all reasonable security measures customary in the industry and with all applicable laws, including laws governing privacy and data security.]

4. *Compensation.* It is mutually agreed that Client will pay the Company for the Services at the rates and schedule ("Company Fees") stated in Exhibit A. Once the Company receives the signed Agreement from Client, the Company will reserve the required amount of time for Client's Services. Client will submit all payments due to the Company pursuant to the schedule shown in Exhibit A. Should any Company Fees not be paid by Client within [number] days of becoming due, a carrying fee calculated at [percent] percent annually and charged monthly shall be charged on the outstanding balance. Interest on amounts owed by Client will not exceed the maximum rate or amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited to Client.

5. *Term and Termination.* The term of the Agreement begins on [date] ("Effective Date") and will continue for an initial term of [number] days ("Term"). Client or the Company may terminate this Agreement by giving [[number] days' written notice to the other/written notice

to the other, [number] days in advance if by Client and [number] days in advance if by the Company] (“Termination Notice”). In case of termination by the Company, Client will receive a prorated refund for any prepaid amounts that did not result in Services received. All expenses incurred by the Company on Client’s behalf in excess of the paid amount at the time of termination will be billed to Client. If the Company receives notice of cancellation after posted business hours, the notice will be deemed received on the following business day.

Include the following if applicable.

Upon termination of this Agreement in its entirety—

- a. all SOWs in effect at the time of the termination shall automatically terminate;
- b. except as set forth in section 9 below and legal obligations, rights, and duties that have accrued before the effective date of the termination, all legal obligations, rights, and duties of the Parties arising out of this Agreement will terminate;
- c. the Company will deliver to Client all Services in progress (whether complete or incomplete), all Client Data and Background Technology (defined in section 8(c) below) of Client provided to the Company (collectively, “Receivables”) and copies thereof, and all hardware, software, tools, equipment, or other materials provided to the Company by Client;
- d. Client shall promptly pay the Company for all Services rendered and all expenses incurred up to and including the effective date of the termination, provided that Client shall pay a pro rata portion of any Company Fees owed for Services that are incomplete at the time of the termination and for which

payments have not been made, and upon that payment the Company shall deliver to Client copies of all the incomplete work; and

- e. each Party will (i) either return or destroy (at the other Party's sole option) all Confidential Information of the other Party then in possession or control, including all tangible documents and materials (and any copies thereof) containing, reflecting, incorporating, or based on the Confidential Information; (ii) permanently erase from its computer systems and networks all such Confidential Information; and (iii) certify in writing to the other Party its compliance with the terms of this section 5(e).

Continue with the following.

6. *Mutual Representation and Warranties.* Each Party represents and warrants that—
- a. it is duly organized, validly existing, and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization;
 - b. it has the full right, power, and authority to enter into, and to perform its obligations and grant the rights and licenses it grants or is required to grant under, this Agreement;
 - c. the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of that Party;
 - d. when executed and delivered by both Parties, this Agreement will constitute the legal, valid, and binding obligation of the Parties, enforceable against each in accordance with its terms;

- e. its performance of its obligations under this Agreement will not violate the terms of any agreement with a third party; and
- f. it will comply with all applicable federal, state, and local laws and regulations in the performance of its obligations.

7. *Representations and Warranties of Client.* Client represents and warrants to the Company that—

- a. Client has secured all permissions necessary for the Company's performance of the Services;
- b. the agreed Services [, including but not limited to Client Data and Background Technology,] do not and, to the best of Client's knowledge, will not infringe on, violate, or misappropriate any Intellectual Property Rights (defined in section 8(a)(ii) below) or any contractual, publicity, privacy, or proprietary right of any third party; [and]
- c. Client has secured all rights and licenses necessary from third-party owners or licensors for all of those third parties' components or intellectual property provided to the Company to perform the Services in this Agreement [./; and]

Include the following if applicable.

- d. Client Data and Background Technology will not contain any malware, viruses, or other disabling devices or any codes or instructions that can access, modify, damage, or disable the Company's computer networks or systems.

Continue with the following.

8. *Intellectual Property.* The Company reserves the right to display a copy of any materials created for Client in its portfolio, website, and other marketing materials.

- a. *Definitions.* For purposes of this Agreement—
- i. “Background Technology” has the meaning given to the term in section 8(c) below;
 - ii. “Intellectual Property Rights” means all intellectual property rights arising under the applicable laws of the United States or of any other jurisdiction or provided by international treaties or conventions, including—
 - (a) patents, patent applications (including patents issued thereon), and statutory invention registrations, including reissues, divisions, continuations, continuations in part, extensions, and reexaminations thereof;
 - (b) all rights in any original works of authorship or any part thereof that are within the scope of any applicable copyright law, including all rights of authorship, use, publication, reproduction, distribution, or performance, all moral rights, all rights of ownership of copyrightable works, and all rights to register and to obtain renewals, extensions, revivals, and resuscitations of any such copyright registrations;
 - (c) marks (including any copyrights therein) and other identifiers, including all goodwill associated therewith, all common-law rights, all registrations and applications for registration thereof, and all reissues, extensions, and renewals of any of the foregoing;

- (d) trade secret and confidential and proprietary information, including trade secrets, confidential processes, compositions, formulas, customer information, operational data, processing quality control procedures, research and development studies, engineering information, invention reports, laboratory notebooks, technical reports, research and development archives, pricing information, and know-how; and
 - (e) database and design rights, including rights related to Technology (defined in section 8(a)(iii) below), domain names, or domain name registrations and reservations; and
 - iii. “Technology” means software, technology, designs, formulas, algorithms, procedures, methods, discoveries, processes, techniques, ideas, know-how, research and development, technical data, tools, materials, specifications, processes, inventions (whether patentable or not and whether reduced to practice or not), innovations, apparatuses, creations, improvements, works of authorship, copyrightable works, mask works, and other similar materials; all recordings, graphs, drawings, reports, analyses, writings, and other tangible embodiments of any of the foregoing, in any form or medium; and all other information, data, and technology related thereto.
- b. *Deliverables.* The Company acknowledges that the Deliverables have been specially ordered and commissioned by Client and that, as such, all Deliverables will be deemed “works made for hire,” as defined by the Copyright Revision Act of 1976, amended from time to time, at 17 U.S.C. § 101(7)(2)(3)(2)(C). Client will own all copyrights in the Deliverables upon payment in full to the Company. Interim work papers, research, drafts, notes,

and the like prepared by the Company in the course of providing the Services will remain the exclusive property of the Company.

- c. *Background Technology.* Each Party will retain all right, title, and interest, including all Intellectual Property Rights, in and to any Technology owned or controlled by the Party before the Effective Date or conceived of, generated, created, or otherwise developed by or on behalf of that Party outside the scope of this Agreement (collectively, “Background Technology”).
- d. *Client Data and Limited License.* Client will exclusively own and retain all right, title, and interest, including all Intellectual Property Rights, in and to all Client Data provided to the Company. Client grants to the Company a limited, nonexclusive, royalty-free, fully-paid-up, nontransferable, nonsublicensable license in and to the Data to the extent necessary to enable the Company to perform the Services and other obligations under this Agreement. Other than the foregoing limited license, nothing in this Agreement will convey, transfer, or assign to the Company any right, title, or interest in or to the Client Data.

9. *Confidential Information.* The Parties acknowledge that in the course of dealings between them, each may acquire information or materials about the other that are confidential or proprietary in nature, such as business activities and operations, know-how, pricing, technical information, and trade secrets (“Confidential Information”). Such information will be treated as confidential (a) if it is marked or accompanied by documents clearly and conspicuously designating them as “confidential” or the equivalent or (b) if it is identified by the disclosing Party as confidential before, during, or within twenty-four hours after the presentation or communication and the communication is reduced to writing, marked confidential, and delivered to the other Party within ten days of the original disclosure. For a period commencing on the Effective Date and continuing through two years after the date of the termination or

expiration of this Agreement, each Party will use the same degree of care as it uses for its own similar information, but no less than reasonable care, to protect the other Party's Confidential Information and to prevent (a) any use of the other Party's Confidential Information not authorized in this Agreement, (b) dissemination of Confidential Information to any employee or agent of the Party without a legitimate need to know and without the employee or agent being bound by a nondisclosure agreement with the receiving Party with terms and conditions at least as restrictive as those in this Agreement, (c) communication of the other Party's Confidential Information to any third party, or (d) publication of the other Party's Confidential Information. These restrictions of confidentiality will not apply, however, to any information that (a) was lawfully known to the receiving Party before receipt from the disclosing Party, (b) is or becomes publicly available through no fault of the receiving Party, (c) is rightfully received by the receiving Party from a third party without a duty of confidentiality, (d) is disclosed by the disclosing Party to a third party without a duty of confidentiality on the third party, (e) is independently developed by the receiving Party without a breach of this Agreement, or (f) is disclosed by the receiving Party with the disclosing Party's prior written approval. If a receiving Party is required by a governmental body or court of law to disclose information, the receiving Party agrees to give the disclosing Party no less than seven days' reasonable advance notice so that the disclosing Party may contest the disclosure requirement or seek a protective order. Upon written demand of the disclosing Party, the receiving Party shall (a) cease using the Confidential Information; (b) return to the disclosing Party or destroy, as specified by the disclosing Party, the Confidential Information and all copies, notes, or extracts of it within seven business days of receipt of the notice; and (c) upon request of the disclosing Party, certify in writing that the receiving Party has complied with the obligations set forth in this paragraph.

10. *Indemnification.* Client shall defend, indemnify, and hold the Company and its officers, agents, and employees (collectively, "Indemnified Parties") harmless from and against all third-party allegations, claims, actions, suits, demands, damages, liabilities, obligations,

losses, settlements, judgments, costs, and expenses (including without limitation attorney's fees and costs) that arise out of or relate to the execution of this Agreement, except to the extent that the losses or damages result from the gross negligence or willful misconduct of the Indemnified Parties. Client shall specifically indemnify the Company for any third-party claims of intellectual property infringement related to Client Data, Background Technology, and any other information or intellectual property provided by Client to the Company for use in performance of the Services. [Include if applicable: Client shall specifically indemnify the Company for any governmental, police, or consumer action taken and civil claims asserted against the Company or Client's customers related to this Agreement, including but not limited to all laws and regulations referenced in section 18 below.]

11. *Waiver and Release of Liability.* Client releases and forever discharges the Company and its successors and assigns from all liability, claims, and demands of whatever kind or nature, either in law or in equity, that arise or may hereafter arise from contracting for the Company's Services. Client understands and acknowledges that this Waiver discharges the Company from any liability or claim that Client may have against the Company for bodily injury, personal injury, illness, death, or property damage that may result from this Agreement and the Services of the Company, except for such injury, illness, death, or damage that may result from the Company's gross negligence or willful misconduct. Client also understands that the Company does not assume any responsibility for or obligation to provide financial or other assistance, including but not limited to medical, health, or disability insurance, in the event of injury, illness, death, or property damage. Excepting damages incurred under sections [specify] of this Agreement, damages will be limited to the amounts paid or owed as stated in Exhibit A.

12. *Notices.* All notices relating to this Agreement must be given in writing and will be deemed given (a) in the case of mail, three days after the date deposited in the mail, postage prepaid, and certified, with return receipt requested; (b) in the case of e-mail, on the date of

submission; or (c) in the case of personal delivery to an authorized representative or officer of the Party, or in the case of express courier service or overnight delivery service of national standing, on the date of delivery or attempted delivery. Notice must be provided to the physical or e-mail address in the Party's contact information listed below or as periodically updated in writing by that Party.

13. *Applicable Law and Dispute Resolution.* The laws of the state of Texas shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the Parties.

Include the following informal dispute resolution clause if applicable.

Except as necessary for equitable relief described in section 14 below, a complaining Party must first contact the other Party directly to seek informal resolution in good faith by sending written notice of the matter in dispute to the appropriate contact as listed in this Agreement [**include if applicable:** before resorting to the formal dispute resolution steps described in this section 13].

Include the following mediation clause if applicable.

Any controversies arising out of the terms of this Agreement or its interpretation shall be submitted to mediation in [**county**] County, Texas, [before [the filing of suit/initiating arbitration/the filing of suit or initiating arbitration] regarding the controversy] with mediation costs shared by the Parties.

Include the following arbitration clause if applicable.

[If the dispute is not resolved after attempted mediation in good faith, the matter/Any controversies arising out of the terms of this Agreement or its interpretation] shall be settled by [arbitration/a court of appropriate jurisdiction] in [**city**], [**county**] County, Texas [, in accor-

dance with the rules of the American Arbitration Association]. Any award shall be final, binding, and conclusive on the Parties. A judgment on the award rendered may be entered in any court having jurisdiction.

Include the following waiver of jury and class action if applicable.

By entering into these Terms, each Party waives the right to a trial by jury or to participate in a class action.

Continue with the following.

14. *Equitable Remedies.* Notwithstanding anything to the contrary in this Agreement, each Party acknowledges and agrees that a breach or threat of imminent breach by the Party of any of its obligations under sections [specify] through [specify] would cause the other Party irreparable harm for which monetary damages would not be adequate. Each Party agrees that in the event of such a breach or threat of imminent breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court without any requirement to post a bond or other security or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

15. *Modification, Entire Agreement, and Severability.* No amendment, change, or modification of this Agreement shall be valid unless in writing and signed by both Parties. This document and any exhibit attached hereto constitute the entire understanding and Agreement of the Parties. In case of conflict between the main body of this Agreement and any attachment or exhibit, the terms of this Agreement will control. All prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect. If any provision of this Agreement or any portion thereof is held to be invalid and unenforceable, the remainder of this Agreement shall nevertheless remain in full force and

effect. Notwithstanding any termination of this Agreement for any reason, sections [specify] shall survive the termination of this Agreement. All licenses granted under the preceding sections will immediately terminate upon termination of this Agreement.

16. *Assignment, Waiver, and Amendments.* Neither Party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party. The failure of either Party to this Agreement to object to or take affirmative action on any conduct of the other Party will not be construed as a waiver of any right under this Agreement. This Agreement may not be modified or amended except in writing signed by both Parties; no other act, usage, or custom will be deemed to amend or modify this Agreement. Nothing in this Agreement, express or implied, is intended to or will confer on any person or entity other than the Parties any right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

Include the following if applicable.

17. *Nonsolicitation.* During the term of this Agreement and for a period of twelve months after its termination, Client agrees that it will not, either directly or indirectly, solicit, induce, recruit, or encourage any of the Company's employees or contractors to leave their employment by the Company, or hire or take away such employees or contractors, or attempt to solicit, induce, recruit, encourage, hire, or take away employees or contractors of the Company, either for Client itself or for any other person or entity. Further, Client agrees that during the term and for a period of twelve months after the termination of this Agreement, Client will not, either directly or indirectly, attempt to inhibit or alter the Company's customer, vendor, or other relationships.

Continue with the following.

[17./18.] *Legal Compliance.* Client assumes full responsibility for compliance with all applicable laws and regulations regarding its services and product sales and warrants to the

Company that it is currently in compliance and will maintain compliance with all such laws and regulations. Those laws and regulations may include, but are not limited to, local municipal, state, and federal law; regulations of the federal drug administration, drug enforcement agency, and other federal agencies; and state agencies.

[18./19.] *Signatures.* The signatures below indicate both the Company and Client understand the content and terms in this Agreement.

Remainder of page intentionally left blank. Separate signature page follows.

IN WITNESS WHEREOF, this Agreement has been signed by the Parties to be effective as of the Effective Date stated in this Agreement.

Client:

[Name of client], a Texas [type of entity]

By: _____

[Name], [title]

[Address]

[Phone]

[Fax]

[E-mail]

Date: _____

Company:

[Name of limited liability company], a Texas limited liability company

By: _____

[Name], [title]

[Address]

[Phone]

[Fax]

[E-mail]

Date: _____

Exhibit A

Services

1. *Services.* The Company will provide the following agreed Services to Client during the Term of the Agreement:

a. [specify]

Repeat as necessary.

2. *Compensation*

a. In exchange for Services rendered, Client will pay the Company according to the following schedule (“Company Fees”):

i. [specify]

Repeat as necessary.

b. Payment will be made according to the procedures described in section 4 of this Agreement.

Exhibit B

Statement of Work

Provide details on all work product the company will deliver to the client, including specifications and, if applicable, timelines.

Form 23-3

Independent Contractor Agreement
[For Hiring Company]

This independent contractor agreement (“Agreement”) is made and entered into as of [date] between [name of limited liability company], a limited liability company organized under the laws of the state of Texas (“Company” or “[name of limited liability company]”), and [name of contractor], [an individual/[a/an] [type of entity] (“Contractor”). The Company desires to retain Contractor as an independent contractor to perform certain services for the Company, and Contractor is willing to perform those services, on terms set forth more fully below. In consideration of the mutual promises contained herein, the parties agree as follows:

1. *Services and Compensation.* Contractor agrees to perform for the Company the services (“Services”) described in Exhibit A, attached hereto and incorporated herein. Contractor will be responsible for successfully completing all of the Services according to Company specifications and within Company policy guidelines, which may be revised by the Company without prior notice. The Company agrees to pay Contractor the compensation set forth in Exhibit A for the performance of the Services. Exhibit A may be updated from time to time as needed and agreed to by the parties. The services may include, but are not limited to, [specify].

2. *Confidentiality*

- a. *Definition.* “Confidential Information” means any Company proprietary information, technical data, trade secrets, or know-how, including, but not limited to, research, product plans, products, services, customers, customer lists, vendor lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, or other Company business informa-

tion disclosed to or accessed by Contractor either directly or indirectly in writing, orally, or by drawings or inspection of parts or equipment.

- b. *Nonuse and Nondisclosure.* Contractor will not, during or subsequent to the term of this Agreement, use the Company's Confidential Information for any purpose other than the performance of the Services on behalf of the Company or disclose the Company's Confidential Information to any third party. It is understood that all Confidential Information will remain the sole property of the Company. Contractor further agrees to take all reasonable precautions to prevent any unauthorized disclosure of the Confidential Information. Confidential Information does not include information that (i) is known to Contractor on a nonconfidential basis at the time of disclosure to Contractor by the Company as evidenced by written records of Contractor, (ii) has become publicly known and made generally available through no breach by Contractor of this Agreement nor any other wrongful act of Contractor, or (iii) has been rightfully received by Contractor on a nonconfidential basis from a third party that is authorized to make the disclosure. Without the Company's prior written approval, Contractor will not directly or indirectly disclose to anyone the existence or terms and conditions of this Agreement or the fact that Contractor has this arrangement with the Company.
- c. *Third-Party Confidential Information.* Contractor recognizes that the Company may receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of that information and to use it only for certain limited purposes. Contractor agrees that Contractor owes the Company and those third parties, during the term of this Agreement and afterward, a duty to hold all such confidential or proprietary information in the strictest confidence, not to disclose it publicly

or to any person or entity, and not to use it except as necessary in carrying out the Services for the Company consistent with the Company's agreement with those third parties. Between the Company and Contractor for purposes of this Agreement, all such third-party information will be deemed to be the Company's Confidential Information.

- d. *Return of Materials.* Upon the termination of this Agreement, or upon the Company's earlier request, Contractor will deliver to the Company all of the Company's property or Confidential Information that Contractor may have in Contractor's possession or control.
- e. *Exception to Confidentiality Obligations.* Notwithstanding the confidentiality obligations contained in this section 2, Contractor will not be held liable under any federal or state trade secret law for the disclosure of a Company trade secret that is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if the filing is made under seal.

3. *Ownership*

- a. *Assignment.* All work product created or developed by the Company and Contractor in the course of performing the agreed Services, including but not limited to ideas, concepts, discoveries, techniques, designs, inventions, processes, procedures, formulas, methods, software, documentation, or other works of authorship developed or created by Contractor, Contractor's personnel, or Contractor's agents ("Work Product"), and all intellectual property rights to the Work Product, are the sole and exclusive property of the Com-

pany upon payment for work rendered. Contractor hereby assigns fully to the Company all Work Product and all related copyrights, patents, and other intellectual property rights. Contractor waives all rights of attribution, moral rights, and similar rights wherever existing in and to any of the foregoing.

- b. *Limited License.* During the term of this Agreement, the Company grants to Contractor a limited royalty-free license to use its intellectual property in furtherance of the Services and in a manner as authorized by the Company. This limited license will automatically terminate upon the termination of this Agreement and does not extend to any actions taken outside of providing the Services to Company clients. The license may include using the Company's name, logo, and other identifying marks that the Company may authorize in writing in its sole discretion.
- c. *Further Assurances.* Contractor agrees to assist the Company, or its designee, at the Company's expense, in every proper way (i) to secure the Company's rights in the Work Product and any related copyrights, trademarks, or other intellectual property rights in all countries, including the disclosure to the Company of all pertinent related information and data and the execution of all applications, specifications, oaths, assignments, and all other instruments the Company deems necessary in order to apply for and obtain those rights, and (ii) to assign and convey to the Company, its successors, assigns, and nominees the sole and exclusive right, title, and interest in and to the Work Product and any related copyrights, trademarks, or other intellectual property rights. Contractor further agrees that Contractor's obligation to execute or cause to be executed, when it is in Contractor's power to do so, any such instrument or papers will continue after the termination of this Agreement. The Company will provide reasonable notice to Contractor of its need

for Contractor's assistance in accordance with this paragraph and will reasonably accommodate Contractor in carrying out the obligation.

- d. *Pre-Existing Materials.* Contractor will not incorporate any third-party work product or work of authorship nor any invention, process, improvement, development, concept, discovery, or trade secret or other confidential or proprietary information owned by any third party into any Work Product without the Company's and the applicable third party's prior written permission.

4. *Warranties.* Contractor will perform the obligations described in this Agreement in a good and workmanlike manner with due diligence and in full compliance with this Agreement's terms and conditions, all mutually agreed to specifications and acceptance criteria, and applicable law. Contractor, at its expense, will use reasonable efforts to correct any Services or Work Product performed by or delivered by Contractor that do not conform with this warranty.

5. *Conflicting Obligations and Restrictions*

- a. *Conflicting Obligations.* Contractor certifies that it is unaware of any current agreement or obligation that is in conflict with any of the provisions of this Agreement or that would preclude Contractor from complying with this Agreement's provisions, and Contractor certifies that it will not enter into a conflicting agreement during the term of this Agreement.

Include the following if applicable.

- b. *Noncompetition.* During the term of this Agreement and for a period of twelve months after the Agreement's termination, Contractor agrees that it will not, either directly or indirectly, solicit, induce, recruit, or encourage any

of the Company's employees to leave their employment; hire or take away those employees; or attempt to solicit, induce, recruit, encourage, hire, or take away those employees, either for Contractor itself or for any other person or entity. Further, Contractor agrees that during the term of this Agreement and for a period of twelve months after the Agreement's termination, Contractor will not, either directly or indirectly, attempt to inhibit or alter the Company's customer, vendor, or other relationships.

Include the following if applicable.

- c. *Nonsolicitation.* During the term of this Agreement and for a period of twelve months after the Agreement's termination, Contractor agrees that it will not, directly or indirectly, through employment or ownership interest, compete with the Company or any of its affiliates or subsidiaries through services to any business that conducts marketing and promotion of [**specify, e.g.**, reduced-price online retail sales] within the city of [**city**].

Continue with the following.

6. *Term and Termination.* This Agreement will commence on the date first written above and will continue until either party terminates the Agreement as provided herein ("Initial Term"). Either party may terminate this Agreement immediately for any reason upon providing written notice to the other party. Upon termination of the Agreement, the Company will remove Contractor's access to all merchant accounts and websites maintained by the Company.

Sections [**specify**] will survive the expiration or termination of this Agreement. Additionally, the Company will pay all amounts owing to Contractor for Services completed and accepted by the Company before the termination date.

7. *Independent Contractor.* It is the express intention of the parties that Contractor is an independent contractor. Nothing in this Agreement will in any way be construed to constitute Contractor as an agent, employee, or representative of the Company, and Contractor will perform the Services as an independent contractor. Except as otherwise agreed by the Company, Contractor agrees to furnish (or reimburse the Company for) all tools and materials necessary to accomplish this contract and will incur all expenses associated with performance. Contractor acknowledges and agrees that Contractor is obligated to report as income all compensation received by Contractor pursuant to this Agreement, and Contractor agrees to and acknowledges the obligation to pay all related self-employment and other taxes. Contractor acknowledges and agrees that it will not receive, and it is the intent of the parties that neither Contractor nor any employees or contractors of Contractor receive, any Company-sponsored benefits from the Company as either a consultant or an employee. Those benefits include but are not limited to paid vacation, sick leave, medical insurance, and retirement plan participation. In the Company's sole discretion, the Company may require proof that Contractor maintains certain commercial insurance policies and limits before beginning the Services.

8. *Indemnification.* Each party will indemnify and hold harmless the other to this Agreement and its members, directors, officers, employees, and shareholders ("Indemnified Parties") from and against all claims, suits, investigations, proceedings, liabilities, damages, losses, fines, penalties, costs, and expenses, including, without limitation, reasonable attorney's fees and costs of suit, arising out of or in connection with this Agreement unless that damage is caused by the Indemnified Party's gross negligence or willful misconduct.

9. *Limitation of Liability.* THE PARTIES AGREE THAT THE COMPANY'S LIABILITY FOR DAMAGES FROM ANY CAUSE OF ACTION WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WILL NOT EXCEED THE FEES PAID OR TO BE PAID BY THE COMPANY PURSUANT TO SERVICES UNDER THIS AGREEMENT. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOST PROFITS OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY NATURE WHAT-

SOEVER OR FOR ANY CLAIM OR DEMAND BY ANY THIRD PERSON, ARISING OUT OF OR RELATED TO THE AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, EVEN IF ADVISED OF THIS POSSIBILITY.

10. *Dispute Resolution*

Include the following informal resolution clause if applicable.

Before resorting to the formal dispute resolution steps described below, a complaining party must first contact the other party directly to seek informal resolution in good faith by sending written notice of the matter in dispute to the other party via the e-mail address listed below or as periodically updated in writing by the parties.

Include the following mediation clause if applicable.

Any controversies arising out of the terms of this Agreement or its interpretation that are not resolved by good-faith informal resolution attempts will be submitted to mediation in [county] County, Texas, before seeking additional legal remedies. The Company and Contractor will each pay one-half of the costs and expenses of mediation.

Include the following attorney's fee clause if applicable.

In any action at law or inequity that is brought by one of the parties to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorney's fees and court costs.

Include the following injunctive relief clause if applicable.

[Notwithstanding the foregoing,] Contractor acknowledges that its violation of the terms of this Agreement, particularly those terms in [specify, e.g., sections 2 through 7 and Exhibit A], may cause the Company to suffer immediate and material irreparable harm with

incalculable damages that would be inadequately remedied by money damages. In response to such violations, the Company may seek immediate equitable relief against Contractor, including but not limited to specific performance, temporary restraining order, and injunctive relief, without first pursuing informal resolution or mediation.

Continue with the following.

[Except as otherwise provided in this section 10, the Company/The Company] and Contractor agree that any dispute or controversy arising out of, relating to, or in connection with the interpretation, validity, construction, performance, breach, or termination of this Agreement will be resolved by a court of appropriate jurisdiction in [county] County, Texas.

11. *Miscellaneous*

- a. *Governing Law.* This Agreement will be governed by the laws of the state of Texas without regard to its conflict-of-laws provisions.
- b. *Entire Agreement.* This Agreement is the entire agreement of the parties and supersedes any prior agreements between them, whether written or oral, regarding the subject matter herein.
- c. *Waiver.* No waiver, alteration, or modification of any of the provisions of this Agreement will be binding unless in writing and signed by duly authorized representatives of the parties.
- d. *Severability.* Each party agrees that if any provision of this Agreement is held to be illegal, invalid, or unenforceable, the provision will be enforced to the maximum extent permissible to give effect to the intent of the parties; the provision will otherwise be severed from this Agreement; and the provision will not in any way affect or impair the validity, legality, and enforceability of the remaining provisions of this Agreement.

- e. *Assignments.* Neither this Agreement nor any right or interest in it may be assigned or transferred by Contractor without the express written consent of the Company.

- f. *Notice.* Any notice will be addressed to the party being notified at the e-mail address or mailing address set forth in this Agreement or another address as either party may provide in writing and will be deemed given upon delivery.

- g. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute the same instrument. The Agreement may be executed and delivered by facsimile or PDF, which will have the same force and effect as original documents with original signatures.

Remainder of page intentionally left blank. Separate signature page follows.
--

IN WITNESS WHEREOF, this Agreement has been signed by the parties to be effective as of the date stated in this Agreement.

Company:

[Name of limited liability company], a Texas limited liability company

By: _____

[Name], [title]

[Address]

[Phone]

[Fax]

[E-mail]

Date: _____

Contractor:

[Name of contractor], a Texas [type of entity]

By: _____

[Name], [title]

[Address]

[Phone]

[Fax]

[E-mail]

Date: _____

Exhibit A

Services and Compensation

1. *Services.* Contractor will render to the Company the following Services:

a. **[specify]**

Repeat as necessary.

2. *Compensation and Expenses.* The Company will pay to Contractor the following Compensation amounts:

a. **[specify]**

Repeat as necessary.

The Company will pay to Contractor all Compensation earned for performing the Services within **[number]** days of when the client project payments have been received by the Company. Unless otherwise agreed by the Company, the Company will not reimburse Contractor for out-of-pocket expenses incurred by Contractor in performing the Services.

Form 23-4

Mutual Nondisclosure Agreement

This mutual nondisclosure agreement (“Agreement”) is made and entered into as of the date last signed (“Effective Date”) between [name of party] and the other party set forth in the signature block below. The party disclosing Confidential Information (defined in section 2 below) is the “Disclosing Party,” and the party receiving the Confidential Information is the “Recipient.”

1. *Purpose.* The parties wish to explore a business opportunity of mutual interest and benefit (“Opportunity”), and in connection with the Opportunity, each party may disclose to the other certain confidential technical and business information that the Disclosing Party desires the Recipient to treat as confidential.

2. *Confidential Information.* “Confidential Information” means any information disclosed by the Disclosing Party to the Recipient, either directly or indirectly, in writing, orally, or by inspection of tangible objects, including, without limitation, business plans, customer data, customer lists, customer names, designs, documents, drawings, engineering information, financial analyses, hardware configuration information, inventions, market information, marketing plans, processes, products, product plans, research, services, specifications, software, source code, trade secrets, and any other information that the Disclosing Party identifies as “confidential,” “proprietary,” or similar or that reasonably appears to be confidential or proprietary because of legends or other markings, the circumstances of disclosure, or the nature of the information itself. Confidential Information also includes information disclosed to the Disclosing Party by third parties. Confidential Information shall not, however, include any information that (a) is now, or hereafter becomes, through no act or failure to act on the part of the Recipient, generally known and made generally available in the public domain; (b) is in the possession of the Recipient at the time of disclosure by the Disclosing Party, as shown by

the Recipient's files and records immediately before the time of disclosure; (c) is obtained by the Recipient without restriction on use or disclosure from a third party without a breach of the third party's obligations of confidentiality; or (d) is independently developed by the Recipient without use of or reference to the Disclosing Party's Confidential Information, as shown by documents and other competent evidence in the Recipient's possession.

3. *Permitted Use.* The Recipient agrees that it shall use the Disclosing Party's Confidential Information solely for the purpose of evaluating the Opportunity and shall not reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody the Disclosing Party's Confidential Information without the Disclosing Party's express written consent. If such a prohibition is not permitted pursuant to applicable law, the Recipient shall provide the Disclosing Party written notice before undertaking any such reverse engineering and shall give the Disclosing Party reasonable time to provide any interface information required by law before commencing the reverse engineering. If the interface information is provided, the Recipient is prohibited from reverse engineering. The Recipient shall not make any copies of the Disclosing Party's Confidential Information unless the Disclosing Party previously approves the same in writing. The Recipient shall reproduce the Disclosing Party's proprietary rights and confidentiality notices on any authorized copies in the same manner in which the notices were set forth in or on the original. The Recipient agrees not to remove or export from the United States or reexport any of the Disclosing Party's Confidential Information or any direct product thereof except in compliance with this paragraph and in compliance with, and with all licenses and approvals required under, applicable export laws and regulations, including, without limitation, those of the United States Department of Commerce.

4. *Maintenance of Confidentiality.* The Recipient shall maintain the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care that it uses to protect its own Confidential Information, but in any event shall use at least commercially

reasonable measures to protect the confidentiality of and avoid disclosure of the Disclosing Party's Confidential Information. The Recipient further agrees that the Disclosing Party's Confidential Information will be kept confidential, and the Recipient agrees it will not disclose any of the Disclosing Party's Confidential Information to employees or to third parties, provided, however, that the Confidential Information may be disclosed to the Recipient's directors, officers, employees, or representatives who need to know the Confidential Information for the purpose of evaluating the Opportunity and have agreed to abide by nondisclosure terms at least as protective of the Disclosing Party's Confidential Information as those set forth in this Agreement. The Recipient also agrees to make copies of Confidential Information only as necessary to evaluate the Opportunity. The Recipient shall promptly notify the Disclosing Party of any unauthorized use or disclosure of the Disclosing Party's Confidential Information.

5. *Disclosure Required by Law.* If the Recipient is required by law or a valid and effective subpoena or order issued by either a court of competent jurisdiction or a governmental body to disclose any of the Disclosing Party's Confidential Information, the Recipient shall promptly notify the Disclosing Party in writing of the existence, terms, and circumstances surrounding the required disclosure so that the Disclosing Party may seek a protective order, have the Recipient seek a protective order on its behalf, or pursue other appropriate relief from the proper authority. The Recipient shall cooperate with the Disclosing Party in seeking the order or other relief. If the Recipient is nonetheless required to disclose the Disclosing Party's Confidential Information, it will furnish only that portion of the Confidential Information that is legally required and will exercise all reasonable efforts to obtain reliable assurances that the Confidential Information will be treated confidentially to the extent possible.

6. *No Obligation.* Each party understands and agrees that nothing in this Agreement requires either party (a) to disclose any Confidential Information, which shall be disclosed, if at all, solely at the option of the Disclosing Party; (b) to proceed with the Opportunity or any

relationship in connection with which Confidential Information may be disclosed; or (c) to refrain from entering into an agreement or negotiation with any other party. Nothing in this Agreement shall be construed as creating any joint venture, teaming arrangement, partnership, or other formal business organization or agency arrangement between the parties.

7. *No Warranty.* ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS, OR PERFORMANCE OF THE CONFIDENTIAL INFORMATION, AND EACH PARTY EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. *Return of Materials.* All documents and other tangible objects containing or representing Confidential Information disclosed by the Disclosing Party to the Recipient and all copies thereof shall remain the property of the Disclosing Party and shall be promptly returned to the Disclosing Party, or in the case of electronic materials, permanently deleted, upon the Disclosing Party's written request or upon termination or expiration of this Agreement, whichever is sooner. The Recipient shall certify that all such materials have been returned or permanently deleted, as applicable.

9. *No License.* All of the Disclosing Party's Confidential Information shall remain the sole property of the Disclosing Party. Nothing in this Agreement is intended to grant any rights to either party under any patent, copyright, trade secret, or other intellectual property right of the other party, nor shall this Agreement grant either party any rights in or to the other party's Confidential Information except as expressly set forth in this Agreement.

10. *Term and Termination.* This Agreement shall be effective as of the Effective Date and shall remain in effect for three years. Thereafter, the Agreement shall automatically renew for additional automatic one-year terms if any Confidential Information has been exchanged within three months preceding the renewal date. Otherwise, the Agreement shall expire. Upon

expiration or termination of this Agreement, the obligations of the Recipient to the Disclosing Party's Confidential Information shall survive and shall continue until that Confidential Information is no longer Confidential Information as defined in section 2 above.

11. *Remedies.* The Recipient agrees that its obligations under this Agreement are necessary and reasonable to protect the Disclosing Party and the Disclosing Party's business and expressly agrees that monetary damages would be inadequate to compensate the Disclosing Party for any breach by the Recipient of this Agreement. Accordingly, the Recipient agrees and acknowledges that any breach or threatened breach of this Agreement will cause irreparable injury to the Disclosing Party and that in addition to any other remedies that may be available in law, in equity, or otherwise, the Disclosing Party shall be entitled to obtain injunctive relief against the continuation of the breach or the threatened breach of this Agreement without the necessity of proving actual damages or posting bond.

12. *Feedback.* Notwithstanding the foregoing, any ideas, suggestions, guidance, or other information disclosed by the Recipient related to the Disclosing Party's Confidential Information and any related intellectual property rights shall be collectively deemed "Feedback." The Disclosing Party shall own all Feedback, and the Recipient assigns to the Disclosing Party all of its right, title, and interest in and to the Feedback. To the extent that the foregoing assignment is ineffective for whatever reason, the Recipient grants to the Disclosing Party a nonexclusive, perpetual, irrevocable, royalty-free, worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit the Feedback without restriction.

13. *Miscellaneous.* This Agreement shall be governed by the laws of the state of Texas without regard to its conflict-of-laws provisions, and the parties consent to the exclusive jurisdiction and venue of the state and federal courts located in [county] County, Texas, and agree to waive all objections to personal jurisdiction, venue, and forum non conveniens. This Agree-

ment contains the entire agreement between the parties on its subject matter and supersedes all prior related communications, reports, and understandings between the parties. Any failure to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision. If any term of this Agreement is found by any court to be void or otherwise unenforceable, the remainder of this Agreement shall remain valid and enforceable as though the term were absent on the Effective Date. This Agreement shall bind and inure to the benefit of the parties and their successors and assigns. Neither party may assign this Agreement without the express written consent of the other party, and any prohibited assignment shall be void, provided that either party may assign this Agreement pursuant to a merger, acquisition, or sale of all or substantially all of the party's assets unless the proposed assignee is a competitor of the other party. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties. This Agreement may be executed in counterparts, each of which shall be deemed original, and both together shall constitute one and the same instrument.

Remainder of page intentionally left blank. Separate signature page follows.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

[Name of party]

By: _____

[Name], [title]

[Address]

[Phone]

[Fax]

[E-mail]

Date: _____

Other party:

Printed company name (if on behalf of an entity)

Signature

Printed name

Printed title (if on behalf of an entity)

Address

City, state, zip

Phone number

Fax number

E-mail address

Date: _____



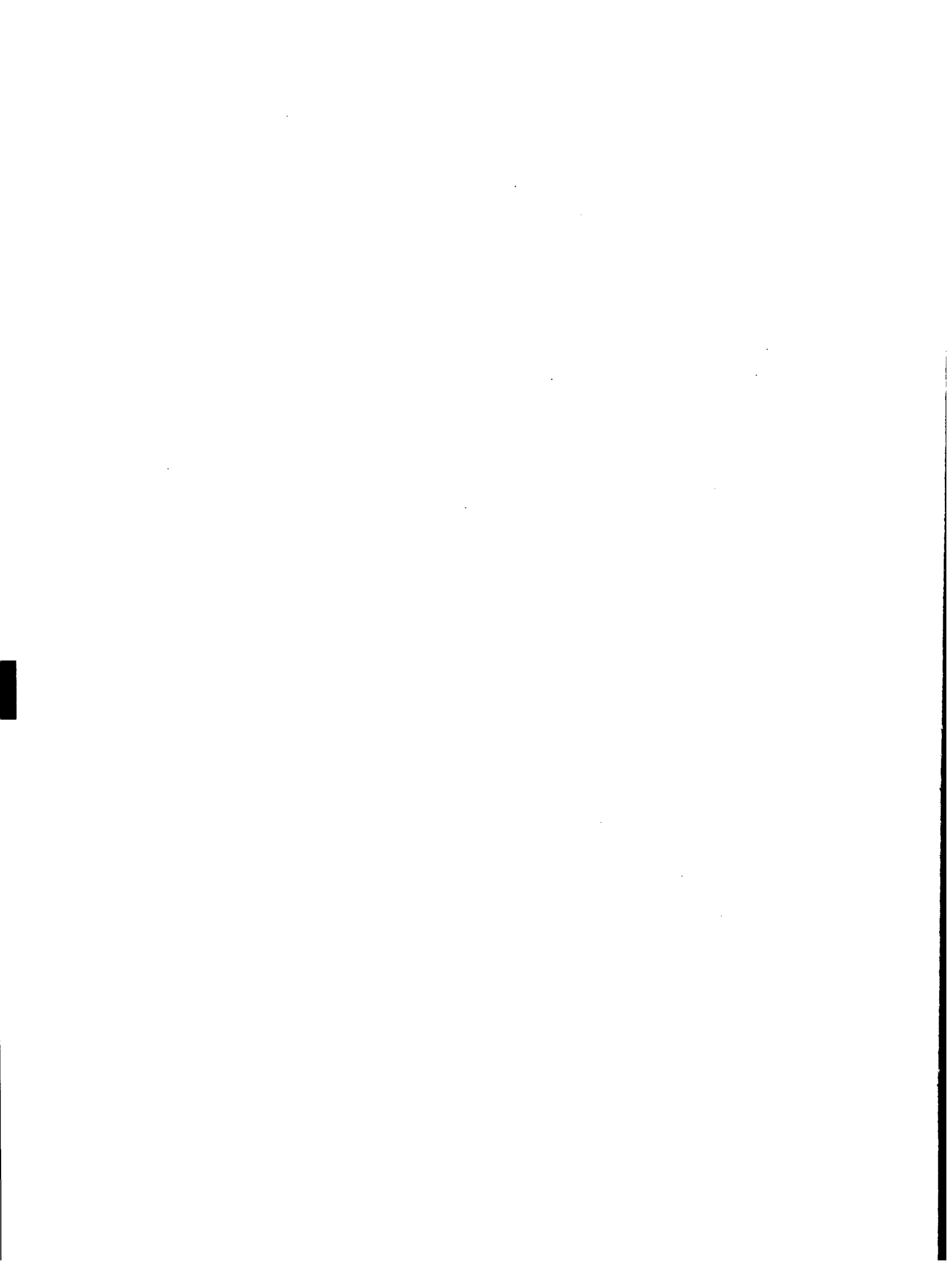
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