

**Texas Real Estate Forms Manual  
Third Edition**

Volume 4



# TEXAS REAL ESTATE FORMS MANUAL

**Third Edition**

**Volume 4**

A project of the  
Real Estate Forms Committee  
of the  
State Bar of Texas



Austin 2017

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International Standard Book Number: 978-1-938873-48-5

Library of Congress Control Number: 2017936428

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State Bar of Texas  
Austin, Texas 78711

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Printed in the United States of America

Third Edition, 2017



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## Chapter 23

### Restrictive Covenants and Property Owners Associations

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#### § 23.1 General Considerations

##### § 23.1:1 Restrictive Covenants

“Restrictive covenant” means “any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.” Tex. Prop. Code § 202.001(4). A restrictive covenant is a private way to regulate or control the use of real property by contract. This type of regulation and control is based on the fundamental “right of parties to contract with relation to property as they see fit, provided they do not contravene public policy and their contracts are not otherwise illegal.” *Curlee v. Walker*, 244 S.W. 497, 498 (1922). Restrictive covenants are subject to general common-law rules of contracts. *Pilarcik v. Emmons*, 966 S.W.2d 474, 478 (Tex. 1998).

Under common law, restrictive covenants can be adopted as part of a general plan for the development of a tract of land to make it more attractive for residential or commercial purposes by reason of the covenants imposed on each of the separate lots sold. The development plan that includes restrictive covenants forms an inducement to each purchaser to buy a lot in the development, and it may be assumed that the purchaser pays an enhanced price for the property purchased. The development plan, including restrictive covenants, enters into and becomes a part of the consideration for the purchase of a lot. The purchaser of a lot submits to a burden on his own land because a like burden imposed on his neighbor’s lot will be beneficial to both lots. The covenant or agreement between the original owner and each purchaser is therefore mutual. *Curlee*, 244 S.W. at 498.

The most common reason for imposing restrictive covenants on property is to enhance the value of the property as part of a development scheme. For example, by subdividing property on the edge of a town that is zoned for agriculture into separate smaller lots, and by imposing restrictive covenants so the purchasers of the lots know how the use of nearby lots will be restricted, the value of the property as a whole will be substantially enhanced. A development project subject to restrictive covenants can be for residential use only, commercial use only, or a combination of the two. The forms in this chapter are for residential projects only.

Based on the common-law rules and the statutory definitions, restrictive covenants can be imposed or applied to property in a variety of ways. One of the most common ways to impose restrictive covenants on property is for the owner of the land to file with the county clerk a document known as a declaration, which describes the restrictive covenants to which the property is subject. A declaration regarding property is similar to the declaration of a living trust. Both documents declare that certain described property will be owned by the owner subject to the described covenants.

The filing of the declaration on real property with the county clerk is constructive notice to the public that the property described in the declaration is subject to the restrictive covenants stated. Once a declaration of restrictive covenants is filed regarding the described property, the covenants are continuing obligations for the use of the property from that time forward, through each sale of the property, until canceled or modified by the owner. These ongoing restrictions on the use of land are called ‘cove-

nants running with the land. Purchasers are charged with notice of the terms of deeds that form an essential link in their chain of ownership and with knowledge of the provisions and contents of other recorded instruments. *Cooksey v. Sinder*, 682 S.W.2d 252, 253 (Tex. 1984).

A restrictive covenant is a contract subject to the same rules of construction and interpretation as any other contract. *Davis v. Canyon Creek Estates Homeowners Ass'n*, 350 S.W.3d 301, 313 (Tex. App.—San Antonio 2011, pet. denied). Once restrictive covenants are imposed on a property, they are contractual obligations among all future owners of subdivided parts of the property. An owner's noncompliance with a restrictive covenant is a breach of contract as to all the other owners of lots subdivided from the same property to which the declaration applies. Therefore, each owner has a right to enforce the restrictive covenants in a development or subdivision by filing suit against an owner who violates a restrictive covenant. *Anderson v. New Property Owners Ass'n of Newport*, 122 S.W.3d 378, 384 (Tex. App.—Texarkana 2003, pet. denied). However, placing the burden on individual owners for the enforcement of restrictive covenants, while generally allowed by common law and by the terms of declarations, is not usually practical.

### § 23.1:2 Declarations and Other Dedicatory Instruments

“Dedicatory instrument” means—

each document governing the establishment, maintenance, or operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes a declaration or similar instrument subjecting real property to:

- (A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association;
- (B) properly adopted rules and regulations of the property owners' association; or
- (C) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

Tex. Prop. Code § 202.001(1).

To be effective, a dedicatory instrument—whether from a property owners association or an original declarant—must be filed in the real property records of each county in which the property to which the dedicatory instruments relate is located. Tex. Prop. Code § 202.006. This requirement covers bylaws or similar instruments governing the administration or operation of a property owners association, properly adopted rules and regulations of the property owners association, and all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

A provision for amendment of a declaration cannot require a vote of more than 67 percent of the total votes of members of the property owners association entitled to vote on the proposed amendment. Tex. Prop. Code § 209.0041. If the declaration contains a lower percentage, the percentage in the declaration controls. Tex. Prop. Code § 209.0041. If the declaration is silent as to voting rights for an amendment, the declaration may be amended by a vote of owners owning 67 percent of the lots subject to the declaration. Tex. Prop. Code § 209.0041. Section 209.0041 prevails over any conflicting provisions in title 11 of the Texas Property Code. See, however, Property Code section 201.006

concerning the requirements for a petition to amend restrictions, with significantly different requirements. Tex. Prop. Code § 201.006.

### § 23.1:3 Limitations of Covenants and Restrictions

The Telecommunications Act of 1996 protects the rights of property owners to use satellite dishes. See 47 U.S.C. §§ 151–341. With a few exceptions, any homeowner may install a satellite dish of a size of one meter or smaller in diameter. While property owners associations may encourage that dishes be placed as inconspicuously as possible, the dish must be allowed to be placed where it may receive a usable signal. Additionally, many property owners associations have restrictive covenants prohibiting a homeowner from installing an OTA (Over-the-Air) rooftop antenna. These restrictions are not enforceable, except in some instances. For example, the antenna may be installed at any location unless it imposes on common property. Also, the antenna must be of a design to receive local, not long-distance, signals and must not extend any higher than twelve feet above the top roofline of the home, unless an exception is granted by the property owners association due to extenuating terrestrial interference. See the Federal Communications Commission Rule, available at <https://www.fcc.gov/media/over-air-reception-devices-rule>.

Federal and state fair housing acts will limit certain types of residential restrictions concerning age and occupancy limitations. See the section titled ‘Fair Housing’ in chapter 2 of this manual.

With some exceptions noted in the statute, a provision in a dedicatory instrument is void and unenforceable if it prohibits or restricts a property owner from (1) implementing measures promoting solid-waste composting of vegetation, including grass clippings, leaves, or brush, or leaving grass clippings uncollected on grass;

(2) installing rain barrels or a rainwater harvesting system; (3) implementing efficient irrigation systems, including underground drip or other drip systems; or (4) using drought-resistant landscaping or water-conserving natural turf. Tex. Prop. Code § 202.007.

A property owners association is limited on how it can enforce restrictions of political signs in a subdivision. Tex. Prop. Code § 202.009.

With certain exceptions listed in the statute, a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device is void. Tex. Prop. Code § 202.010.

With certain specified exceptions, a property owners association is prohibited from adopting or enforcing a restrictive covenant limiting the display of the American flag beyond those limitations to time, place, and manner necessary to protect a substantial interest of the association. Freedom to Display the American Flag Act of 2005, Pub. L. No. 109-243, 120 Stat. 572 (2006) (found at 4 U.S.C. § 5 note). Tex. Prop. Code § 202.012 limits a property owners association’s ability to prohibit or regulate flagpoles and flag displays.

Restrictions requiring wood shingle roofs are void. Tex. Prop. Code § 5.025. A property owners association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner who is otherwise authorized to install shingles on the roof of the owner’s property from installing shingles that meet the specifications listed in the statute. Tex. Prop. Code § 202.011.

With specified exceptions, a property owners association may not enforce or adopt a restrictive covenant that prohibits a property owner or resident from displaying or affixing on the entry to the owner’s or resident’s dwelling one or more religious items, the display of which is



motivated by the owner's or resident's sincere religious belief. Tex. Prop. Code § 202.018.

A property owners association is limited on the extent to which it can adopt and enforce restrictions on standby electric generators. Tex. Prop. Code § 202.019.

### § 23.2 Property Owners Association

A property owners association, which is composed of all owners of lots in a subdivision or development, enforces restrictive covenants on behalf of the association and all the owners who are in compliance. A property owners association means—

an incorporated or unincorporated association owned by or whose members consist primarily of the owners of the property covered by the dedicatory instrument and through which the owners, or the board of directors or similar governing body, manage or regulate the residential subdivision, planned unit development, condominium or townhouse regime, or similar planned development.

Tex. Prop. Code § 202.001(2).

The practitioner should consider using a nonprofit association, which is an unincorporated organization. The members and management of a nonprofit association are shielded from personal liability under Tex. Bus. Orgs. Code § 252.006. A nonprofit association requires no certificate of formation or periodic reports. Failure of a corporation to file periodic reports (every four years in the case of a non-profit; annually in the case of a for-profit) with the secretary of state may result in the forfeiture of the corporation's existence.

Property owners associations are regulated by federal, state, and local law, and they are subject to federal income taxation. They do not qualify

as charitable organizations under Internal Revenue Code section 501(c)(3). Associations may qualify for special tax treatment under 26 U.S.C. § 528. All entities organized in Texas must comply with the Texas Business Organizations Code. *See* Tex. Bus. Orgs. Code ch. 402. Texas Property Code chapter 202 applies to all restrictive covenants and property owners associations. Chapter 209 of the Property Code applies to all residential property owners associations subject to a declaration that authorizes the property owners association to collect regular or special assessments on all or a majority of the property in the subdivision. Certain provisions of these chapters do not apply to a property owners association that is subject to Texas Government Code chapter 552. *See* Tex. Gov't Code § 552.0036. Property Code chapter 209 does not apply to condominiums governed by chapter 82 of the Property Code. *See* Tex. Prop. Code § 209.003(d).

Certain chapters of the Property Code have specific requirements not applicable generally to property owners associations in counties having defined characteristics. To determine if these specific requirements apply, see chapters 201, 203, 204, 205, 206, 208, 210, 211, 212 and 215 of the Property Code.

The Texas Residential Property Owners Protection Act is chapter 209 of the Property Code. It applies to residential subdivisions (other than condominiums governed by Tex. Prop. Code ch. 82) that are subject to restrictive covenants authorizing a property owners association to collect regular or special assessments and requiring mandatory membership in the association. Tex. Prop. Code § 209.003. In addition, the Property Code affords certain rights to property owners associations in cities or counties that meet various specified minimum population requirements to amend, extend, or supplement deed restrictions and to establish assessment lien mechanisms. Tex. Prop. Code chs. 201, 204–206.

A property owners association must record a management certificate in each county in which any portion of the residential subdivision is located and must record an amended management certificate within thirty days of the amendment. Tex. Prop. Code § 209.004. See form 23-7 in this chapter. All property owners associations must record a current management certificate on or before January 1, 2014, or rerecord the current management certificate if the previous recording was done before September 1, 2013. This requirement is to facilitate the county clerks' indexing of management certificates, which, before September 1, 2013, did not have a clear, statutorily mandated system. Tex. Prop. Code § 209.004(a-1). Thus, a property owners association should record or rerecord its current management certificates even if it missed the January 1, 2014, deadline. If either the property owners association has, or its management company maintains on behalf of the association, a publicly accessible website, then the dedicatory instruments related to the subdivision and the association must be posted on that website. Tex. Prop. Code § 207.006.

Despite any contrary provision in a dedicatory instrument or in other laws not specifically applicable to a property owners association, a property owners association must make the books and records of the association, including financial records, open to and reasonably available for examination and copying by an owner or a person designated in a writing signed by the owner as the owner's agent, attorney, or certified public accountant. Tex. Prop. Code § 209.005(a), (c).

The procedure for an owner to examine and copy an association's records is set out in Tex. Prop. Code § 209.005. In addition, the property owners association must adopt a records production and copying policy that prescribes the costs the association will charge for the compilation, production, and reproduction of requested records. That policy must be recorded in the real

property records. The association cannot assess any charges if they are not recorded. Tex. Prop. Code § 209.005(i). See form 23-12 for an example of a records production and copying policy.

A property owners association composed of more than fourteen lots must also adopt and comply with a document retention policy meeting certain defined requirements. Tex. Prop. Code § 209.005(m). The documentation retention policy must be recorded as a dedicatory instrument. Tex. Prop. Code § 209.005(i).

### § 23.2:1 Governance of Property Owners Associations

The governance of property owners associations, including meetings and voting procedures for members, is subject to common-law rules, the terms of the dedicatory instruments, the Texas Business Organizations Code, and the Texas Property Code.

Mandatory, statutory provisions about members voting apply to property owners associations and supersede contrary provisions in a dedicatory instrument. *See* Tex. Prop. Code §§ 209.0057-.0059, 209.00592-.00594.

The board of directors of a property owners association must call an annual meeting of the members. If a board does not call an annual meeting of the association members, any owner may demand that a meeting of the association members be called not later than the thirtieth day after the date of the owner's demand. *See* Tex. Prop. Code § 209.014.

Mandatory, statutory provisions for board of director qualifications and meetings apply to property owners associations and supersede contrary provisions in a dedicatory instrument. *See* Tex. Prop. Code §§ 209.0051, 209.00591. Regular and special board meetings must be open to owners, subject to the right of the board to adjourn a board meeting and reconvene in

closed executive session to consider certain specified matters. Written minutes of the meetings must be kept and made available to owners. Members must be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. *See* Tex. Prop. Code § 209.0051.

There are mandatory and permissive statutory provisions for how a property owners association gives notice to owners and the content of the notice. These provisions vary depending on factors such as type and location of meetings, action taken or to be taken with or without a meeting, voting methods, use of electronic communication, and size of the association. *See, e.g.,* Tex. Prop. Code §§ 209.0042, 209.0051, 209.0056, 209.00593, 209.006.

### § 23.2:2 Enforcement of Covenants and Rules and Collection of Assessments

Before a property owners association may suspend an owner's right to use a common area, file a suit against an owner other than a suit to collect a regular or special assessment or foreclose under an association's lien, charge an owner for property damage, or levy a fine for a violation of the restrictions or bylaws or rules of the association, the association or its agent must give written notice to the owner by certified mail with certain required information. Tex. Prop. Code § 209.006. A reasonable time for the owner to cure a violation must be given if the violation is curable and does not materially affect the health or safety of an ordinary resident. Tex. Prop. Code § 209.006. The statute contains examples of curable and incurable violations.

A property owners association may not hold an owner liable for fees of a collection agent retained by the property owners association unless the association first provides written

notice with required information to the owner by certified mail. Tex. Prop. Code § 209.0064. A property owners association may collect from an owner reimbursement of reasonable attorney's fees and other reasonable costs incurred relating to collecting amounts due to the association for enforcing restrictions or the bylaws or rules of the association only if the owner is provided a written notice that attorney's fees and costs will be charged to the owner if the delinquency or violation continues after a date certain. Tex. Prop. Code § 209.008.

A property owners association composed of more than fourteen lots must adopt reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments to the property owners association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties. The guidelines must allow at least three months to pay the assessment. The guidelines are not considered a dedicatory instrument but must be recorded in the real property records. Tex. Prop. Code § 209.0062.

A property owners association whose dedicatory instruments grant a right to foreclose on assessment liens is deemed to have any power of sale required to exercise the foreclosure right under Tex. Prop. Code § 209.0092. The Texas Residential Property Owners Protection Act regulates the foreclosure of an assessment lien and provides a right of redemption after foreclosure. *See* Tex. Prop. Code §§ 209.009-.011. Generally, judicial foreclosure of an owner's lot is required, and nonjudicial foreclosure is not allowed, unless the owner waives the right to require a judicial foreclosure after default. Tex. Prop. Code § 209.0092. A judicial foreclosure required by Tex. Prop. Code § 209.0092 must be conducted according to Texas Rules of Civil Procedure 735 and 736. Tex. Prop. Code § 209.0092(b). *See* Tex. R. Civ. P. 735, 736.

A property owners association may not conduct a nonjudicial foreclosure or commence a judicial foreclosure action related to the association's assessment lien on an owner's lot unless the association provides written notice to any holder of an inferior or subordinate deed-of-trust lien of record on the lot of (1) the total amount of the delinquency giving rise to the foreclosure and (2) the lienholder's opportunity to cure the delinquency before the sixty-first day after the receipt of the notice. The notice must be sent by certified mail to the address for the inferior or subordinate lienholder shown in the deed records relating to the lot. Tex. Prop. Code § 209.0091.

Not later than the thirtieth day after a judicial or nonjudicial foreclosure sale of an owner's lot, a property owners association must send to the lot owner, each lienholder of record according to the most recently filed deed of trust, and any transferee or assignee of that deed of trust, a written notice stating the date and time the sale occurred and informing them of the right of the lot owner and lienholder to redeem the lot under section 209.011 of the Texas Property Code. Tex. Prop. Code § 209.010-.011. See form 23-19 in this chapter for an example of a notice.

Not later than the thirtieth day after the property owners association sends notice under Tex. Prop. Code § 209.010, the association must record an affidavit under Tex. Prop. Code § 209.010(c) in the real property records where the property is located, stating the date on which notice was sent and containing a legal description of the lot foreclosed. See form 23-18 for an example of an affidavit. If the lot owner or lienholder sends a written request to redeem the property before the expiration of the redemption period, the redemption period is extended until the tenth day after the date the association and any third-party purchaser at the foreclosure provides written notice to the redeeming party of the amounts that must be paid to redeem the property. Tex. Prop. Code § 209.011(m).

If the redemption period (including any extensions) expires without redemption of the property, the association or third-party foreclosure purchaser must record an affidavit in the real property records in which the property is located, stating that the lot owner or lienholder did not redeem the property. Tex. Prop. Code § 209.011(n). See form 23-20 for an example of an affidavit.

### § 23.2:3 Resale Certificates

Texas Property Code chapter 207 applies to residential subdivisions with a property owners association that is entitled to levy regular or special assessments. Tex. Prop. Code §§ 207.001(6), 207.002. Within ten business days after a written request, a residential property owners association is required to deliver a resale certificate to the requesting owner, title company, purchaser, or their respective agents. The resale certificate must be prepared no earlier than the sixtieth day before it is delivered and must include specific information about the property and the subdivision as a whole. Tex. Prop. Code § 207.003. See form 23-10 in this chapter for an example of a resale certificate. The property owners association may require evidence of the requester's authority to order a resale certificate and payment of a fee for having provided the resale certificate. Tex. Prop. Code § 207.003.

### § 23.3 Instructions for Completing Declaration of Restrictive Covenants and Other Dedicatory Instruments

#### § 23.3:1 General Information

See chapter 3 in this manual for general information about designations of parties, addresses, property descriptions, and execution and acknowledgment of documents.

### § 23.3:2 Scope of Declaration of Restrictive Covenants

Form 23-1 in this chapter is drafted for use with a single-family residential subdivision whose owners are members of a property owners association, and form 23-2 is drafted for use with a residential subdivision that does not include a property owners association.

### § 23.3:3 Prohibited Activities

The prohibitions listed in paragraph C.2. of forms 23-1 (the declaration of restrictive covenants for a subdivision with a property owners association) and 23-2 (the declaration for a subdivision without a property owners association) in this chapter should include only those activities that a declarant does not want to allow on the property subject to the declarations.

### § 23.3:4 Construction and Maintenance Standards

The construction and maintenance standards in section D. of forms 23-1 and 23-2 in this chapter should be tailored to address a declarant's desired construction and maintenance standards for the property. In addition, several construction options need to be selected by a declarant in section D. of both declarations, such as maximum height restrictions, minimum floor area, time to complete repairs or for rebuilding of improvements, and time to complete installation of landscaping.

### § 23.3:5 Association

Section E. of form 23-1 in this chapter includes a property owners association that has two classes of membership. Class A members are all property owners except the declarant, and each Class A member has one vote. The declarant is designated a Class B member with special voting rights as specified in the bylaws of the asso-

ciation. Paragraph E.3.b. of form 23-1 allows a declarant to select the date on which Class B member rights are to be converted to Class A member rights.

### § 23.3:6 Architectural Control Committee

Section F. of form 23-1 in this chapter includes an architectural control committee (ACC) established to assist the association in ensuring that permitted improvements and landscaping conform to the dedicatory instruments. A declarant must select the number of members comprising the ACC and the number of days that a property owner or the ACC has to act on various matters brought before the ACC.

### § 23.3:7 Assessments

Section G. of form 23-1 in this chapter authorizes the association to impose and collect regular and special assessments, and a lien is created on each owner's property to secure an owner's payment of the assessments. The amount of the initial regular assessment, the timing for payment of regular assessments, and the manner in which the owners approve special assessments all need to be completed in this section.

### § 23.3:8 Remedial Rights

If a declarant desires to impose a late charge or interest on delinquent assessments, the amount and interest rate should be completed in section H. of form 23-1 in this chapter.

### § 23.3:9 Dedication or Conveyance of Common Areas

Paragraph I.1.d. of form 23-1 in this chapter requires a declarant to select the number of votes necessary to dedicate or convey common areas owned by the association.

**§ 23.3:10 Term of Declaration**

Paragraph J.1. of form 23-1 in this chapter and paragraph E.1. of form 23-2 both allow a developer to select the period of time the restrictive covenants will remain in effect and, if the restrictive covenants terminate on a specific date, how the property owners may continue the restrictive covenants.

**§ 23.3:11 Annexation of Additional Property**

Paragraph J.8. of form 23-1 in this chapter and paragraph E.7. of form 23-2 both allow for annexation of additional property into the declaration. A declarant needs to determine the percentage of owners needed to annex additional property into the declaration.

**§ 23.3:12 Bylaws**

Form 23-4 in this chapter is a set of bylaws for the property owners association. The bylaws can be adapted to either an unincorporated association or a corporation. If the property owners association is an unincorporated nonprofit association, consult chapter 252 of the Texas Business Organizations Code. For a nonprofit corporation, consult chapter 22 of the Business Organizations Code.

**§ 23.3:13 Rules**

Form 23-5 in this chapter is a form that can be used in promulgating rules for the property owners association and the use of any common areas. The rules and penalties for violation (to be inserted in sections A. and B. of the form), promulgated by the association, will be unique to each subdivision. The enforcement provisions (contained in section C. of the form) are based on the requirements in section 209.006 of the Texas Property Code.

## Additional Resources

- Austin, Judd A., Jr. "HOA Collections and Foreclosures: New Statutes & New Rules." In *Advanced Real Estate Drafting Course, 2012*. Austin: State Bar of Texas, 2012.
- Hailey, Roy D. "Overview of 2011 Legislation Affecting Texas Property Owners Associations." In *State Bar College 'Summer School' Course, 2012*. Austin: State Bar of Texas, 2012.
- . "Practical Tips for Dealing with Property Owners Associations." In *Advanced Real Estate Law Course, 2005*. Austin: State Bar of Texas, 2005.
- . "Property Owners Associations Are Nonprofits Too!" In *Governance of Non-profit Organizations*. Austin: State Bar of Texas, 2013.
- Jackson, Rosemary B. "Architectural Guidelines for POAs." In *Advanced Real Estate Drafting Course, 2015*. Houston: State Bar of Texas, 2015.
- . "Established Subdivisions without Mandatory HOAs—Adding HOAs 'After the Fact.'" In *Advanced Real Estate Law Course, 2011*. Austin: State Bar of Texas, 2011.
- . "Property Owners Association Litigation and Dispute Resolution." In *Advanced Real Estate Law Course, 2004*. Austin: State Bar of Texas, 2004.
- Katine, Mitchell. "Consumer Rights and Protection in the HOA Context." In *Advanced Real Estate Law Course, 2011*. Austin: State Bar of Texas, 2011.
- Markel, Marc D. "Standards of Duty & Liability for Community Association Officers & Directors." In *Advanced Real Estate Law Course, 2011*. Austin: State Bar of Texas, 2011.
- Reuler, Sharon, and Roy D. Hailey. "The Texas POA Primer." In *Advanced Real Estate Law Course, 2010*. Austin: State Bar of Texas, 2010.
- Weinberg, William R. "Green Building Issues in Residential Covenants, Conditions and Restrictions." In *Advanced Real Estate Strategies Course, 2009*. Austin: State Bar of Texas, 2009.
- Wilson, Reid C. "Amending/Modifying Restrictive Covenants." In *Advanced Real Estate Strategies Course, 2008*. Austin: State Bar of Texas, 2008.
- . "Restrictive Covenants: Modifying and Updating." In *Advanced Real Estate Law Course, 2010*. Austin: State Bar of Texas, 2010.

**Form 23-1**

This form is provided as an example only. The attorney should tailor the provisions of the form to address the specific standards of the association.

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**Declaration of Restrictive Covenants of  
the [name of subdivision] Subdivision  
[with Property Owners Association]**

**Basic Information**

Date:

Declarant:

Declarant's Address:

Property Owners Association: [name], a Texas nonprofit [corporation/association]

Property Owners Association's Address:

Property:

**Definitions**

“ACC” means the Architectural Control Committee established in this Declaration.

“Assessment” means any amount due to the Property Owners Association by an Owner or levied against an Owner by the Property Owners Association under this Declaration.

“Board” means the Board of Directors of the Property Owners Association.

“Bylaws” means the Bylaws of the Property Owners Association adopted by the Board.



“Common Area” means all property within the Subdivision not designated as a Lot on the Plat and that has not been accepted for maintenance by the applicable governmental body. Declarant will convey the Common Area to the Property Owners Association.

“Covenants” means the covenants, conditions, and restrictions contained in this Declaration.

“Declarant” means [name], [a/an] [individual/[Texas/[state of formation]] limited partnership/corporation/limited liability company] and any successor that acquires all unimproved Lots owned by Declarant for the purpose of development and is named as successor in a recorded document.

“Dedicator Instruments” means this Declaration and the [certificate of formation,] Bylaws, rules of the Property Owners Association, and standards of the ACC, as amended.

“Easements” means Easements within the Property for utilities, drainage, and other purposes as shown on the Plat or of record.

“Lot” means each tract of land designated as a lot on the Plat, excluding lots that are part of the Common Area.

“Member” means Owner.

“Owner” means every record Owner of a fee interest in a Lot.

“Plat” means the Plat of the Property recorded in [recording data] of the real property records of [county] County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

“Residence” means a detached building designed for and used as a dwelling by a Single Family and constructed on one or more Lots.

“Single Family” means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Residence.

“Structure” means any improvement on a Lot (other than a Residence), including a sidewalk, driveway, fence, wall, tennis court, swimming pool, outbuilding, or recreational equipment.

“Subdivision” means the Property covered by the Plat and any additional property made subject to this Declaration.

“Vehicle” means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.

## **Clauses and Covenants**

### **A. Imposition of Covenants**

1. Declarant imposes the Covenants on the Subdivision. All Owners and other occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants.

2. The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.

3. Each Owner and occupant of a Lot agrees to comply with the Dedicatory Instruments and agrees that failure to comply may subject him to a fine, an action for amounts due to the Property Owners Association, damages, or injunctive relief.

**B. Plat and Easements**

1. The Plat, Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.
2. An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement.
3. Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.
4. Declarant and each Easement holder may install, maintain, and connect facilities in the Easements.

**C. Use and Activities**

1. *Permitted Use.* A Lot may be used only for an approved Residence and approved Structures for use by a Single Family.
2. *Prohibited Activities.* Prohibited activities are—
  - a. any activity that is otherwise prohibited by the Dedicatory Instruments;
  - b. any illegal activity;
  - c. any nuisance, noxious, or offensive activity;
  - d. any dumping of rubbish;
  - e. any storage of—
    - i. building materials except during the construction or renovation of a Residence or a Structure;

- ii. vehicles, except vehicles in a garage or Structure or operable automobiles on a driveway; or
- iii. unsightly objects unless completely shielded by a Structure;
- f. any exploration for or extraction of minerals;
- g. any keeping or raising of animals, livestock, or poultry, except for common domesticated household pets, such as dogs and cats, not to exceed [number] confined to a fenced yard or within the Residence;
- h. any commercial or professional activity except reasonable home office use;
- i. the renting of a portion of a Residence or Structure;
- j. the drying of clothes in a manner that is visible from any street;
- k. the display of any sign except—
  - i. one not more than five square feet, advertising the Lot for sale or rent or advertising a garage or yard sale; and
  - ii. political signage not prohibited by law or the Dedicatory Instruments;
- l. installing a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot;
- m. moving a previously constructed house onto a Lot;
- n. interfering with a drainage pattern without ACC approval;
- o. hunting and shooting; and

- p. occupying a Structure that does not comply with the construction standards of a Residence.

#### **D. Construction and Maintenance Standards**

##### 1. *Lots*

- a. *Consolidation of Lots.* An Owner of adjoining Lots, with ACC approval, may consolidate those Lots into one site for the construction of a Residence.
- b. *Subdivision Prohibited.* No Lot may be further subdivided.
- c. *Easements.* No easement in a Lot may be granted without ACC approval.
- d. *Maintenance.* Each Owner must keep the Lot, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition.

##### 2. *Residences and Structures*

- a. *Aesthetic Compatibility.* All Residences and Structures must be aesthetically compatible with the Subdivision, as determined by the ACC.
- b. *Maximum Height.* The maximum height of a Residence is [number] [feet above grade/stories].
- c. *Required Area.* The total area of a Residence, exclusive of porches, garages, or carports, must be at least [number] square feet.
- d. *Location on Lot.* No Residence or Structure may be located in violation of the setback lines shown on the Plat. Each Residence must face the front Lot line. All Structures must be located behind the front wall of the Residence. All outbuildings, except garages, must not be visible from any street.

- e. *Garages.* Each Residence must have at least a two-car garage accessed by a driveway. The garage may be a separate structure.
- f. *Damaged or Destroyed Residences and Structures.* Any Residence or Structure that is damaged must be repaired within [number] days (or within a period approved by the ACC) and the Lot restored to a clean, orderly, and attractive condition. Any Residence or Structure that is damaged to the extent that repairs are not practicable must be demolished and removed within [number] days and the Lot restored to a clean and attractive condition.
- g. *Fences, Walls, and Hedges.* No fence, wall, or hedge may be located forward of the front wall line of the Residence, except for trellises and decorative fences that are approved by the ACC.
- h. *Traffic Sight Lines.* No landscaping that obstructs traffic sight lines may be placed on any Lot.
- i. *Sidewalks.* When the Residence is constructed, the Lot must be improved with sidewalks connecting with the sidewalks on adjacent Lots.
- j. *Landscaping.* Landscaping must be installed within [number] days after occupancy. The minimum landscaping is specified in the standards of the ACC.

3. *Building Materials for Residences and Structures*

- a. *Roofs.* Only [composition/tile/metal] roofs may be used on Residences and Structures, unless otherwise approved by the ACC. All roof stacks must be painted to match the roof color.

- b. *Air Conditioning.* Window- or wall-type air conditioners may not be used in a Residence.
- c. *Exterior Walls.* All Residences must have at least [percent] percent of their exterior walls, including exposed foundation, of stone or brick, minus windows and doors, unless otherwise approved by the ACC.
- d. *Color Changes.* No change to the color of the exterior walls, trim, or roof of a Residence will be permitted, unless otherwise approved by the ACC.
- e. *Driveways and Sidewalks.* All driveways and sidewalks must be surfaced with concrete, unless otherwise approved by the ACC. Driveways and sidewalks may not be surfaced with dirt, gravel, shell, or crushed rock.
- f. *Lot Identification.* Lot address numbers and name identification must be aesthetically compatible with the Subdivision.

#### **E. Property Owners Association**

Select one of the following.

1. *Establishment and Governance.* The Property Owners Association is established by filing its certificate of formation and is governed by the certificate, the Declaration, and the Bylaws. The Property Owners Association has the powers of a nonprofit corporation and a property owners association under the Texas Business Organizations Code, the Texas Property Code, and the Dedicatory Instruments.

Or

1. *Establishment and Governance.* The filing of this Declaration establishes the Property Owners Association as an unincorporated nonprofit association that is governed by this Declaration and the Bylaws. The Property Owners Association has the powers of an unin-

corporated nonprofit association and a property owners association for the Subdivision under the Texas Business Organizations Code, the Texas Property Code, and the Dedicatory Instruments.

Continue with the following.

2. *Rules.* The Board may adopt rules that do not conflict with law or the other Dedicatory Instruments. On request, Owners will be provided a copy of any rules.

3. *Membership and Voting Rights.* Every Owner is a Member of the Property Owners Association. Membership is appurtenant to and may not be separated from ownership of a Lot. The Property Owners Association has two classes of voting Members:

- a. *Class A.* Class A Members are all Owners, other than Declarant. Class A Members have one vote per Lot. When more than one person is an Owner, each is a Class A Member, but only one vote may be cast for a Lot.
- b. *Class B.* The Class B Member is Declarant and has the number of votes for each Lot owned specified in the Bylaws. The Class B Membership ceases and converts to Class A Membership on the earlier of—
  - i. when the Class A Members' votes exceed the total of Class B Member's votes or
  - ii. [date].

## F. ACC

### 1. *Establishment*

- a. *Purpose.* The ACC is established as a committee of the Property Owners Association to assist the Property Owners Association in ensuring that all



Residences, Structures, and landscaping within the Subdivision are aesthetically compatible and conform to the Dedicatory Instruments.

- b. *Members.* The ACC consists of at least [number] persons appointed by the Board. The Board may remove or replace an ACC member at any time.
- c. *Term.* ACC members serve until replaced by the Board or they resign.
- d. *Standards.* Subject to Board approval, the ACC may adopt standards that do not conflict with the other Dedicatory Instruments to carry out its purpose. These standards are not effective unless recorded with the county clerk. On request, Owners will be provided a copy of any standards.

2. *Plan Review*

- a. *Required Review by ACC.* No Residence or Structure may be erected on any Lot, or the exterior altered, unless plans, specifications, and any other documents requested by the ACC have been submitted to and approved by the ACC. The plans and specifications must show exterior design, height, building materials, color scheme, location of the Residence and Structures depicted horizontally and vertically, and the general plan of landscaping, all in the form and detail the ACC may require.
- b. *Procedures*
  - i. *Complete Submission.* Within [number] days after the submission of plans and specifications by an Owner, the ACC must notify the submitting Owner of any other documents or information required by the ACC. In the absence of timely notice from the ACC requesting additional documents or other information, the submission is deemed complete.

- ii. *Deemed Approval.* If the ACC fails to give notice of disapproval of the plans and specifications to the submitting Owner within [number] days after complete submission, the submitted plans and specifications are deemed approved.
  
- c. *Appeal.* An Owner may appeal any action of the ACC to the Board. The appealing Owner must give written notice of the appeal to the Board, and if the appeal is by an Owner who is not the submitting Owner, the appealing Owner must also give written notice to the submitting Owner within [number] days after the ACC's action. The Board shall determine the appeal within [number] days after timely notice of appeal is given. The determination by the Board is final.
  
- d. *Records.* The ACC will maintain written records of all requests submitted to it and of all actions taken. The Board will maintain written records of all appeals of ACC actions and all determinations made. Any Owner may inspect the records of the ACC and Board, but no Owner may inspect or copy the interior floor plan or security system design of any other Owner.
  
- e. *No Liability.* The Property Owners Association, the Board, the ACC, and their members will not be liable to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request.

## **G. Assessments**

1. *Authority.* The Property Owners Association may levy Assessments to promote the recreation, health, safety, and welfare of the residents in the Subdivision, to fund operating expenses of the Property Owners Association, and to improve and maintain the Common Areas.

2. *Personal Obligation.* An Assessment is a personal obligation of each Owner when the Assessment accrues.

3. *Creation of Lien.* Assessments are secured by a continuing vendor's lien on each Lot, which lien is reserved by Declarant and hereby assigned to the Property Owners Association. By acceptance of a deed to a Lot, each Owner grants the lien, together with the power of sale, to the Property Owners Association to secure Assessments.

4. *Commencement.* A Lot becomes subject to Assessments on conveyance of the Lot by Declarant.

5. *Regular Assessments*

- a. *Rate.* Regular Assessments are levied by the Board, annually, to fund the anticipated operating and maintenance expenses of the Property Owners Association. Until changed by the Board, the Regular Assessment is \$[amount] per [Lot/acre].
- b. *Changes to Regular Assessments.* Regular Assessments may be changed annually by the Board. Written notice of the Regular Assessment will be sent to every Owner at least thirty days before its effective date.
- c. *Collections.* Regular Assessments will be collected [annually/semiannually/monthly] in advance, payable on the [first/tenth/[other]] day of the [month/year] and on [the same day of each succeeding [month/year]/the [first/tenth/[other]] day of [month] of each year].

6. *Special Assessments.* In addition to the Regular Assessments, the Board may levy Special Assessments for the purpose of funding the cost of any construction, reconstruction, repair, or replacement of any capital improvement on the Common Area or for any other purpose benefiting the Subdivision but requiring funds exceeding those available from the

Regular Assessments. Special Assessments must be approved by the Members. Written notice of the terms of the Special Assessment will be sent to every Owner.

7. *Approval of Special Assessments.* Any Special Assessment must be approved by a [majority/two-thirds] vote at a meeting of the Members in accordance with the Bylaws.

8. *Fines.* The Board may levy a fine against an Owner for a violation of the Dedicatory Instruments as permitted by law.

9. *Subordination of Lien to Mortgages.* The lien granted and reserved to the Property Owners Association is subordinate to any lien granted by an Owner against a Lot not prohibited by the Texas Constitution. The foreclosure of a superior lien extinguishes the Property Owners Association's lien as to Assessments due before the foreclosure.

10. *Delinquent Assessments.* Any Assessment not paid within [number] days after it is due is delinquent.

#### **H. Remedial Rights**

1. *Late Charges and Interest.* A late charge of [\$[amount]/[percent] percent of the delinquent amount] is assessed for delinquent payments. Delinquent Assessments accrue interest at the rate of [percent] percent per year. The Board may change the late charge and the interest rate.

2. *Costs, Attorney's Fees, and Expenses.* If the Property Owners Association complies with all applicable notice requirements, an Owner is liable to the Property Owners Association for all costs and reasonable attorney's fees incurred by the Property Owners Association in collecting delinquent Assessments, foreclosing the Property Owners Association's lien, and enforcing the Dedicatory Instruments.

3. *Judicial Enforcement.* The Property Owners Association may bring an action against an Owner to collect delinquent Assessments, foreclose the Property Owners Association's lien, or enforce or enjoin a violation of the Dedicatory Instruments. An Owner may bring an action against another Owner to enforce or enjoin a violation of the Dedicatory Instruments.

4. *Remedy of Violations.* The Property Owners Association may levy a fine against an Owner for a violation of the Dedicatory Instruments.

5. *Suspension of Rights.* If an Owner violates the Dedicatory Instruments, the Property Owners Association may suspend the Owner's rights under the Dedicatory Instruments in accordance with law.

6. *Damage to Property.* An Owner is liable to the Property Owners Association for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees in accordance with law.

## **I. Common Area**

1. *Common Area Easements.* Each Owner has an easement in and to the Common Area, subject to the right of the Property Owners Association to—

- a. charge reasonable admission and other fees for the use of recreational facilities situated on the Common Area, and if an Owner does not pay these fees, the Owner may not use the recreational facilities;
- b. suspend an Owner's rights to use a Common Area under the Dedicatory Instruments;
- c. grant an easement approved by the Board over the Common Area for utility, drainage, or other purposes; and

- d. dedicate or convey any of the Common Area for public purposes, on approval by a vote of [a majority/two-thirds] of the Members at a meeting in accordance with the Bylaws.

2. *Permitted Users.* An Owner's right to use and enjoy the Common Area extends to the Owner's family, guests, agents, and invitees, subject to the Dedicatory Instruments.

3. *Unauthorized Improvements in Common Area.* An Owner may not erect or alter any Structure on, or clear, landscape, or disturb, any Common Area except as approved by the Board.

#### J. General Provisions

Select one of the following.

1. *Term.* This Declaration runs with the land and is binding in perpetuity.

Or

1. *Term.* This Declaration runs with the land and is binding for a term of [number] years. The term may be extended for [successive terms of [number] years each by [percent] percent of the Members at a meeting in accordance with the Bylaws within [number] months before the end of a term/an initial term of [number] years]. [Include if applicable: Thereafter this Declaration automatically continues for successive terms of [number] years each, unless within [number] months before the end of a term [percent] percent of the Members at a meeting in accordance with the Bylaws elect not to extend the term.] An instrument reflecting the extension will be signed by the Property Owners Association and recorded.

Continue with the following.

2. *No Waiver.* Failure by the Property Owners Association or an Owner to enforce the Dedicatory Instruments is not a waiver.

3. *Corrections.* The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.

4. *Amendment.* This Declaration may be amended at any time by vote of [**percent (cannot exceed sixty-seven)**] percent of Owners entitled to vote on the amendment. An instrument containing the approved amendment will be signed by the Property Owners Association and recorded.

5. *Conflict.* This Declaration controls over the other Dedicatory Instruments.

6. *Severability.* If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration.

7. *Notices.* All notices must be in writing and must be given as required or permitted by the Dedicatory Instruments or by law. Notice by mail is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed (a) to a Member, at the Member's last known address according to the Property Owners Association's records, and (b) to the Property Owners Association, the Board, the ACC, or a managing agent at the Property Owners Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Dedicatory Instruments, actual notice, however delivered, is sufficient.

8. *Annexation of Additional Property.* On written approval of the Board and not less than [**percent**] percent of the Members at a meeting in accordance with the Bylaws, the owner of any property who desires to subject the property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property.

\_\_\_\_\_  
[Name of declarant]

By \_\_\_\_\_  
[Name and title]

Include acknowledgment.

After recording, please return to:  
[name and address of declarant or attorney]



*[Reserved]*

Form 23-2

**Declaration of Restrictive Covenants of  
the [name of subdivision] Subdivision  
[without Property Owners Association]**

**Basic Information**

Date:

Declarant:

Declarant's Address:

Property:

**Definitions**

“Covenants” means the covenants, conditions, and restrictions contained in this Declaration.

“Declarant” means [name], [a/an] [individual/[Texas/[state of formation]] limited partnership/corporation/limited liability company] and any successor that acquires all unimproved Lots owned by Declarant for the purpose of development and is named as successor in a recorded document.

“Easements” means Easements within the Property for utilities, drainage, and other purposes as shown on the Plat or of record.

“Lot” means each tract of land designated as a lot on the Plat.

“Owner” means every record Owner of a fee interest in a Lot.

“Plat” means the Plat of the Property recorded in [recording data] of the real property records of [county] County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

“Residence” means a detached building designed for and used as a dwelling by a Single Family and constructed on one or more Lots.

“Single Family” means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Residence.

“Structure” means any improvement on a Lot (other than a Residence), including a fence, wall, tennis court, swimming pool, outbuilding, or recreational equipment.

“Subdivision” means the Property covered by the Plat and any additional property made subject to this Declaration.

“Vehicle” means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.

## **Clauses and Covenants**

### **A. Imposition of Covenants**

1. Declarant imposes the Covenants on the Subdivision. All Owners and other occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants.

2. The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.

3. Each Owner and occupant of a Lot agrees to comply with this Declaration and agrees that failure to comply may subject him to a fine, damages, or injunctive relief.

#### **B. Plat and Easements**

1. The Plat, Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.

2. An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement.

3. Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.

4. Declarant and each Easement holder may install, maintain, and connect facilities in the Easements.

#### **C. Use and Activities**

1. *Permitted Use.* A Lot may be used only for an approved Residence and approved Structures for use by a Single Family.

2. *Prohibited Activities.* Prohibited activities are—

- a. any activity that is otherwise prohibited by this Declaration;
- b. any illegal activity;
- c. any nuisance or noxious or offensive activity;
- d. any dumping of rubbish;
- e. any storage of—

- i. building materials except during the construction or renovation of a Residence or a Structure;
  - ii. vehicles, except vehicles in a garage or Structure or operable automobiles on a driveway; or
  - iii. unsightly objects unless completely shielded by a Structure;
- f. any exploration for or extraction of minerals;
  - g. any keeping or raising of animals, livestock, or poultry, except for common domesticated household pets, such as dogs and cats, not to exceed [number] confined to a fenced yard or within the Residence;
  - h. any commercial or professional activity except reasonable home office use;
  - i. the renting of a portion of a Residence or Structure;
  - j. the drying of clothes in a manner that is visible from any street;
  - k. the display of any sign except—
    - i. one not more than five square feet, advertising the Lot for sale or rent or advertising a garage or yard sale; and
    - ii. political signage not prohibited by law;
  - l. installing a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot;
  - m. moving a previously constructed house onto a Lot;
  - n. interfering with a drainage pattern or the natural flow of surface water;

- o. hunting and shooting; and
- p. occupying a Structure that does not comply with the construction standards of a Residence.

**D. Construction and Maintenance Standards**

1. *Lots*

- a. *Consolidation of Lots.* An Owner of adjoining Lots may consolidate those Lots into one site for the construction of a Residence.
- b. *Subdivision Prohibited.* No Lot may be further subdivided.
- c. *Easements.* No easement in a Lot may be granted.
- d. *Maintenance.* Each Owner must keep the Lot, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition.

2. *Residences and Structures*

- a. *Aesthetic Compatibility.* All Residences, Structures, and Landscaping must be aesthetically compatible with the Subdivision.
- b. *Maximum Height.* The maximum height of a Residence is [number] [feet above grade/stories].
- c. *Required Area.* The total area of a Residence, exclusive of porches, garages, or carports, must be at least [number] square feet.
- d. *Location on Lot.* No Residence or Structure may be located in violation of the setback lines shown on the Plat. Each Residence must face the front Lot

line. All Structures must be located behind the front wall of the Residence.

All outbuildings, except garages, must not be visible from any street.

- e. *Garages.* Each Residence must have at least a two-car garage accessed by a driveway. The garage may be a separate structure.
- f. *Damaged or Destroyed Residences and Structures.* Any Residence or Structure that is damaged must be repaired within [number] days and the Lot restored to a clean, orderly, and attractive condition. Any Residence or Structure that is damaged to the extent that repairs are not practicable must be demolished and removed within [number] days and the Lot restored to a clean and attractive condition.
- g. *Fences, Walls, and Hedges.* No fence, wall, or hedge may be located forward of the front wall line of the Residence, except for trellises and decorative fences.
- h. *Antennae.* No antenna, satellite dish, or associated wires may be visible from the street or be located behind the back setback line of any Lot.
- i. *Traffic Sight Lines.* No landscaping that obstructs traffic sight lines may be placed on any Lot.
- j. *Sidewalks.* When the Residence is constructed, the Lot must be improved with sidewalks connecting with the sidewalks on adjacent Lots.
- k. *Landscaping.* Landscaping must be installed within [number] days after occupancy.

3. *Building Materials for Residences and Structures*

- a. *Roofs.* Only [composition/tile/metal] may be used on Residences and Structures. All roof stacks must be painted to match the roof color.
- b. *Air Conditioning.* Window- or wall-type air conditioners may not be used in a Residence.
- c. *Exterior Walls.* All Residences must have at least [percent] percent of their exterior walls, including exposed foundation, of stone or brick, minus windows and doors.
- d. *Driveways and Sidewalks.* All driveways and sidewalks must be surfaced with concrete or asphalt.
- e. *Lot Identification.* Lot address numbers and name identification must be aesthetically compatible with the Subdivision.

**E. General Provisions**

Select one of the following.

1. *Term.* This Declaration runs with the land and is binding in perpetuity.

Or

1. *Term.* This Declaration runs with the land and is binding for a term of [number] years. The term may be extended for [successive terms of [number] years each by the affirmative vote of [percent] percent of the Owners within [number] months before the end of a term/ an initial term of [number] years]. [Include if applicable: Thereafter this Declaration automatically continues for successive terms of [number] years each, unless within [number] months before the end of a term [percent] percent of the Owners vote not to extend the term.]



Continue with the following.

2. *No Waiver.* Failure by an Owner to enforce this Declaration is not a waiver.
3. *Corrections.* Declarant may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.
4. *Amendment.* This Declaration may be amended at any time by the affirmative vote of [percent] percent of the Owners.
5. *Severability.* If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration.
6. *Notices.* Any notice required or permitted by this Declaration must be given in writing by certified mail, return receipt requested. Unless otherwise required by law or this Declaration, actual notice, however delivered, is sufficient.
7. *Annexation of Additional Property.* On written approval of Declarant and not less than [percent] percent of the Owners, the owner of any property who desires to subject the property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property.
8. *Presuit Mediation.* As a condition precedent to the commencement of a legal proceeding to enforce this Declaration, the Owners will mediate the dispute in good faith.

Include the following if applicable.

9. *Association.* The Owners of [percent] of Lots in the Subdivision may authorize the formation of an association of Owners ("Association") by signing and acknowledging a

statement containing (a) the proposed Association's name and type of entity and (b) the names and addresses of the initial directors. The Association will be governed by this Declaration, its Certificate of Formation, if any, and its bylaws and rules adopted by its board of directors (collectively, "Dedictory Instruments").

If an Association is formed, every Owner will be a member and agrees to comply with the Dedictory Instruments with the same consequences for failure to comply as are contained in this Declaration for failure to comply with it. Membership in the Association is appurtenant to and may not be separated from ownership of a Lot. If more than one person is an Owner of a Lot, only one vote may be cast for the Lot. The Association will have the powers of a Texas [nonprofit corporation/unincorporated nonprofit association] and a property owners association for the Subdivision under the Texas Business Organizations Code, the Texas Property Code, and the Dedictory Instruments. The Association may levy assessments to pay the expenses of its formation; to promote the recreation, health, safety, and welfare of Owners in the Subdivision; to fund its operating expenses; and to improve and maintain any common areas. An assessment is a personal obligation of each Owner when the assessment accrues. Assessments are secured by a continuing vendor's lien on each Lot, and the lien is reserved by the Declarant and assigned to the Association. By acceptance of a deed to a Lot, each Owner grants a lien, together with the power of sale, to the Association to secure assessments. The lien granted and reserved to the Association is subordinate to any lien granted by an Owner against a Lot not prohibited by the Texas Constitution. The foreclosure of a superior lien extinguishes the Association's lien as to assessments due before the foreclosure. The bylaws or the rules of the Association establish when assessments are due, how assessment amounts may be changed, and the Association's rights to collect assessments. Regular assessments [will be equal for all Lots/will be based on the size of each Lot, rounded to the nearest one-tenth of an acre]. The bylaws and rules may also specify the Association's remedial rights to charge late fees for late payment of assessments; enforce compliance with the Dedictory Instruments; and assess an Owner for attorney's fees and costs arising out of enforcement

actions, foreclosure of the Association's lien, or suspension of an Owner's rights, including voting rights, for a delinquency in paying an assessment or other violations of the Dedicatory Instruments.

\_\_\_\_\_  
[Name of declarant]

Include acknowledgment.

After recording, please return to:  
[name and address of declarant or attorney]

Form 23-3

**Certificate of Formation of [name of corporation], a Texas Nonprofit Corporation**

1. *Name.* The name of the corporation is [name].
2. *Type of Filing Entity.* The type of filing entity being formed is a nonprofit corporation.
3. *Purpose.* The purpose for which the filing entity is formed is to be the property owners association under the Declaration of Restrictive Covenants of the [name] subdivision.
4. *Period of Duration.* The period of duration of the filing entity is perpetual.
5. *Initial Registered Office.* The street address of the initial registered office of the filing entity and the name of its initial registered agent at that address are:

Name: [name of registered agent]

Address: [address, city, state]

6. *Organizer.* The name and address of the organizer for the filing entity are:

Name: [name of organizer]

Address: [address, city, state]

7. *Members.* The filing entity will be composed of Members.

8. *Initial Board of Directors.* The number of directors constituting the initial board of directors is [number], and their names and addresses are:

Name: [name]

Address: [address, city, state]

Repeat as necessary.

9. *Meetings.* Any action that may be taken at a Members or board of directors meeting may be taken without a meeting by written consent setting forth the action taken signed by a sufficient number of Members or of the board of directors as would be necessary to take that action at a meeting.

Signed on [date].

---

[Name of organizer]

## Form 23-4

## Bylaws of [name of property owners association] [, Inc.]

## Basic Information

Property Owners Association: [name], [established by the certificate of formation filed with the secretary of state of Texas on [date] under file number [number]/a Texas nonprofit association, which is an unincorporated organization].

Principal Office: [address, city], Texas. The Property Owners Association may have other offices.

Declaration: The Declaration of Restrictive Covenants of the [name of subdivision] Subdivision, recorded in the real property records of [county] County, Texas.

Definitions: Capitalized terms used but not defined herein have the meaning set forth in the Declaration.

Voting Members: Members entitled to vote or their proxies. Any Member delinquent in payment of any Assessment is not a Voting Member.

**A. Members**

*A.1. Membership.* Every Owner is a Member of the Property Owners Association. Membership is appurtenant to and may not be separated from ownership of a Lot. The Property Owners Association has two classes of voting Members:

*A.1.a. Class A.* Class A Members are all Owners, other than Declarant. Class A Members have one vote per Lot. When more than one person is an Owner, each is a Class A Member, but only one vote may be cast for a Lot.

*A.1.b. Class B.* The Class B Member is Declarant and has [number] votes for each Lot owned. The Class B membership ceases and converts to Class A membership on the earlier of—

- i. when the Class A Members' votes exceed the total of Class B Member's votes; or
- ii. the date specified in the Declaration.

*A.2. Place of Meeting.* Members meetings will be held at the Property Owners Association's Principal Office or at another place designated by the Board.

*A.3. Annual Meetings.* The first Members meeting will be held within [number] months after the formation of the Property Owners Association. Subsequent regular annual Members meetings will be held on [describe meeting date taking into consideration when dues are payable, e.g., the first Sunday in June].

*A.4. Special Meetings.* The president may call special meetings. The president must call a special meeting if directed by the Board or by a petition signed by [percent] percent of the Class A Voting Members.

*A.5. Notice of Meetings, Election, and Vote.* Written notice stating the place, day, and hour of each Members meeting, other than a reconvened meeting, must be given to each Member not less than ten nor more than sixty days before the meeting. For voting not at a meeting, notice must be given not later than the twentieth day before the latest day on which a ballot may be submitted to be counted. The special Members meeting notices must also state the meeting's purpose, and no business may be conducted except as stated in the notice. Notice to a Member must state the purpose of an association-wide election or vote and is deemed given when hand delivered or mailed. If mailed, notice is deemed given (whether

actually received or not) when deposited with the United States Postal Service, postage prepaid.

*A.6. Waiver of Notice.* A Member may, in writing, waive notice of a meeting. Attendance at a meeting is a waiver of notice of the meeting, unless the Member objects to lack of notice when the meeting is called to order.

*A.7. Quorum.* A majority of the Voting Members is a quorum. If a Members meeting cannot be held because a quorum is not present, a majority of the Voting Members who are present may adjourn the meeting. At the reconvened meeting, [percent] percent of the Voting Members is a quorum. If a quorum is not present, a majority of the Voting Members who are present may adjourn the meeting. At the second reconvened meeting, a majority of the Board is a quorum. Written notice of the place, date, and hour of each reconvened meeting must be given to each Member not more than [number] nor less than [number] days before the reconvened meeting.

*A.8. Majority Vote.* Voting by Members may be at a meeting or outside of a meeting. Voting must be as required by law. Votes representing more than 50 percent of the Voting Members present at a meeting at which a quorum is present are a majority vote.

*A.9. Proxies.* Voting Members may vote by written proxy.

*A.10. Conduct of Meetings.* The president will preside over Members meetings. The secretary will keep minutes of the meetings and will record in a minutes book the votes of the members.

## **B. Board**

*B.1. Governing Body; Composition.* The affairs of the Property Owners Association are governed by the Board. Each director has one vote. The initial Board is composed of



the directors appointed in the certificate of formation. Each director must be a Member or, in the case of an entity Member, a person designated in writing to the secretary.

*B.2. Number of Directors.* The Board consists of not less than three nor more than [number] directors. Within those limits, the Board may change the number of directors. No decrease may shorten the term of a director.

*B.3. Term of Office.* The initial directors serve until the first annual meeting of Members.

Select one of the following.

The terms of directors will be staggered. At least one-third of the Board will be elected each year. The initial Board will determine the initial term, not to exceed three years, of each director. At the expiration of the initial term of a director, each successor will have a term of [number] years.

Or

Successor directors will have a term of one year.

Continue with the following.

Directors may serve consecutive terms.

*B.4. Election.* At the first annual meeting of Members, the Voting Members will elect directors to succeed the initial directors. At subsequent annual Members meetings, successors for each director whose term is expiring will be elected. Cumulative voting is prohibited. The candidate or candidates receiving the most votes will be elected. The directors elected by the Voting Members will hold office until their respective successors have been elected.

*B.5. Removal of Directors and Vacancies*

*B.5.a. Removal by Members.* Any director may be removed, with or without cause, by a majority of the Voting Members. Any director whose removal is sought will be given notice of the proposed removal.

*B.5.b. Removal by Board.* Any director may be removed at a Board meeting if the director—

- i. failed to attend [number] consecutive Board meetings;
- ii. failed to attend [percent] percent of Board meetings within one year;
- iii. is delinquent in the payment of any Assessment for more than [number] days; or
- iv. is the subject of an enforcement action by the Property Owners Association for violation of the Dedicatory Instruments.

*B.5.c. Vacancies.* A director's position becomes vacant if the director dies, becomes incapacitated, resigns, or is no longer a Member.

*B.5.d. Successors.* If a director is removed or a vacancy exists, a successor will be elected by the remaining directors for the remainder of the term.

*B.6. Compensation.* Directors will not receive compensation. A director may be reimbursed for expenses approved by the Board.

*B.7. Powers.* The Board has all powers necessary to administer the Property Owners Association's affairs.

*B.8. Management.* The Board may employ a managing agent. Declarant, or an affiliate of Declarant, may be the managing agent.

*B.9. Accounts and Reports.* Accounting and controls must conform to good accounting practices. Accounts will not be commingled with accounts of other persons. The following financial reports will be prepared at least annually:

*B.9.a.* An income statement reflecting all income and expense activity for the preceding period.

*B.9.b.* A statement reflecting all cash receipts and disbursements for the preceding period.

*B.9.c.* A variance report reflecting the status of all accounts in an “actual” versus “approved” budget format.

*B.9.d.* A balance sheet as of the last day of the preceding period.

*B.9.e.* A delinquency report listing all Owners who are delinquent by more than [number] days in paying any Assessment and describing the status of any action to collect those delinquent Assessments.

*B.10. Borrowing.* The Board may borrow money to maintain, repair, or restore the Common Area without the approval of the Members. If approved in advance by the Members in the same manner as approving a Special Assessment, the Board may borrow money for any other purpose.

*B.11. Rights of Association.* With respect to the Common Area, and in accordance with the Declaration, the Property Owners Association will have the right to contract with any person for the performance of various duties and functions. Such agreements require the approval of the Board.

*B.12. Enforcement Procedures*

*B.12.a. Notice.* Before the Board may (i) suspend an Owner's right to use a Common Area, (ii) file a suit against an Owner other than a suit to collect any Assessment, (iii) foreclose the Property Owners Association's lien, (iv) charge an Owner for property damage, or (v) levy a fine for a violation of the Dedicatory Instruments, the Property Owners Association or its agent must give written notice to the Owner as required or permitted by law. The notice must describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the Property Owners Association from the Owner. The notice must also (i) inform the Owner that if the violation is curable and does not pose a threat to public health or safety, which means it could not materially affect the health or safety of an ordinary resident, the Owner is entitled to a reasonable period to cure the violation and avoid the fine or suspension unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months; (ii) indicate that the Owner may request a hearing in accordance with Texas Property Code section 209.007 on or before the thirtieth day after the date the notice was mailed to the Owner; (iii) state that the Owner may have special rights if the Owner is serving on active military duty, and (iv) state the date by which the Owner must cure a curable violation that does not pose a threat to public health and safety.

*B.12.b. Hearing.* If the Owner is entitled to an opportunity to cure the violation, the Owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the Board or before the Board if the Board does not appoint a committee. If a hearing is to be held before a committee, the notice must state that the Owner has the right to appeal the committee's decision to the Board by written notice to the Board.

The Property Owners Association must hold a hearing under this section not later than the thirtieth day after the date the Board receives the Owner's request for a hearing and must

notify the Owner of the date, time, and place of the hearing not later than the tenth day before the date of the hearing. The Board or the Owner may request a postponement, and, if requested, a postponement will be granted for a period of not more than ten days. Additional postponements may be granted by agreement of the parties. The Owner or the Property Owners Association may make an audio recording of the meeting.

The hearing will be held in executive session affording the alleged violator a reasonable opportunity to be heard. Before any sanction hereunder becomes effective, proof of proper notice will be placed in the minutes of the meeting. Such proof will be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered the notice. The notice requirement will be satisfied if the alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board may, but will not be obligated to, suspend any proposed sanction if the violation is cured within a [number]-day period. Such suspension will not constitute a waiver of the right to sanction violations of the same or other provisions and rules by any person.

*B.12.c. Appeal.* Following hearing before a committee, if any, the violator will have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the managing agent, if any, president, or secretary within [number] days after the hearing date.

*B.12.d. Changes in Law.* The Board may change the enforcement procedures set out in this section to comply with changes in law.

## **C. Board Meetings**

*C.1. Meetings.* Except as permitted by law, all regular and special meetings of the Board must be open to the Owners. Except for a meeting held by electronic or telephonic means, a Board meeting must be held in a county in which all or part of the property in the

subdivision is located or in a county adjacent to that county. A Board meeting may be held by electronic or telephonic means, provided all Owners and Board Members have access to the communication at the meeting as required by law.

*C.2. Notice.* Owners and Board Members must be given notice of the date, hour, place, and general subject of a regular or special Board meeting, including a general description of any matter to be brought up for deliberation in executive session. Notice must be given as required by law.

*C.3. Waiver of Notice.* The actions of the Board at any meeting are valid if (a) a quorum is present and (b) either proper notice of the meeting was given to each director or a written waiver of notice is given by any director who did not receive proper notice of the meeting. Proper notice of a meeting will be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of proper notice.

*C.4. Quorum of Board.* At all meetings, a majority of the Board will constitute a quorum, and the votes of a majority of the directors present at a meeting at which a quorum is present constitutes the decision of the Board. If the Board cannot act because a quorum is not present, a majority of the directors who are present may adjourn the meeting to a date not less than [number] nor more than [number] days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business that may have been transacted at the meeting originally called may be transacted without further notice.

*C.5. Conduct of Meetings.* The president will preside at Board meetings. The secretary will keep minutes of the meetings and will record in a minute book the votes of the directors. The Board meeting will be conducted as required by law.

*C.6. Proxies.* Directors may vote by written proxy.

**D. Officers**

*D.1. Officers.* The officers of the Property Owners Association are a president, vice president, secretary, and treasurer, to be elected from the Members. The Board may appoint other officers having the authority and duties prescribed by the Board. Any two or more offices may be held by the same person, except the offices of president and secretary.

*D.2. Election, Term of Office, and Vacancies.* Officers will be elected annually by the Board at the first meeting of the Board following each annual meeting of the Voting Members. A vacancy in any office may be filled by the Board for the unexpired portion of the term.

*D.3. Removal.* The Board may remove any officer whenever, in the Board's judgment, the interests of the Property Owners Association will be served thereby.

*D.4. Powers and Duties.* Officers have such powers and duties as are generally associated with their respective offices and as may be specifically conferred by the Board. The president is the chief executive officer of the Property Owners Association. The treasurer has primary responsibility for the preparation of the budget and financial reports and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

*D.5. Resignation.* Any officer may resign at any time by giving written notice to the Board, the president, or the secretary. Resignation takes effect on the date of the receipt of the notice or at any later time specified in the notice.

**E. Committees**

The Board may establish committees by resolution and authorize the committees to perform the duties described in the resolution.

**F. Miscellaneous**

*F.1. Fiscal Year.* The Board may establish the Property Owners Association's fiscal year by resolution. In the absence of a Board resolution determining otherwise, the Property Owners Association's fiscal year is a calendar year.

*F.2. Rules for Meeting.* The Board may adopt rules for the conduct of meetings of Members, Board, and committees.

*F.3. Conflict.* The Declaration controls over these Bylaws.

*F.4. Inspection of Books and Records*

*F.4.a. Inspection by Member.* After a written request to the Property Owners Association, a Member may examine and copy, in person or by agent, any Property Owners Association books and records relevant to that purpose. The Board may establish rules concerning the (i) written request; (ii) hours, days of the week, and place; and (iii) payment of costs related to a Member's inspection and copying of books and records.

*F.4.b. Inspection by Director.* A director has the right, at any reasonable time, and at the Property Owners Association's expense, to (i) examine and copy the Property Owners Association's books and records at the Property Owners Association's Principal Office and (ii) inspect the Property Owners Association's properties.

*F.5. Notices.* Any notice required or permitted by the Dedicatory Instruments must be in writing. Notices regarding enforcement actions must be given as required or as permitted by law. All other notices may be given by regular mail. Notice by mail is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed to (a) a Member at the Member's last known address according to the Property Owners Association's records and (b) the Property Owners Association, the Board, or a managing agent at the Property Owners Association's Principal Office or another address desig-



nated in a notice to the Members. Unless otherwise required by law or the Dedicatory Instruments, actual notice, however delivered, is sufficient.

*F.6. Amendment.* These Bylaws may be amended at any time by the vote of [per- cent] percent of the Voting Members in the Property Owners Association. This provision will not be construed as limiting the Board's power to amend the enforcement procedures to comply with changes in law.

[Name of association]

By \_\_\_\_\_  
[Name and title]

Include acknowledgments.

Form 23-5

Rules of [name of property owners association] [, Inc.]

Basic Information

Date:

Property Owners Association: [name], [established by the certificate of formation filed with the secretary of state of Texas on [date] under file number [number]/a Texas nonprofit association, which is an unincorporated organization].

Property Owners  
Association's Address:

Declaration: The Declaration of Restrictive Covenants of the [name of subdivision] Subdivision, [include recording information].

Definitions: Capitalized terms used but not defined in the Rules have the meaning set forth in the Declaration or Bylaws.

The Property Owners Association adopts these Rules, which will be enforceable on the recording of this document in the real property records of the [county/counties] in which the property described by the Declaration is located. On violation of these Rules, owners may be subject to Penalties for Violation.

**A. Rules**

Insert the rules that the property owners association wants to adopt. Consider the following subject areas: use of common areas (including swimming pools and recreation facilities), architectural and building rules, parking of vehicles, pet control, nuisances, trash collection, etc.

**B. Penalties for Violation**

Insert penalties for violation by type of violation.

**C. Enforcement Procedures**

*C.1 Notice.* Before the Property Owners Association may (a) suspend an Owner's right to use a common area, (b) file a suit against an Owner other than a suit to collect a Regular Assessment or Special Assessment or foreclose under the Property Owners Association's lien, (c) charge an Owner for property damage, or (d) levy a fine for a violation of the restrictions or Bylaws or Rules of the Property Owners Association, the Property Owners Association or its agent must give written notice to the Owner by certified mail, return receipt requested. The notice must describe the violation or property damage that is the basis for the suspension action, charge, or fine and must state any amount due the Property Owners Association from the Owner. The notice also must inform the Owner that the Owner (a) is entitled to a reasonable period to cure the violation and avoid the fine or suspension, unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months; (b) may request a hearing in accordance with Texas Property Code section 209.007 on or before the thirtieth day after the date the Owner receives the notice; and (c) may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901–4043) if the Owner is serving on active military duty. If a hearing is to be held before a committee, the notice must state that the Owner has the right to appeal the committee's decision to the Board by written notice to the Board.

*C.2. Hearing.* If the Owner is entitled to an opportunity to cure the violation, the Owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter at issue before a committee appointed by the Board or before the Board if the Board does not appoint a committee. The Property Owners Association must hold a hearing under this provision not later than the thirtieth day after the date the Board receives the Owner's request for a hearing and must notify the Owner of the date, time, and place of the hearing not later than the tenth day before the date of the hearing. The Board or the Owner may request a postponement, and, if requested, a postponement will be granted for a period of not more than ten days. Additional postponements may be granted by agreement of the parties. The Owner or the Property Owners Association may make an audio recording of the meeting. The hearing will be held in executive session, affording the alleged violator a reasonable opportunity to be heard. Before any sanction under these Rules becomes effective, proof of proper notice will be placed in the minutes of the meeting. Such proof will be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered the notice. The notice requirement will be satisfied if the alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction imposed, if any. The Board may, but will not be obligated to, suspend any proposed sanction if the violation is cured within a [number]-day period. Such suspension will not constitute a waiver of the right to sanction violations of the same or other provisions and rules by any person.

*C.3. Appeal.* Following hearing before a committee, if any, the violator will have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the managing agent, president, or secretary within [number] days after the hearing date.

[Name of property owners association]

By \_\_\_\_\_  
[Name and title]

Include acknowledgment.

Form 23-6

**Deed without Warranty**

**Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.**

Date: [date]

Grantor: [name of developer]

Grantor's Mailing Address:

Grantee: [name of association], a [Texas nonprofit corporation/nonprofit association]

Grantee's Mailing Address:

Subdivision: [name of subdivision], a subdivision, according to the Plat recorded in [recording data] of the real property records of [county] County, Texas.

Declaration: The Declaration recorded in [recording data] of the real property records of [county] County, Texas.

Property (including any improvements): The Common Area defined in the Declaration.

Reservations from Conveyance:

State "None" or, to create reservations of title, include the appropriate clauses from form 5-7 in this manual.

Exceptions to Conveyance:

State "None" or, to create exceptions to conveyance, include the appropriate clauses from form 5-8.

Grantor, subject to the Plat, the Declaration, the Reservations from Conveyance, and the Exceptions to Conveyance, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever, without express or implied warranty. All warranties that might arise by common law as well as the warranties in section 5.023 of the Texas Property Code (or its successor) are excluded.

This conveyance is made in connection with Grantor's development of the Subdivision pursuant to the Plat and Declaration as a ministerial task that fulfills a duty of Grantor under the Declaration.

When the context requires, singular nouns and pronouns include the plural.

\_\_\_\_\_  
[Name of grantor]

If the deed imposes contractual obligations on the grantee, include the following signature line.

\_\_\_\_\_  
[Name of grantee]

Include acknowledgments.

Form 23-7

**Management Certificate**  
**(Texas Property Code Section 209.004)**

Name of Subdivision: [name of subdivision]

Subdivision Recording Data: The plat of the Subdivision recorded in [recording data] of the real property records of [county] County, Texas

Declaration Recording Data: The Declaration recorded in [recording data] of the real property records of [county] County, Texas

Name of Association: [name of association]

Mailing Address of Association: [address, city, state]

Name of Person Managing Association or Association's Designated Representative: [name of person managing association or association's designated representative]

Mailing Address of Person Managing Association or Association's Designated Representative: [address, city, state]

[Include other information the association considers appropriate.]



---

[Name of officer]  
[Title]

Repeat as necessary.

Include acknowledgment(s).

Include the following if applicable.

The undersigned hereby certifies that [he/she] is the duly elected and qualified president of [name of association]; that [name] is the duly elected and qualified [secretary/[other officer]] of [name of association]; that the signature above is [name]'s genuine signature; and that the foregoing certificate is true and correct.

---

[Name of president]

Include acknowledgment.

Form 23-8

Notice to Purchaser[s]

STATE OF TEXAS )

COUNTY OF )

The real property described below, which you are purchasing, is subject to deed restrictions recorded at [recording data] of the County [title of records in which restrictions are recorded] records. [If restrictions have been amended or extended or if the property is subject to restrictions recorded at various places, identify each filing and be certain to include reference to subdivision and other map filings to the extent they include setback lines or other restrictions.] THE RESTRICTIONS LIMIT YOUR USE OF THE PROPERTY THE CITY OF HOUSTON IS AUTHORIZED BY STATUTE TO ENFORCE COMPLIANCE WITH CERTAIN DEED RESTRICTIONS. You are advised that, in the absence of a declaratory judgment that the referenced restrictions are no longer enforceable, the City of Houston may sue to enjoin a violation of such restrictions. ANY PROVISIONS THAT RESTRICT THE SALE, RENTAL, OR USE OF THE REAL PROPERTY ON THE BASIS OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN ARE UNENFORCEABLE; however, the inclusion of such provisions does not render the remainder of the deed restrictions invalid. The legal description and street address of the property you are acquiring are as follows: [insert legal description or attach and refer to by designated exhibit; state property street address].

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[Name of seller]

Date:

Include acknowledgment.
-------------------------

The undersigned admit[s] receipt of the foregoing notice at or prior to closing the purchase of property above described.

---

[Name of purchaser]

Date:

Include acknowledgment.

## Form 23-9

The language in this notice must be substantially similar to the language set out in Tex. Prop. Code § 5.012(a), and the second paragraph must be in bold print and underlined.

---

**Notice of Membership in Property Owners Association  
Concerning the Property at  
[street address and name of residential community]**

Property:

Property Owners Association:

As a purchaser of property in the residential community in which this Property is located, you are obligated to be a member of a Property Owners Association. Restrictive covenants governing the use and occupancy of the Property and all dedicatory instruments governing the establishment, maintenance, or operation of this residential community have been or will be recorded in the real property records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk.

**You are obligated to pay assessments to the Property Owners Association. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your Property.**

Section 207.003 of the Texas Property Code entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including but not limited to restrictions, bylaws, rules and regulations, and a resale certificate from the Property Owners Association. A resale certificate contains information including but not limited to statements specifying the amount and frequency of regular assessments of the Property Owners Association and the style and cause number of lawsuits to which the Property

Owners Association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the Property Owners Association. These documents must be made available to you by the Property Owners Association or the Property Owners Association's agent on your request.

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name of purchaser]

## Form 23-10

Note: If a written request for an update to the resale certificate is received within 180 days after the date a resale certificate is issued, the property owners association shall deliver the updated information within seven days to the party requesting the original resale certificate. Tex. Prop. Code § 207.003(f), (g).

---

**Required Information [Issued on [date]] Applicable to  
the Property Including Resale Certificate  
(Texas Property Code Section 207.003)**

Date: [date]

Property (including any common areas assigned to the Property): [address, city], [county] County, Texas

Subdivision: [name and legal description]

Property Owners Association: [name of association]

Property Owners Association's address: [address, city, state]  
[telephone]  
[fax]

Managing agent of Subdivision: [name of managing agent]

Managing agent's address: [address, city, state]  
[telephone]  
[fax]

Current regular assessment: \$[amount] per [time period, e.g., month]

Special assessment(s) due after the date of [this updated] resale certificate:      \$[amount] payable as follows: [specify time-frame for paying and purpose of special assessment[s]]

Total amounts due and unpaid to Property Owners Association:      \$[amount]

Capital expenditures approved by Property Owners Association for current fiscal year:      \$[amount]

Reserves for capital expenditures:      \$[amount]

Unsatisfied judgments against Property Owners Association:      \$[amount]

Administrative transfer fee:      \$[amount] payable to: [specify]

Other fees for change of ownership:      \$[amount] to [name] for [specify]

There [are/are not any] suits pending against the Property Owners Association. **[Include if applicable: The style and cause number of each pending suit are: [describe any pending suits].]**

The Property Owners Association's board has [no] actual knowledge of conditions on the Property in violation of the restrictions applying to the Subdivision or the bylaws or rules of the Property Owners Association. **[Include if applicable: Known violations are: [list any known violations].]**

The Property [is/is not] subject to a right of first refusal or other restraint contained in the restrictions or restrictive covenants that restricts the owner's right to transfer the owner's property.

The Property Owners Association [has/has not] received notice from any governmental authority regarding health or building code violations with respect to the Property or any common areas or common facilities owned or leased by the Property Owners Association.

[Include if applicable: A summary or copy of each notice is attached.]

The restrictions on the Lot [do/do not] allow foreclosure of the Property Owners Association's lien on the Property for failure to pay assessments.

Required Attachments:

1. Restrictions
2. Rules
3. Bylaws
4. Current Balance Sheet
5. Current Operating Budget
6. Certificate of Insurance Concerning Property and Liability Insurance for Common Areas and Facilities
7. Any Governmental Notices of Health or Housing Code Violations

Notice: This Subdivision information may change at any time.



[Name of property owners association]

By \_\_\_\_\_

[Name and title]

[Mailing address]

[E-mail]

Form 23-11

This form is used by a seller and a buyer to impose restrictions on the sold property and property retained by the seller.

---

**Restrictive Covenant Agreement**

**Basic Information**

Date:

Seller:

Seller's Mailing Address:

Buyer:

Buyer's Mailing Address:

Conveyed Property: [Describe by metes and bounds or plat reference the property being conveyed by the seller to the buyer that will be subject to the restrictive covenants.]

Retained Property: [Describe by metes and bounds or plat reference the property being retained by the seller that will be subject to the restrictive covenants.]

Development: [Describe by metes and bounds or plat reference the subdivision of which the conveyed property and the retained property are a part.]

Restricted Uses of the Conveyed Property: [specify]

Restricted Uses of the Retained Property: [specify]

Consideration: Good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller.

### Agreements

1. *Restrictions on Use of Conveyed Property.* No portion of the Conveyed Property may be used for the Restricted Uses of the Conveyed Property for the period beginning on the date of this agreement and ending on the earlier of the expiration of [number] years after that date or the cessation of the use of the Retained Property for any of the Restricted Uses of the Conveyed Property for a continuous period of not less than [number] consecutive days.

2. *Restrictions on Use of Retained Property.* No portion of the Retained Property may be used for the Restricted Uses of the Retained Property for the period beginning on the date of this agreement and ending on the earlier of the expiration of [number] years after that date or the cessation of the use of the Conveyed Property for any of the Restricted Uses of the Retained Property for a continuous period of not less than [number] consecutive days.

3. *Prohibited Uses.* The Conveyed Property and the Retained Property will not be used for any of the following prohibited uses for a period beginning on the date of this agreement and ending [number] years after that date: [list prohibited uses].

4. *Amendment and Termination.* This agreement may be amended or terminated in whole or in part from time to time, and at any time, by written instrument signed by the then owners of all of the Conveyed Property and the Retained Property and by the owners of 75 percent or more in surface area of the remaining portion of the Development and recorded in the real property records of [county] County, Texas; provided, however, that as long as Seller owns any portion of the Development any such instrument must be signed by Seller to be effective.

5. *Covenants Running with the Land.* Without limiting the provisions of paragraph 4. above, the parties agree that the provisions of this agreement will be deemed to be covenants running with the land that are for the benefit of, and create burdens on, the respective portions of the Development described above.

6. *Binding Effect.* This agreement binds, benefits, and may be enforced by the successors in interest to the parties.

7. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules in any jurisdiction. Venue is in the county or counties in which the Development is located.

8. *Attorney's Fees.* If [either/any] party retains an attorney to enforce this agreement, the party prevailing in litigation will be entitled to recover reasonable attorney's fees and court and other costs.

9. *Severability.* If a provision in this agreement is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this agreement, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement.

10. *Remedies Cumulative.* Except as otherwise provided herein, all rights, privileges, and remedies afforded the parties by this agreement will be deemed cumulative and not exclusive and the exercise of any remedy will not be deemed to be a waiver of any other right, remedy, or privilege provided for herein or available at law or in equity. It is expressly understood that a recovery in damages may not be an adequate remedy for a violation of the provisions of this agreement and that the granting of equitable remedies may, and probably will, be necessary.

11. *Number and Gender.* The use of the singular will be deemed to mean the plural, the masculine to mean the feminine or neuter, and the neuter to mean the masculine or feminine when context requires.

12. *Captions.* Captions used in this agreement are for convenience only and will not be considered as a limitation on or an expansion of the terms of the agreement.

13. *Construction of Agreement.* The terms and provisions of this agreement are the result of negotiation between the parties, each of which has been represented by counsel of its selection, and neither of which has acted under duress or compulsion, legal, economic, or otherwise. Consequently, the terms and provisions of this agreement will be interpreted and construed in accordance with their usual and customary meanings, and the parties expressly waive and disclaim any rule of law or procedure interpreting or construing this agreement otherwise, including, without limitation, any rule of law to the effect that ambiguous or conflicting terms or provisions in this agreement must be interpreted or construed against the party whose attorney prepared this agreement or any draft hereof.

14. *Other Instruments.* The parties to this agreement covenant and agree that they will execute any further instruments and agreements necessary or convenient to carry out the purposes of this agreement, including, without limitation, amendments of this agreement reasonably requested by Seller in connection with the sale of any of the Retained Property to other parties, as long as such amendments do not materially and adversely affect the rights and obligations of Buyer and Buyer's heirs, successors, and assigns under this agreement.

15. *Entire Agreement.* This agreement and any exhibits are the entire agreement of the parties concerning the Conveyed Property, the Retained Property, the Development, the Restricted Uses of the Conveyed Property, and the Restricted Uses of the Retained Property. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of any agent of the other party, that are not in this agreement and any exhibits.

16. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular

mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

17. *No Third-Party Beneficiaries.* Nothing in this agreement, expressed or implied, is intended or may be construed to confer on any person or entity, other than the parties and their respective heirs, successors, and assigns, any right, remedy, or claim by reason of this agreement. This agreement is intended for the sole and exclusive benefit of the parties and their respective heirs, successors, and assigns as the owners of the Development or portions thereof.

18. *Time.* Time is of the essence with respect to each covenant, agreement, and obligation of the parties set forth in this agreement.

19. *Counterparts.* If this agreement is executed in multiple counterparts, all counterparts taken together will constitute this agreement.

\_\_\_\_\_  
[Name of seller]

\_\_\_\_\_  
[Name of buyer]

Include acknowledgments.

*[Reserved]*

**Form 23-12**

This form may be used to comply with the requirements of Tex. Prop. Code § 209.005.

---

**Records Production and Copying Policy**

Date:

Subdivision: **[insert legal description]**

Property Owners Association:

Charges: Charges for examining and copying Property Owners Association information are set out in Exhibit A.

Except for information deemed confidential by law or court order, the Property Owners Association will make its books and records open to and reasonably available for examination by an owner of property in the Subdivision or a person designated in a writing signed by the owner as the owner's agent, attorney, or certified public accountant, in accordance with Texas Property Code section 209.005. Owners are also entitled to obtain copies of information in the Property Owners Association's books and records on payment of the Charges for the copies. To the extent the Charges in this policy exceed the charges in section 70.3 of title 1 of the Texas Administrative Code, the amounts in section 70.3 of title 1 of the Texas Administrative Code govern.

Information not subject to inspection by owners includes but is not limited to—

1. any document that constitutes the work product of the Property Owners Association's attorney or that is privileged as an attorney-client communication;



2. files and records of the Property Owners Association's attorney relating to the Property Owners Association, excluding invoices requested by an owner under Texas Property Code section 209.008(d); and

3. except to the extent the information is provided in the meeting minutes or as authorized by Texas Property Code section 209.005(l), (a) information that identifies the dedicatory instrument violation history of an individual owner; (b) an owner's personal financial information, including records of payment or nonpayment of amounts due the Property Owners Association; (c) an owner's contact information, other than the owner's address; and (d) information related to an employee of the Property Owners Association, including personnel files.

If a document in the Property Owners Association's attorney's files and records relating to the Property Owners Association would be subject to a request by an owner to inspect or copy Property Owners Association documents, the document will be produced by using the copy from the attorney's files and records if the Property Owners Association has not maintained a separate copy of the document.

### **Procedures for Inspecting Information or Obtaining Copies**

1. An owner or the owner's agent must submit a written request for access or information by certified mail, with sufficient detail describing the Property Owners Association's books and records requested, to the mailing address of the Property Owners Association or authorized representative as reflected on the most current management certificate filed with the county clerk of [county] County, Texas.

2. The request must include enough description and detail about the information requested to enable the Property Owners Association to accurately identify and locate the information requested. Owners must cooperate with the Property Owners Association's reasonable efforts to clarify the type or amount of information requested.

3. The request must contain an election either to inspect the books and records before obtaining copies or to have the Property Owners Association forward copies of the requested books and records and—

- a. if an inspection is requested, the Property Owners Association, on or before the tenth business day after the date the Property Owners Association receives the request, will send written notice of dates during normal business hours that the owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the Property Owners Association; or
- b. if copies of identified books and records are requested, the Property Owners Association will, to the extent those books and records are in the possession, custody, or control of the Property Owners Association, produce the requested books and records for the requesting party on or before the tenth business day after the date the Property Owners Association receives the request.

4. If the Property Owners Association is unable to produce the books or records requested that are in its possession or custody on or before the tenth business day after the date the Property Owners Association receives the request, the Property Owners Association must provide to the requestor written notice that—

- a. informs the owner that the Property Owners Association is unable to produce the information on or before the tenth business day after the date the Property Owners Association received the request; and
- b. states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the fifteenth business day after the date notice under this subsection is given.

5. If an inspection is requested or required, the inspection will take place at a mutually agreeable time during normal business hours, and the owner will identify the books and records for the Property Owners Association to copy and forward to the owner.

6. The Property Owners Association may produce copies of the requested information in paper copy, electronic, or other format reasonably available to the Property Owners Association.

7. Before starting work on an owner's request, the Property Owners Association must provide the owner with a written, itemized statement of estimated Charges for examining and copying records related to the owner's request, using amounts prescribed in this policy when the estimated Charges exceed \$40. Owners may modify the request in response to the itemized statement.

8. Within ten business days of the date the Property Owners Association sent the estimate of Charges, the owner must respond in writing to the written estimate, or the request is considered automatically withdrawn. The response must state whether the owner (a) accepts the estimate per the request, (b) modifies the request, or (c) withdraws the request.

9. Owners are responsible for Charges related to the compilation, production, and reproduction of the requested information in the amounts stated in this policy. The Property Owners Association may require advance payment of the estimated Charges of compilation, production, and reproduction of the requested information.

10. If the estimated Charges are less or more than the actual Charges, the Property Owners Association must submit a final invoice to the owner on or before the thirtieth business day after the date the information is delivered. If the final invoice includes additional amounts due from the owner, the additional amounts, if not reimbursed to the Property Owners Association before the thirtieth business day after the date the invoice is sent to the owner, may be added to the owner's account as an assessment. If the estimated Charges exceeded the

final invoice amount, the owner is entitled to a refund, and the refund will be issued to the owner not later than the thirtieth business day after the date the invoice is sent to the owner.

[Name of property owners association]

By \_\_\_\_\_  
[Name and title]

Include acknowledgment.

**Exhibit A****Charges for Examining and Copying Property Owners****Association Information****A. Labor Charge for Computer Programming**

If a particular request requires the services of a computer programmer to execute an existing program or to create a new program so that requested information may be accessed and copied, the Property Owners Association will charge \$28.50 an hour for the programmer's time spent on the request.

**B. Labor Charge for Locating, Compiling, Manipulating, and Reproducing Data and Information**

1. The charge for labor costs incurred in processing an owner's request for Property Owners Association information is \$15.00 an hour. The labor charge will be calculated based on the actual time to locate, compile, manipulate, and reproduce the requested data and information.

2. A labor charge will not be billed in connection with complying with requests that are for fifty or fewer pages of paper records, unless the documents to be copied are located in (a) two or more separate buildings that are not physically connected with each other or (b) a remote storage facility.

3. A labor charge will not be billed for any time spent by an attorney, legal assistant, or any other person who reviews the requested information to determine whether it is confidential or privileged under Texas law.

4. When confidential or privileged information is mixed with public information in the same page, a labor charge may be recovered for time spent to redact, black out, or otherwise obscure the confidential or privileged information in order to comply with the owner's

request. The Property Owners Association will not charge for redacting confidential or privileged information for requests of fifty or fewer pages unless the request also qualifies for a labor charge under section 552.261(a)(1) or 552.261(a)(2) of the Texas Government Code.

### **C. Overhead Charge**

1. Whenever any labor charge is applicable to a request, the Property Owners Association may include in the Charges direct and indirect costs, in addition to the specific labor charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. If the Property Owners Association chooses to recover such costs, the overhead charge will be computed at 20 percent of the charge made to cover any labor costs associated with a particular request.

For example, if one hour of labor is used for a particular request, the formula would be as follows:

- a. Labor charge for locating, compiling, and reproducing— $\$15.00 \times .20 = \$3.00$ .
- b. Labor charge for computer programming— $\$28.50 \times .20 = \$5.70$ .

If a request requires a charge for one hour of labor for locating, compiling, and reproducing information (\$15.00 per hour) and one hour of programming (\$28.50 per hour), the combined overhead would be  $\$15.00 + \$28.50 = \$43.50 \times .20 = \$8.70$ .

2. An overhead charge will not be made for requests for copies of fifty or fewer pages of standard paper records.

### **D. Microfiche and Microfilm Charge**

If the Property Owners Association already has the requested information on microfiche or microfilm, the charge for a copy must not exceed the cost of reproducing the informa-

tion on microfiche or microfilm or ten cents per page for standard size paper copies of the information on microfiche or microfilm, plus any applicable labor and overhead charge for more than fifty copies.

#### **E. Remote Document Retrieval Charge**

To the extent that the retrieval of documents stored on the Property Owners Association's property results in a charge to comply with a request, the Property Owners Association will charge the actual cost of the retrieval.

#### **F. Copy Charges**

1. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is ten cents per page or part of a page. Each side of a piece of paper on which information is recorded is counted as a single copy. A piece of paper that has information recorded on both sides is counted as two copies. Standard paper copy is a copy of Property Owners Association information that is a printed impression on one side of a piece of paper that measures up to eight and one-half by fourteen inches.

2. A "nonstandard" copy includes everything but a copy of a piece of paper measuring up to eight and one-half by fourteen inches. Microfiche, microfilm, diskettes, magnetic tapes, and CD-ROM are examples of nonstandard copies. The charges in this subsection are to cover the materials onto which information is copied and do not reflect any additional charges, including labor, that may be associated with a particular request. The charges for nonstandard copies are—

- a. diskette—\$1.00;
- b. magnetic tape—actual cost;
- c. data cartridge—actual cost;

- d. tape cartridge—actual cost;
- e. rewritable CD (CD-RW)—\$1.00;
- f. nonrewritable CD (CD-R)—\$1.00;
- g. digital video disc (DVD)—\$3.00;
- h. JAZ drive—actual cost;
- i. other electronic media—actual cost;
- j. VHS video cassette—\$2.50;
- k. audio cassette—\$1.00;
- l. oversize paper copy (e.g., larger than eight and one-half by fourteen inches, greenbar, bluebar, not including maps and photographs using specialty paper)—\$0.50; and
- m. specialty paper (e.g., Mylar, blueprint, blueline, map, photographic)—actual cost.



*[Reserved]*

**Form 23-13**

This form may be used to comply with the requirements of Tex. Prop. Code § 209.0062. The minimum term for a payment plan is three months. The maximum term is eighteen months from the date of the owner's request for a payment plan.

---

**Guidelines for Alternative Payment Plans**

Date:

Property Owners Association:

Property Owners Association's Address:

Subdivision:

Payment Plan Guidelines: **[describe terms that will govern all payment plans]**

Administrative Fee: **[state amount of fee and how often it accrues]**

Annual Interest Rate:

The Property Owners Association establishes these guidelines to allow owners who are delinquent in payment of a debt to the Property Owners Association to pay the debt in partial payments to avoid monetary penalties. However, delinquency in payment of a debt [may/will] result in nonmonetary penalties, such as loss of privileges.

Payments under a payment plan will incur the Administrative Fee and interest at the Annual Interest Rate.

To be entitled to pay a debt under a payment plan, an owner who is delinquent on a debt must submit a written request to the Property Owners Association.

Owners can make no more than [number] requests for a payment plan within a twelve-month period. The Property Owners Association is not required to enter into a payment plan agreement with an owner who failed to honor the terms of a previous payment plan agreement during the two years following the owner's default under the previous payment plan agreement.

[Name of property owners association]

By \_\_\_\_\_  
[Name and title]

Include acknowledgment.

Form 23-14

This form may be used to comply with the requirements of Tex. Prop. Code § 209.0062. The minimum term for a payment plan is three months. The maximum term is eighteen months from the date of the debtor's request for a payment plan.

Alternative Payment Plan Agreement

Date:

Debtor:

Debtor's Mailing Address:

Debt

Principal Amount of Debt: [describe the delinquent regular assessments, special assessments, and/or other amount owed to the property owners association]

Annual Interest Rate:

Annual Interest Rate on Matured, Unpaid Amounts:

Administrative Fee: [state amount of fee and how often it accrues]

Property Owners Association:

Place for Payment: [mailing address of property owners association or other place for payment]

Maturity Date:

The terms of payment must be consistent with the property owners association's recorded guidelines for alternative payment plans. See form 23-13 in this chapter.

Terms of Payment (principal and interest): [insert clause from form 6-2]

Debtor promises to pay to the Property Owners Association the Principal Amount of Debt plus interest at the Annual Interest Rate and the Administrative Fee. The Debt is payable at the Place for Payment and according to the Terms of Payment. All unpaid amounts are due by the Maturity Date. If any amount is not paid either when due under the Terms of Payment or on acceleration of maturity, Debtor promises to pay any unpaid amount plus interest from the date the payment was due to the date of payment at the Annual Interest Rate on Matured, Unpaid Amounts.

If Debtor defaults in the payment of this agreement, the Property Owners Association may declare the unpaid principal balance, earned interest, and any other amounts owed immediately due. Debtor and each surety, endorser, and guarantor waive all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.

Debtor also promises to pay reasonable attorney's fees and court and other costs if this agreement is given to an attorney to collect or enforce. These expenses will bear interest from the date of advance at the Annual Interest Rate on Matured, Unpaid Amounts. Debtor will pay the Property Owners Association these expenses and interest on demand at the Place for Payment. These expenses and interest will become part of the Debt evidenced by this agreement.

Interest on the Debt 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 on the Principal Amount of Debt or, if the Principal Amount of Debt has been paid, refunded. On any acceleration or required or permitted prepayment, any excess interest will be canceled automatically as of the acceleration or prepayment or, if the excess interest has already been paid, credited on the Principal Amount of Debt or, if the Principal Amount of Debt has been paid, refunded. This provision overrides any conflicting provisions in this agreement and all other instruments concerning the Debt.

Each Debtor is responsible for all obligations represented by this agreement.

When the context requires, singular nouns and pronouns include the plural.

---

[Name of debtor]

*[Reserved]*

**Form 23-15**

This form may be used to comply with the requirements of Tex. Prop. Code § 209.0064. The notice should be sent to the owner by certified mail, return receipt requested.

---

**Notice of Collection Agent Fees**

**Basic Information**

Date:

Property Owners Association:

Property Owners Association's Address:

Property:

Owner: **[name and address]**

Delinquent Amounts: **[specify each delinquent amount by category and amount]**

Total Amount Required to Make Account Current:

You are delinquent in payment of the Delinquent Amounts.

To avoid having your account turned over to a collection agent you must, within thirty days of receipt of this notice, either (1) pay the Total Amount Required to Make Account Current or (2) sign and return to the Property Owners Association the enclosed alternative payment plan agreement.

If you fail to cure the delinquency, you will be charged for all fees that the Property Owners Association must pay its collection agent related to your account and for all reason-



able attorney's fees and other reasonable costs incurred by the Property Owners Association relating to collecting amounts that you owe the Property Owners Association.

[Name of property owners association]

By \_\_\_\_\_  
[Name and title]

Certified Mail No. [number]  
Return Receipt Requested

Attach the alternative payment plan agreement.  
See form 23-14 in this chapter.

**Form 23-16**

This form may be used to comply with the requirements of Tex. Prop. Code § 209.0091. This notice should be sent to all inferior or subordinate lienholders whose lien is evidenced by a deed of trust at the address for the lienholder shown in the deed records relating to the property. It should be sent to such lienholders by certified mail, return receipt requested.

---

**Notice of Delinquency to Subordinate Lienholder**

**Basic Information**

Date:

Property Owners Association:

Property Owners Association's Address:

Property:

Owner:

Owner's Address:

Delinquent Amount: [specify each delinquent amount by category and amount]

Total Amount Required to Cure Delinquency:

Subordinate Lienholder[s]: [name[s] and address[es]]

**Notice**

You are notified that the Owner is delinquent in payment of the Delinquent Amount.

To avoid the Property Owners Association foreclosing its lien against the Property, you may, within sixty-one days of your receipt of this notice, pay the Property Owners Association the Total Amount Required to Cure Delinquency.

If the delinquency is not cured within sixty-one days of your receipt of this notice, the Property Owners Association has the right to foreclose on the Property.

[Name of property owners association]

By \_\_\_\_\_  
[Name and title]

Certified Mail No. [number]  
Return Receipt Requested

**Form 23-17**

This form may be used to comply with the requirements of Tex. Prop. Code §§ 209.006, 209.008. The notice should be sent to the owner by certified mail, return receipt requested.

---

**Notice of Enforcement Action and Attorney's Fees**

**Basic Information**

Date:

Property Owners Association:

Property Owners Association's Address:

Property:

Amount Due to Property Owners Association:

Date By Which Violation or Delinquency Must Be Cured:

Owner:

Owner's Address:

"You" and "your" in this notice refers to Owner.

**Notice**

You are subject to enforcement action by the Property Owners Association for the following:

Select one or more of the following as applicable.

Violation of the declaration: [**specify**]

Violation of the bylaws of the Property Owners Association: **[specify]**

Violation of the rules of the Property Owners Association: **[specify]**

Damage to Property Owners Association property: **[specify]**

Failure to pay the Property Owners Association: **[specify]**

**[Specify other reason for enforcement action.]**

Continue with the following.

You are entitled to a reasonable period from your receipt of this notice to cure the violation or delinquency and avoid enforcement action and attorney's fees.

On or before the thirtieth day after the date you receive this notice, you have the right to submit a written request to the Property Owners Association for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the Board of the Property Owners Association or before the Board if the Board does not appoint a committee. If a hearing is to be held before a committee, you have the right to appeal the committee's decision to the Board by written notice to the Board.

You may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. §§ 501–596), if you are serving on active military duty.

If you do not request a hearing, then you must either (1) pay the Amount Due to Property Owners Association, cure the violation, or both, as applicable, by the Date By Which Violation or Delinquency Must Be Cured or (2) sign and deliver an Alternative Payment Plan Agreement, if applicable, to pay the delinquent amount in accordance with the Property Owners Association's Guidelines for Alternative Payment Plans, a copy of which is attached.

However, you are not eligible to use an alternative payment plan if you failed to honor the terms of a previous Alternative Payment Plan Agreement within the last two years.

If you do not request a hearing and you (1) fail to cure the violation or delinquency by the Date By Which Violation or Delinquency Must Be Cured or (2) sign an Alternative Payment Plan Agreement, if eligible, and fail to pay the Amount Due to Property Owners Association pursuant to that plan, the Property Owners Association may—

1. suspend your right to use a common area;
2. file a suit against you;
3. charge you for property damage;
4. levy a fine for a violation of the declaration, bylaws, or rules of the Property Owners Association;
5. collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the Property Owners Association relating to collecting amounts, including damages, due the Property Owners Association or for enforcing restrictions in the declaration, bylaws, or rules of the Property Owners Association; and
6. take other enforcement action against you in accordance with the declaration, bylaws, and rules of the Property Owners Association and Texas law.

[Name of property owners association]

By \_\_\_\_\_  
[Name and title]

Certified Mail No. [number]  
Return Receipt Requested

Attach the guidelines for alternative payment plans.  
See form 23-13 in this chapter.

**Form 23-18**

This form may be used to comply with the requirements of Tex. Prop. Code § 209.010(c). This affidavit must be recorded in the real property records of the county in which the property is located no later than the thirtieth day after the date the property owners association sent the notice required under Tex. Prop. Code § 209.010(a).

---

**Affidavit of Mailing**

**Basic Information**

Date:

Property Owners Association:

Property Owners Association's Address:

Property:

Date Property Owners Association Mailed Notice:

Affiant:

**Statement**

Affiant on oath swears that the following statements are true and are within the personal knowledge of Affiant:

1. This affidavit is made concerning the foreclosure of the lien held by the Property Owners Association on the Property.
2. Attached to this affidavit is a copy of the letter sent to—
  - a. each former property owner obligated to pay the debt secured by the lien on the Property, at the former property owner's last known mailing address;



- b. each holder of a lien on the Property evidenced by the most recently filed deed of trust on the Property; and
- c. each transferee/assignee of a deed of trust on the Property who provided the Property Owners Association with notice under section 209.010 of the Texas Property Code.

3. Each letter was sent by certified mail, return receipt requested, to the person designated on the letter on the date designated in the letter.

\_\_\_\_\_  
 [Name of affiant]

SUBSCRIBED AND SWORN TO before me on \_\_\_\_\_ by [name of affiant].

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

Attach copies of letters sent.

## Form 23-19

This form may be used to comply with the requirements of Tex. Prop. Code § 209.010. This notice must be sent no later than the thirtieth day after the foreclosure sale. It should be sent to the former property owner and to each lienholder by certified mail, return receipt requested. If a recorded instrument does not include an address for a lienholder, the property owners association has no duty to notify that lienholder. The notice should also be sent to each transferee or assignee of a lien who has provided the property owners association with notice of the transfer or assignment in accordance with Tex. Prop. Code § 209.010(b)(3).

---

**Notice of Foreclosure Sale**

[Date]

To: [name and address of former property owner]  
[name[s] and address[es] of lienholder[s]]

Re: Foreclosure Sale

Property: [include legal description]

Date and Time:

Property Owners Association:

[Third Party Purchaser: [name and address]]

**NOTICE**

The Property Owners Association foreclosed the Property Owners Association's lien on the Property at the Date and Time indicated [insert if applicable: to the Third Party Purchaser]. You have the right to redeem the Property under section 209.011 of the Texas Property Code. You must redeem the Property within 180 days after the date of this notice. If you are a lienholder, you may not redeem the Property before ninety days after the date of this notice, and then only if the former property owner has not previously redeemed the Property.

You may obtain an extension of the redemption period only as provided in section 209.011(m) of the Texas Property Code.

[Name of property owners association]

By \_\_\_\_\_  
[Name and title]

Certified Mail No. [number]  
Return Receipt Requested

Certified Mail No. [number]  
Return Receipt Requested

**Form 23-20**

This form may be used to comply with the requirements of Tex. Prop. Code § 209.011(n). This affidavit must be recorded in the real property records of the county in which the property is located. Tex. Prop. Code § 209.011(n).

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**Affidavit of Nonredemption**

**Basic Information**

Date:

Property:

Property Owners Association:

Property Owners Association's Address:

Include if applicable.

Third Party Purchaser:

Third Party Purchaser's Address:

Continue with the following.

Former Property Owner:

Former Property Owner's Address:

Lienholder:

Lienholder's Address:

If there is more than one lienholder, repeat above information for each additional lienholder.

Date of Foreclosure:

Affiant:

**Statement**

Affiant on oath swears that the following statements are true and are within the personal knowledge of Affiant:

- 1. This affidavit is made with respect to the foreclosure of the lien held by the Property Owners Association on the Property on the Date of Foreclosure.
- 2. Neither the Former Property Owner nor any Lienholder redeemed the Property during the redemption period or any extended redemption period.

\_\_\_\_\_  
[Name of affiant]

SUBSCRIBED AND SWORN TO before me on \_\_\_\_\_ by [name of affiant].

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



## Chapter 24

### Condominium Documents

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## Chapter 24

### Condominium Documents

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#### § 24.1 General Considerations

##### § 24.1:1 Definition and Creation of a Condominium and Its Owners Association

A condominium is a form of real property ownership in which portions of the real property are designated for separate ownership or occupancy (the “units”) and the remainder is designated for common ownership or occupancy solely by the owners of the units. Real property is a condominium only if one or more of the common elements (for use by all the unit owners) are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation or property owners association, even if the separate legal entity is owned by the unit owners. Tex. Prop. Code § 82.003(a)(8).

Condominiums are established through filing, in the real property records of the county in which the property is located, a declaration imposing restrictive covenants on the property comprising the condominium regime. Tex. Prop. Code § 82.051. The declaration must contain statutorily prescribed information. Tex. Prop. Code § 82.055. The declaration defines the boundaries of the units and operates to subdivide the property into separate condominium units and common areas or elements. Tex. Prop. Code § 82.052. It is not uncommon for condominium developers to presell condominium units before construction of the condominium building and thus before the boundaries of the units are defined by an as-built survey. In 2013, the Texas legislature amended the definition in Tex. Prop.

Code § 82.003(a)(11) to eliminate the word *recorded* with reference to the declaration but left section 82.051 (requiring recording to establish a condominium) unchanged.

The provisions of the declaration and bylaws are severable. *See* Tex. Prop. Code § 82.053. These bylaws are for a condominium owners association that will take over management of the condominium regime from the declarant. The declaration also typically includes rules affecting the property and owners in the condominium regime.

A condominium owners association for a condominium formed after January 1, 1994, must be a Texas corporation. Tex. Prop. Code § 82.101. These owners associations are typically non-profit corporations, although section 82.101 allows them to be for-profit corporations. The Texas Business Organizations Code provides for the formation of both nonprofit and for-profit corporations. Form 24-3 in this chapter is a certificate of formation for a condominium owners association.

##### § 24.1:2 Applicable Law

The Uniform Condominium Act, chapter 82 of the Texas Property Code, governs all condominiums with declarations recorded on or after January 1, 1994. The Act also applies to condominiums formed before that date if the owners vote to have chapter 82 apply or if a declaration or amendment of declaration recorded before January 1, 1994, states that chapter 82 will apply. *See* Tex. Prop. Code § 82.002(a). Portions of the Act apply to all condominiums; however, certain rights cannot be limited for owners of

condominiums created before 1994. *See* Tex. Prop. Code § 82.002(b)–(d). Condominiums created before January 1, 1994, are otherwise governed by chapter 81 of the Property Code.

Property Code chapter 202, governing construction and enforcement of restrictive covenants, also applies to condominiums. Section 202.002(a) states that the chapter “applies to all restrictive covenants.” “Restrictive covenant” is defined to mean any covenant, condition, or restriction in a dedicatory instrument, and a “dedicatory instrument” means all governing instruments of planned developments, explicitly including condominiums. *See* Tex. Prop. Code § 202.001(1), (4). “Dedicatory instrument” as it relates to condominiums is defined in Tex. Prop. Code § 82.003(a)(11–a), which does not specifically require recording. Under chapter 202, however, a dedicatory instrument has no effect until it is recorded in the public records. Tex. Prop. Code § 202.006(b). In many instances, the provisions of the statutes applicable to condominiums differ substantially from those that apply to noncondominium residential subdivisions. *See* Tex. Prop. Code § 209.003(d).

In addition to provisions in chapter 82 of the Property Code, the Texas Business Organizations Code governs the formation and operation of the condominium owners association. *See* Tex. Bus. Orgs. Code ch. 21 (for-profit corporations), ch. 22 (nonprofit corporations).

Condominium owners associations are subject to federal income taxation. They do not qualify as charitable organizations under Internal Revenue Code section 501(c)(3). Associations may qualify for special tax treatment under 26 U.S.C. § 528.

### § 24.1:3 Foreclosure of Assessment Lien

An assessment levied by a condominium owners association is a personal obligation of the unit

owner and is also secured by a continuing lien on the unit, on rents, and on insurance proceeds relating to the unit. *See* Tex. Prop. Code § 82.113(a). For purposes of this section, “assessment” includes regular and special assessments, dues, fees, late fees, fines, collection costs, attorney’s fees, “and any other amount due to the association by the unit owner or levied against the unit by the association

” Tex. Prop. Code § 82.113(a). The lien for assessments is created by the recording of the declaration, and no other recordation of a lien or notice of lien is required. Tex. Prop. Code § 82.113(c). The association’s lien for assessments has priority over other liens, except for liens for real property taxes or other governmental assessments, liens recorded before the declaration was recorded, first vendor’s liens or first deed-of-trust liens recorded before the assessment becomes delinquent, and under certain circumstances, liens on improvements. *See* Tex. Prop. Code § 82.113(b).

By acquiring a unit, an owner grants the association a power of sale. That power of sale is exercised pursuant to Texas Property Code section 51.002 unless the declaration provides otherwise. Tex. Prop. Code § 82.113(d). The association may not foreclose a lien for assessments consisting only of fines. Tex. Prop. Code § 82.113(e). The association may not foreclose during a person’s active military service or nine months thereafter without complying with Tex. Prop. Code § 51.015. A notice of foreclosure sale must include the military service language in Tex. Prop. Code § 51.002(i). A unit owner may not petition a court to set aside a sale solely because the price at foreclosure was insufficient to fully satisfy the owner’s debt. The association may purchase the unit at foreclosure.

The redemption rights of condominium owners are set out in Tex. Prop. Code § 82.113(g). The Texas Residential Property Owners Protection Act, chapter 209 of the Property Code, does not apply to condominiums. Tex. Prop. Code

§ 209.003(d). *See Duarte v. Disanti*, 292 S.W.3d 733, 736 (Tex. App.—Dallas 2009, no pet.) (it was “the legislature’s clear intent to have different redemption rights for residential subdivisions than for condominiums”).

At any time before a nonjudicial foreclosure sale, the unit owner may avoid foreclosure by paying “all amounts due the association. Tex. Prop. Code § 82.113(j). The association is not prohibited from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment. Tex. Prop. Code § 82.113(i).

If an owner defaults on obligations to the association, the association may notify other lienholders of its intent to foreclose and must notify any holder of a recorded lien or a duly perfected mechanic’s lien if the lienholder has given the association a written request of notification. Tex. Prop. Code § 82.113(h), (m). Foreclosure of a tax lien under chapter 32 of the Texas Tax Code does not discharge the association’s lien. Tex. Prop. Code § 82.113(l).

### § 24.2 General Instructions for Completing Forms

For general information about completing the forms in this chapter, see chapter 3 in this manual. In most forms, the information that the attorney must provide is listed at the beginning of the form. Of course, the attorney may add other specific provisions and references to exhibits and riders at the end of the form.

For general information about designation of parties, addresses, property descriptions, and execution and acknowledgment of documents, see chapter 3.

### § 24.3 General Considerations for Declaration

The required contents for a condominium declaration are set out in Tex. Prop. Code § 82.055.

### § 24.3:1 Definitions

The definition of “assessment” used in the declaration, form 24-1 in this chapter, is based on that used in Tex. Prop. Code § 82.113(a).

The definition of “residential purposes” is derived from Tex. Prop. Code § 82.003(a)(21).

The definition of “common elements” is based on Tex. Prop. Code § 82.003(a)(5). In each condominium, there will likely be portions that should be designated as “limited common elements.” The consequence of such a designation is important, not only to limit use of those elements but also to determine responsibility for their maintenance, repair, or replacement, and the costs thereof. The drafter should carefully review Texas Property Code sections 82.052, 82.058, 82.107, and 82.112(d) when determining which aspects of a condominium should be designated as limited common elements as opposed to common elements.

The declaration defines the plat as including the plans. Property Code section 82.003(a) makes a distinction between plan and plat as follows:

(18) “Plan” means a dimensional drawing that is recordable in the real property records or the condominium plat records and that horizontally and vertically identifies or describes units and common elements that are contained in buildings.

(19) “Plat” means a survey recordable in the real property records or the condominium plat records and containing the information required by Section 82.059. As used in this chapter, “plat” does not have the same meaning as “plat” in Chapter 212 or 232, Local Government Code, or other statutes dealing with municipi-

pal or county regulation of property development.

Tex. Prop. Code § 82.003(a)(18), (19).

### § 24.3:2 Restrictions on Use, Occupancy, or Alienation

Texas Property Code section 82.055(9) requires a declaration to set out any restrictions on use, occupancy, or alienation of the units. Examples are provided in paragraph D.8. of the declaration, form 24-1 in this chapter. The practitioner will need to consider what conditions or activities are to be prohibited. The nature and extent of the limitations will depend on the declarant's purpose and expectations for the condominium. In addition, lenders may require that restrictions be incorporated to protect their interests and the security of mortgages.

Certain restrictions are prohibited or regulated, including restrictions concerning rain barrels and xeriscaping (Tex. Prop. Code § 202.007); solar energy devices (Tex. Prop. Code § 202.010); roof shingles (Tex. Prop. Code § 202.011); flags and flagpoles (Tex. Prop. Code § 202.012); religious items (Tex. Prop. Code § 202.018); standby electric generators (Tex. Prop. Code § 202.019); and speed feedback signs (Tex. Transp. Code § 430.002). The owner or developer must determine whether and to what extent rentals are permitted, and the practitioner must draft appropriate prohibitions.

### § 24.3:3 Units and Common Elements

Texas Property Code sections 82.052 and 82.055(4) allow the declaration to define the boundaries of a unit other than as set forth in paragraphs D.3. and D.4. of the declaration, form 24-1 in this chapter.

The declaration is required to contain a description of limited common elements other than those described in Texas Property Code section 82.052(2) and (4). Tex. Prop. Code § 82.055(6).

Examples of limited common elements as set out in the statute include chutes, flues, ducts, wires, bearing walls, and other fixtures partially within and partially outside the designated boundaries of a unit and that serve only that unit. Tex. Prop. Code § 82.052(2). Items such as windows, exterior doors, shutters, awnings, window boxes, doorsteps, porches, balconies, and patios designed to serve a single unit but located outside the unit's boundaries are also limited common elements. Tex. Prop. Code § 82.052(4). The declaration must also contain a description of property that may be allocated subsequently as limited common elements. Tex. Prop. Code § 82.055(7).

### § 24.3:4 Assignment of Association Income

Unless a dedicatory instrument requires a vote of the association members to borrow money or to assign the association's right to future income or lien rights, Tex. Prop. Code § 82.102(f) gives the association's board of directors the power to borrow money and assign as collateral for the loan the association's right to future income and lien rights. If a vote of the members is required, (1) the board can provide for electronic voting, absentee ballot, proxy at a meeting, or written consent, and (2) at least 67 percent of all voting interests must vote in favor of the action, unless a dedicatory instrument provides for a lower threshold.

Form 24-12 in this chapter is a unanimous consent in lieu of a directors' meeting to approve a loan under Tex. Prop. Code § 82.102(f) after any required members' vote under section 82.102(g) has approved the loan. Chapter 6 in this manual contains forms and clauses for the promissory note. Form 24-13 is a security agreement and transfer of lien to secure the loan.

### § 24.3:5 Assessments and Late Charges

Texas Property Code section 82.112 provides that an expense for maintenance, repair, or replacement of a limited common element must be assessed as if it were a general common element expense except as otherwise provided by the declaration or Tex. Prop. Code § 82.107.

Late charges are governed by Tex. Prop. Code §§ 82.102(a)(12), 82.112(c), 82.117(1). The creation of liens and foreclosure for failure to pay assessments is addressed in Tex. Prop. Code § 82.113. Redemption rights for condominium owners after foreclosure of an association's lien for assessments are governed by Tex. Prop. Code § 82.113(g).

Among the powers granted to the association by the Uniform Condominium Act is the power to impose charges for use of the common elements. *See* Tex. Prop. Code § 82.102(a)(11). Paragraph H.2. of the declaration, form 24-1 in this chapter, concerns fees for use of specified common elements and is optional. The purpose of this section is to expressly authorize such charges and to provide a procedure to the association.

### § 24.3:6 Voting Rights

The declaration may provide for different allocations of votes on particular specified matters or class voting on specified issues; however, units may not constitute a class merely because they are owned by a declarant. Tex. Prop. Code § 82.057(c), (d).

The formulas used to establish the allocations of interests must be stated in the declaration. *See* Tex. Prop. Code §§ 82.055(8), (16), 82.057(a), (c). Attention should be given to section 82.057(c), which permits special provisions relating to voting rights.

If any unit is restricted exclusively to residential purposes, the approval of at least 80 percent of

the members is required to terminate the condominium under section 82.068(a) of the Texas Property Code.

### § 24.3:7 Amendment of Declaration

Tex. Prop. Code § 82.055(11) requires the declaration to contain the method of its amendment. By statute an amendment to a declaration may be made—

1. by written ballot that states the exact wording or substance of the amendment and that specifies the date by which a ballot must be received to be counted;
2. at a meeting of the members of the association after written notice of the meeting has been delivered to an owner of each unit stating that a purpose of the meeting is to consider an amendment to the declaration; or
3. by any method permitted by the declaration.

Tex. Prop. Code § 82.067(a).

The drafter may merely reference the two specific methods described in Tex. Prop. Code § 82.067(a) or may include additional methods. Some thought should be given to taking advantage of technological advances in order to accommodate different sizes and types of anticipated membership populations. For example, written ballots might be submitted electronically, rather than only by mail.

### § 24.3:8 Development Rights

The right to create additional units is a development right. *See* Tex. Prop. Code § 82.003(a)(12)(B). The Uniform Condominium Act requires all condominium declarations to include a statement of the maximum number of

units that the declarant reserves the right to create. *See* Tex. Prop. Code § 82.055(5). If any development right is to be reserved by the declarant, the declaration (form 24-1 in this chapter) will require substantial modification.

### § 24.3:9 Special Declarant Rights

Tex. Prop. Code § 82.055(14), (15) requires not only a description of development rights and other special declarant rights but also clear identification of the particular real property to which such rights apply and time limits within which such rights must be exercised. Unless special declarant rights are expressly reserved in the declaration, they do not arise under the Uniform Condominium Act. If development rights are reserved, the declaration (form 24-1 in this chapter) will require substantial modification. *See* Tex. Prop. Code §§ 82.003(a)(12), (22), 82.055(14). Examples of special declarant rights include:

1. The right to complete or make improvements indicated on the plats and plans. *See* Tex. Prop. Code §§ 82.003(a)(22)(A), 82.059.
2. The right to maintain sales and other offices and models and condominium advertising signs on the condominium. *See* Tex. Prop. Code §§ 82.003(a)(22)(D), 82.065.
3. Rights of easement through the common elements for the discharge of declarant's obligations. *See* Tex. Prop. Code §§ 82.003(a)(22)(E), 82.066.
4. The right to appoint or remove officers or directors. *See* Tex. Prop. Code §§ 82.003(a)(22)(F), 82.103(c).

### § 24.4 General Considerations for Bylaws

Form 24-4 in this chapter is a proposed set of bylaws for a condominium owners association.

The form can be modified consistent with applicable law, found primarily in the Texas Business Organizations Code and the Texas Property Code.

The Business Organizations Code provides that bylaws may contain provisions for the "regulation and management" of corporate affairs that are consistent with law and the corporation's certificate of formation. Tex. Bus. Orgs. Code § 21.057(b) (for-profit corporation), § 22.102(b) (nonprofit corporation).

Section 82.106 of the Property Code mandates that the bylaws contain specified provisions governing the "administration and operation of the condominium." It also provides for "other matters the association considers desirable, necessary or appropriate" subject to the declaration. Section 81.202 of the Property Code (applying to condominiums formed before January 1, 1994) states that the "bylaws of a condominium regime govern the administration of the buildings that comprise the regime." Thus, it is not unusual, particularly for associations formed before January 1, 1994, to see provisions in bylaws that go beyond corporate governance.

### § 24.5 General Considerations for Rules

Form 24-11 in this chapter can be used in promulgating rules for the condominium owners association and the use of any common areas. The rules and penalties for violation (to be inserted in sections A and B of the form) will be unique to each condominium regime. The enforcement provisions (contained in section C of the form) are based on the requirements in section 82.102(d) of the Texas Property Code.

**§ 24.6 Additional Forms**

**§ 24.6:1 Condominium Information Statement**

Before offering to the public the sale of any interest in a condominium, a declarant (as well as certain other persons in the business of selling real property) must prepare and provide a condominium information statement to prospective purchasers. Tex. Prop. Code § 82.152. The requirements for the condominium information statement are found in Tex. Prop. Code § 82.153. These include—

1. the name and principal address of the declarant and of the condominium;
2. a general description of the condominium that includes the types and maximum number of units;
3. the minimum and maximum number of additional units that may be included in the condominium;
4. a brief description of any development rights reserved by a declarant and of any conditions relating to those rights;
5. copies of the declaration, articles of incorporation, bylaws, any rules of the association and their amendments, and copies of leases and contracts, other than loan documents, required by the declarant to be signed by purchasers at closing;
6. a projected or pro forma budget for the association for the first fiscal year of the association that conforms to Texas Property Code section 82.153(a)(6) and (b);
7. a general description of each lien, lease, or encumbrance affecting title to the condominium after conveyance by the declarant;

8. a copy of each written warranty provided by the declarant;
9. a description of any unsatisfied judgments against the association and any pending suits to which the association is a party or that are material to the land title and construction of the condominium of which a declarant has actual knowledge;
10. a general description of the insurance coverage provided for the benefit of unit owners; and
11. current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium.

Form 24-2 in this chapter is based on the above requirements. Special disclosures are required for condominiums located in whole or in part in a municipality with a population of more than 1.9 million. *See* Tex. Prop. Code § 82.153(a)(12).

**§ 24.6:2 Management Certificate**

Texas Property Code section 82.116 requires a management certificate to be recorded in each county in which the condominium is located. If any changes in information occur, the association is required to file a new management certificate not later than thirty days after the date the association has notice of the change. *See* Tex. Prop. Code § 82.116(b). In addition, all condominium owners associations must record a current management certificate on or before January 1, 2014, or rerecord the current management certificate if the previous recording was done before September 1, 2013. This requirement is to facilitate the county clerks' indexing of management certificates, which, before September 1, 2013, did not have a clear, statutorily mandated system. Tex. Prop. Code § 82.116(a-1). Thus, a condominium owners association should record or rerecord its current management cer-

tificates even if it missed the January 1, 2014, deadline. Form 24-5 in this chapter, the management certificate, may be used to comply with these requirements.

### § 24.6:3 Resale Certificate and Acknowledgment of Receipt

A unit owner, other than a declarant, who intends to sell a unit must provide a purchaser with a current copy of the declaration, bylaws, any association rules, and a resale certificate. The resale certificate, required under chapter 82 of the Texas Property Code, must be prepared not earlier than three months before the date of delivery. The resale certificate must be issued by the association and contain the disclosures specified in Tex. Prop. Code § 82.157. The resale certificate and other provisions in chapter 207 of the Property Code do not apply to condominiums. Tex. Prop. Code § 207.002(b).

Form 24-6 in this chapter, the resale certificate, may be used to comply with the requirements of Tex. Prop. Code § 82.157.

If the seller fails to deliver to the purchaser copies of the declaration, bylaws, and association rules as required by Tex. Prop. Code § 82.157 before the purchaser executes the contract, or if the contract does not contain an underlined or bold-faced provision acknowledging the purchaser's receipt of those documents and recommending that the purchaser read the documents before executing the contract, the purchaser has the right to cancel the contract before the sixth

day after the date the seller delivers those documents to the purchaser. *See* Tex. Prop. Code § 82.156. Form 24-8, the acknowledgment of receipt of condominium documents, may be used to document compliance with Tex. Prop. Code § 82.157 or may be modified to use as additional clauses in a sales contract.

### § 24.6:4 Record of Unit

An association is required to keep certain records, including information concerning each unit owner. The unit owner, within thirty days after acquiring an interest, must provide—

1. the unit owner's mailing address, telephone number, and driver's license number, if any;
2. the name and address of the holder of any lien against the unit and any loan number;
3. the name and telephone number of any person occupying the unit other than the unit owner; and
4. the name, address, and telephone number of any person managing the unit as agent of the unit owner.

Tex. Prop. Code § 82.114(e).

This information must be updated no later than thirty days after the date the owner has notice of any change in the required information. Tex. Prop. Code § 82.114(f). Form 24-10 in this chapter, the record of unit, may be used to comply with those requirements.



**Additional Resources**

Hailey, Roy D. "Overview of 2011 Legislation Affecting Texas Property Owners Associations." In *State Bar College 'Summer School' Course, 2012*. Austin: State Bar of Texas, 2012.

Kerr, Kevin. "Condominium Board Procedures Manual." In *Advanced Real Estate Draft-*

*ing Course, 2011*. Austin: State Bar of Texas, 2011.

Markel, Marc D. "Standards of Duty & Liability for Community Association Officers & Directors." In *Advanced Real Estate Law Course, 2011*. Austin: State Bar of Texas, 2011.

*[Reserved]*

Form 24-1

**Declaration of [name of condominium], a Condominium**

**Basic Information**

Date:

Declarant:

Declarant's Address:

Association: [name], a Texas [for-profit/nonprofit] corporation

Association's Address:

Property: [include legal description] [include county], including the following easements and licenses appurtenant to, included in, or to which the condominium is or may become subject [include recording data for easements and licenses]

Plat/Plan: [attached hereto as Exhibit [exhibit number/letter]/recorded at [recording data]]

[Reservations from Declaration:]

[Property Subject to Development Right of Withdrawal: [include legal description]]

**Definitions**

“Act” means chapter 82 of the Texas Property Code, as amended, and any successor law, known as the Texas Uniform Condominium Act.

“Assessment” means regular and special assessments, dues, fees, charges, interest, late fees, fines, collection costs, attorney's fees, and any other amount due to the association by the Owner or levied against the Unit by the Association.

“Board” means the Board of Directors of the Association.

“Bylaws” means the Bylaws of the Association adopted by the Board. The initial Bylaws are attached as Exhibit [exhibit number/letter].

“Certificate of Formation” means the Association’s certificate of formation.

“Common Elements” means all portions of the Condominium other than the Units and includes both General and Limited Common Elements. The Common Elements are directly owned by the Condominium Unit Owners in undivided interests.

“Common Expenses” means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

“Condominium” means the Property covered by the Plat and any additional property that is subject to this Declaration.

“Covenants” means the covenants, conditions, and restrictions contained in this Declaration.

“Declarant” means the person or persons identified as Declarant in the Basic Information or who reserves or succeeds to any special declarant right.

“Declarant Control Period” means the period of time during which Declarant can appoint a majority of the Board members and officers as provided in paragraph E.2.

“Dedictory Instruments” means this Declaration and the Certificate of Formation, Bylaws, and Rules, as amended.

“Development Rights” means a right or combination of rights reserved by the Declarant set forth in paragraph L.3.

“General Common Elements” means common elements that are not Limited Common Elements.

“Limited Common Elements” means a portion of the Common Elements allocated by the Declaration or by the Act for the exclusive use of one or more but less than all of the Units, including **[include as applicable and consider expressly excluding any of the following items that are not intended as limited common elements: shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and exterior doors and windows or other fixtures designed to serve one or more but less than all of the Units, but located outside the boundaries of the Unit(s)]. [Include any additional building features that are to be characterized or expressly excluded as limited common elements.]**

“Member” means Owner.

“Owner” means every record Owner of a fee interest in a Unit.

“Plat” means the Plat and any plans for the Condominium [recorded in **[recording data]** of the real property records of **[county]** County, Texas/recorded with this Declaration as Exhibit **[exhibit number/letter]**] and any replat of or amendment to the Plat made in accordance with this Declaration.

“Residential Purposes” means recreational or dwelling purposes or both.

“Rules” means the Rules related to the Condominium adopted by the Board that do not conflict with law or the Dedicatory Instruments. On request, an Owner will be provided a copy of the Rules.

Include the following if applicable.

“Single Family” means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Unit.

Continue with the following.

“Special Declarant Rights” means a right or combination of rights reserved by the Declarant set forth in paragraph L.1.

“Unit” means a physical portion of the Condominium designated for separate ownership, the boundaries of which are described by the Declaration.

Each capitalized term not otherwise defined in this Declaration has the meaning specified in the Act.

### **Clauses and Covenants**

#### **A. Imposition of and Agreement to the Covenants**

*A.1.* Declarant imposes the Covenants on the Property and subjects the Property to a condominium form of ownership in accordance with the provisions of the Act [**include if applicable:** , subject to the Reservations from Declaration]. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Unit.

*A.2.* All Owners and other occupants of the Units by their acceptance of their deeds, leases, or by occupancy of any Unit agree that the Condominium is subject to the Covenants. Each Owner, each occupant of a Unit, and the Association agree to comply with the Dedicatory Instruments and to be subject to an action arising out of or related to the Dedicatory Instruments for declaratory judgment, damages, or for injunctive relief.

#### **B. Plat**

*B.1.* The Plat is part of this Declaration and is incorporated by reference.

*B.2.* To the extent that a Unit or Common Element encroaches on another Unit or Common Element, a valid easement for the encroachment exists. The easement does not

relieve an Owner of liability in case of willful misconduct or relieve Declarant or any other person of liability for failure to adhere to the Plat.

**C. Use and Activities**

*C.1. Permitted Use.* A Unit [shall/shall not] be used [only] for Residential Purposes [by a Single Family]. [Include if applicable: A Unit shall be used only for [office/warehouse/industrial/other nonresidential] purposes.]

*C.2. Prohibited Use and Occupancy Restrictions.* Subject to the Special Declarant Rights, the following use restrictions apply to all Units and to the Common Elements:

Select from the following as applicable.

- a. any activity that is otherwise prohibited by the Dedicatory Instruments;
- b. any illegal activity;
- c. any nuisance, noxious, or offensive activity;
- d. any dumping of trash or rubbish, except in approved locations and in an approved manner;
- e. any storage of—
  - i. building materials except during the construction or renovation of a Unit or
  - ii. vehicles, except vehicles in a garage or operable automobiles on a driveway or in a parking space;

- f. any keeping or raising of animals, except for common domesticated household pets, such as dogs and cats, not to exceed [number] confined to the Unit;
- g. any commercial or professional activity except reasonable home office use;
- h. the drying of clothes outside of a Unit;
- i. the display of any sign except—
  - i. one not more than five square feet, advertising the Unit for sale or rent and
  - ii. political signage not prohibited by law or the Dedicatory Instruments;

Determine whether and to what extent rentals are permitted and draft appropriate prohibitions.
--

[j. the renting of a portion of a Unit;]

[j./k.] [Insert any additional restrictions.]

## D. Units

*D.1. Number of Units.* The number of Units in the Condominium is as shown on Exhibit [exhibit number/letter]. [Include as applicable: Declarant reserves no rights to create additional Units./Declarant reserves the right to create [number] additional Units as shown in section L./Declarant reserves the right to withdraw [number] Units as shown in section L.]

*D.2. Identification of Units.* The identification number of each Unit is shown on Exhibit [exhibit number/letter] and on the Plat.



*D.3. Unit Boundaries.* The boundaries of each Unit are the walls, floors, and ceilings of the Unit. The boundaries of each Unit are located as shown on the Plat and are more particularly described in paragraph D.4.

*D.4. Parts of Unit.* A Unit includes all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting part of the finished surfaces that are a part of a Unit, and the spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit. A Unit also includes [include any additional things that represent part of a unit]. A Unit does not include any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture that is partially within and partially outside the designated boundaries of a Unit, of which the portion serving only that Unit is a Limited Common Element allocated solely to that Unit and of which the portion serving more than one Unit or the Common Elements is a part of the General Common Elements.

*D.5. No Subdivision or Consolidation of Units.* No Unit will be subdivided or consolidated with another Unit (unless approved by the Board).

*D.6. No Structural Modification of Unit without Board Approval.* No structural modifications or alterations will be made in a Unit unless plans, specifications, and any other documents requested by the Board are submitted to and approved by the Board in accordance with the Rules. The Association, the Board, and their members will not be liable to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request. Any structural modification made to a Unit (a) without Board approval, (b) not in conformity with the Board approval, or (c) without the required permit from the applicable entity are unauthorized modifications. The Board may require the Owner to restore the Unit, at the Owner's expense, to the condition before the unauthorized modifications were made.

D.7. *Maintenance.* Each Unit will be maintained by its Owner.

Include D.8. if there are restrictions on alienation.  
The following are examples.

D.8. *Restrictions on Transfer*

A Unit may not be conveyed pursuant to a time-sharing arrangement.

A Unit may not be leased or rented for a term of less than sixty days.

All leases and rental agreements shall be in writing and subject to the reasonable requirements of the Board.

If an Owner receives an acceptable purchase offer for a Unit, the Owner must first offer to sell the Unit to the Association for the same price and terms as the offer received. The Owner will give the Board written notice of the price and terms of the offer received and the name and address of the person making such offer. If, within ten days from the date the Board receives the Owner's notice, the Board fails to give the Owner notice that the Association elects to purchase the Unit, the Owner may sell the Unit to the person(s) making the offer. In such case, the Board will certify in writing, duly acknowledged and in recordable form, that the Association has declined to purchase the Unit. The Board may waive the provisions of this paragraph for any Unit. Any mortgagee of any Unit that acquires title to a Unit is exempt from this "right of first refusal."

Continue with the following.

**E. Association**

E.1. *Establishment and Governance.* The Association is established by filing its Certificate of Formation and is governed by the Dedicatory Instruments. The Association, acting through the Board, will administer and manage the Condominium in accordance with the Dedicatory Instruments. The Association has the powers (a) of a [for-profit/nonprofit] corpo-

ration under the Texas Business Organizations Code, (b) of a condominium association under the Act, and (c) stated in the Dedicatory Instruments, respectively as amended. All acts of the Association must be by and through the Board, except as otherwise provided by the Declaration or Bylaws or by law.

*E.2. Declarant Control.* Declarant has all the powers reserved in section 82.103(c) of the Act to appoint and remove officers and members of the Board until the 120th day after conveyance of 50 percent of the Units that may be created to Owners other than Declarant, at which time not less than one-third of the Board members must be elected by Owners other than Declarant. Not later than the 120th day after conveyance of 75 percent of the Units to Owners other than Declarant, the Declarant Control Period terminates, and all the Board and Association officers shall be elected by the Owners as provided in the Bylaws.

*E.3. Membership and Voting Rights.* Every Owner is a Member of the Association. Membership is appurtenant to and may not be separated from ownership of a Unit. On termination of the Declarant Control Period, the Members have the voting rights provided in the Bylaws.

*E.4. Assignment of Future Income.* The Association may assign its future income, including its rights to receive Common Expenses assessments, [in accordance with section 82.102 of the Act/only by the affirmative vote of Unit Owners of Units to which at least [specify number] of the votes in the Association are allocated].

## **F. Assessments**

*F.1. Authority.* The Association will charge Assessments as provided in the Act.

*F.2. Personal Obligation.* An Assessment is a personal obligation of each Owner when the Assessment accrues.

*F.3. Creation of Lien.* Assessments are secured by a continuing lien on each Unit as provided in section 82.113 of the Act. By acceptance of a deed to a Unit, each Owner grants the lien, together with the power of sale, to the Association to secure Assessments.

*F.4. Commencement.* A Unit becomes subject to Assessments as provided in the Act.

*F.5. Regular Assessments*

*F.5.a. Rate.* Regular assessments will be charged by the Board to fund the budgeted Common Expenses.

*F.5.b. Changes to Regular Assessments.* Regular assessments may be changed by the Board. Written notice of the regular assessment will be sent to every Owner at least thirty days before its effective date.

*F.5.c. Collections.* Regular assessments will be collected [annually/semiannually/monthly] in advance, payable on the [first/tenth/[other]] day of the [month/year] and on [the same day of each succeeding [month/year]/the [first/tenth/[other]] day of [month] of each year].

Include the following if applicable.

*F.5.d. Expenses for Maintenance, Repair, or Replacement of Limited Common Elements.* Expenses for the maintenance, repair, or replacement of a Limited Common Element shall be assessed to the Owner(s) whose Unit(s) benefit from the Limited Common Element.

Continue with the following.

*F.6. Special Assessments.* In addition to the regular assessments, the Board may charge special assessments for the purpose of funding the cost of any construction, reconstruc-

tion, repair, or replacement of any capital improvement on the Common Elements or for any other purpose benefiting the Condominium but requiring funds exceeding those available from the regular assessments. Written notice of the terms of the special assessment will be sent to every Owner. Any special assessment must be approved by a [majority/two-thirds] vote at a meeting of the Members in accordance with the Bylaws.

*F.7. Subordination of Lien to Mortgages.* The lien granted and reserved to the Association is subordinate to the liens described in section 82.113(b) of the Act.

*F.8. Delinquent Assessments.* Any Assessment not paid within [number] days after it is due is delinquent.

## **G. Remedial Rights**

*G.1. Late Charges and Interest.* Owners will pay the Association a late charge of [\$[amount]/[percent] percent of the delinquent amount] for Delinquent Assessments. Owners will pay the Association interest at the rate of [percent] percent per year on Delinquent Assessments from the delinquent date until the date paid. The Board may change the late charge and the interest rate; however, the interest rate may not exceed the maximum permitted by law.

*G.2. Costs, Attorney's Fees, and Expenses.* The prevailing party in any legal proceeding among the Association, an Owner, or an occupant of a Unit related to the Dedicatory Instruments is entitled to recover reasonable attorney's fees and all costs of such proceeding incurred by the prevailing party. A prevailing party is the party who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of its original contention.

*G.3. Nonjudicial Foreclosure of Lien.* The Association may foreclose the Association's lien against a Unit in accordance with section 82.113 of the Act.

*G.4. Judicial Action.* The Association may sue an Owner and an occupant of a Unit to enforce the Dedicatory Instruments for damages for breach of the Dedicatory Instruments, for injunctive relief regarding the Dedicatory Instruments, and to foreclose the Association's lien on a Unit. An Owner and an occupant of a Unit may sue the Association, any Owner, and any occupant of a Unit to enforce the Dedicatory Instruments, for injunctive relief regarding the Dedicatory Instruments, and for damages for breach of the Dedicatory Instruments.

*G.5. Remedy of Violations.* The Association may access an Owner's Unit to remedy a violation of the Dedicatory Instruments.

*G.6. Suspension of Voting.* An Owner delinquent in payment of any Assessment may not vote.

*G.7. Suspension of Other Rights.* If an Owner violates the Dedicatory Instruments, the Association may suspend the Owner's rights under the Dedicatory Instruments in accordance with law until the violation is cured.

*G.8. Damage to Property or Violation of Dedicatory Instruments.* An Owner is liable to the Association (a) for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees ("Owner Affiliates"), and (b) for violations of the Dedicatory Instruments by the Owner or Owner Affiliates, in accordance with law.

## **H. Limited Common Elements**

### *H.1. Allocation of Reserved Limited Common Elements*

*H.1.a.* Limited Common Elements are marked on the Plat and include [**include as applicable:** vehicle parking areas, storage areas, and others].

*H.1.b.* To the extent the Limited Common Elements are not allocated to a Unit by the Declaration, Declarant reserves the right to allocate the Limited Common Elements for the exclusive use of one or more Units (i) by making the allocation in a recorded instrument, (ii) in the deed to the Unit(s) to which the Limited Common Element is ancillary, or (iii) by recording an appropriate amendment to this Declaration.

The following paragraph is optional. Unless the declaration contains a similar provision, a reallocation of limited common elements can be undertaken only by an amendment to the declaration.

*H.2. Allocation of Specified Common Elements.* The Board may designate parts of the Common Elements from time to time for use by less than all of the Owners or by nonowners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Board. Any such designation by the Board shall not be a sale or disposition of such portions of the Common Elements.

## **I. Allocated Interests**

*I.1. Allocated Interests.* The Owners' respective undivided interest in the Common Elements, the Owners' respective Common Expense liability, and the Owners' respective votes in the Association allocated to each Unit are set forth in Exhibit [**exhibit number/letter**].

*I.2. Determination of Allocated Interests.* The interests allocated to each Unit have been calculated as follows:

- a. the undivided interest in Common Elements, on the basis of [**include the method of calculation used**];
- b. the percentage of liability for Common Expenses, on the basis of [**include the method of calculation used**]; and

- c. the number of votes in the Association, on the basis of [include the method of calculation used].

#### J. Amendment of Declaration

The Declaration may be amended by consent of Owners to which at least [67 percent of the votes (or higher for residential condominiums)/[smaller percentage] percent of the votes (if all units are restricted to nonresidential use)] in the Association are allocated—

1. by written ballot that states the exact wording or substance of the amendment and that specifies the date by which a ballot must be received to be counted;
2. at a meeting of the Members of the Association after written notice of the meeting has been delivered to an Owner of each Unit stating that a purpose of the meeting is to consider an amendment to the Declaration;
3. by unanimous written consent of the Owners; or
4. [other method].

#### K. Reconstruction after Loss

On a casualty to any portion of the Condominium for which insurance is required, the Association must promptly repair or replace that portion unless (1) the Condominium is terminated, (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) at least 80 percent of the Owners, including each Owner of a Unit or assigned Limited Common Element that will not be rebuilt or repaired, vote to not rebuild. Each unit owner may vote (in person or by proxy at a meeting; electronically or by written ballot in the absence of a meeting) regardless of whether the owner's unit or limited common element has been damaged or destroyed. Costs will be assessed and paid as provided in section 82.111 of the Act. [Specify alternative provisions if desired and if all units are restricted to



nonresidential use, as the provisions of section 82.111 of the Act may then be varied or waived.]

**L. Special Declarant Rights and Development Rights**

*L.1. Special Declarant Rights.* The Declarant reserves the following Special Declarant Rights:

- a. The right to complete or make improvements indicated on the Plats and Plans.
- b. The right to maintain sales offices, management offices, leasing offices, and models in Units or on the Common Elements, but only [**include limits in number, size, location, and relocation**].
- c. The right to maintain signs on the Condominium to advertise the Condominium.
- d. The right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the Act and this Declaration.
- e. The right to appoint or remove any officer of the Association or any director under paragraph E.2. or section 82.003(a)(22)(F) or 82.103(c) of the Act.

*L.2. Limitations on Special Declarant Rights.* Unless sooner terminated by a recorded instrument signed by the Declarant, any Special Declarant Right may be exercised by the Declarant [until [**date**]/for the period of time specified in the Act].

If development rights are reserved, this form will require substantial modification. See Tex. Prop. Code §§ 82.003(a)(12), 82.003(a)(22)(B), 82.055(14).

*L.3. Development Rights.* The Declarant reserves the following development rights: [specify rights reserved].

## M. General Provisions

*M.1. Term.* The Condominium may be terminated—

- a. by a taking of all of the Units by condemnation; or

Select one of the following.

- b. by the approval of 100 percent of the votes in the Association and each holder of a deed of trust or vendor's lien on a Unit.

Or

**Caution:** The number may not be less than 80 percent if any unit in the condominium regime is residential.

- b. by the approval of at least [percent] percent of the Members of the Association and each holder of a deed of trust or vendor's lien on a Unit.

*M.2. No Waiver.* Failure by the Association or an Owner to enforce the Dedicatory Instruments is not a waiver.

*M.3. Corrections.* The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.

*M.4. Conflict.* This Declaration controls over the other Dedicatory Instruments.

*M.5. Severability.* If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration.

*M.6. Notices.* Any notice required or permitted by the Dedicatory Instruments must be in writing. To the extent required by law, notices regarding remedial rights must be given by certified mail, return receipt requested. All other notices may be given by regular mail. Notice is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed to a Member at the Member's last known address according to the Association's records and the Association, the Board, or a managing agent at the Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Dedicatory Instruments, actual notice, however delivered, is sufficient.

---

[Name of declarant]

Include acknowledgment.

After recording, please return to:  
[name and address of declarant or attorney]

*[Reserved]*

Form 24-2

**Condominium Information Statement**  
**[name of condominium], a Condominium**  
[Tex. Prop. Code § 82.153]

Date:

Declarant:

Declarant's Address:

Condominium's Address:

Association:

Association's Address:

**A. Minimum and Maximum Number of Units**

The Condominium contains [number] units. [No additional units may be added to the Condominium./A maximum of [number] additional units may be added to the Condominium.]

**B. Development Rights**

The Declarant [does not reserve any development rights/reserves the following development rights: [list rights]].

The development rights are [not subject to any conditions or limits/subject to the following conditions or limits: [list limits]].

**C. Attachments**

1. Attached are copies of the [insert if declaration has not yet been recorded: proposed] Condominium declaration and the Association's certificate of formation, bylaws, and

rules and amendments to any of them. Also attached are copies of leases and contracts, other than loan documents, that are required by the Declarant to be signed by purchasers at closing.

2. Attached are copies of the Association's projected or pro forma budget in compliance with Texas Property Code section 82.153(b) for the first fiscal year of the Association following the date of the first conveyance to a purchaser, identification of the person(s) who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors.

3. Attached is a general description of each lien, lease, or encumbrance on or affecting the title to the Condominium after conveyance by the Declarant.

4. Attached is a copy of each written warranty provided by the Declarant.

5. Attached is a description of any unsatisfied judgments against the Association and any pending suits to which the Association is a party or which are material to the land title and construction of the Condominium that are known by the Declarant.

6. Attached is a general description of the insurance coverage provided for the benefit of unit owners.

7. Attached are the current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the Condominium.

For a condominium located wholly or partly in a municipality with a population of more than 1.9 million, the condominium information statement must include the following information.

#### **D. Service**

A unit owner—

1. as an alternative to personal service, may be served with process by the municipality or the municipality's agent for a judicial or administrative proceeding initiated by the municipality and directly related to the unit owner's property interest in the Condominium by serving the unit owner at the unit owner's last known address, according to the records of the appraisal district in which the Condominium is located, by any means permitted by rule 21a of the Texas Rules of Civil Procedure;

2. shall promptly notify the appraisal district in writing of a change in the unit owner's mailing address not later than the ninetieth day after the date the unit owner changes the address; and

3. may not offer proof in the judicial or administrative proceeding, or in a subsequent related proceeding, that otherwise proper service by mail of the notice was not received not later than three days after the date the notice was deposited in a post office or official depository under the care and custody of the United States Postal Service.

Continue with the following.

\_\_\_\_\_  
[Name of declarant]

By \_\_\_\_\_  
[Name and title]

*[Reserved]*



## Form 24-3

**Certificate of Formation of [name of corporation],  
a Texas [For-Profit/Nonprofit] Corporation**

1. *Name.* The name of the corporation is [name].
2. *Type of Filing Entity.* The type of filing entity being formed is a [for-profit/nonprofit] corporation.
3. *Purpose.* The purpose for which the filing entity is formed is to be the property owners association under the Declaration of [name of condominium], a condominium.
4. *Period of Duration.* The period of duration of the filing entity is perpetual.
5. *Initial Registered Office.* The street address of the initial registered office of the filing entity and the name of its initial registered agent at that address are:

Name: [name of registered agent]

Address: [address, city, state]

6. *Organizer.* The name and address of the organizer for the filing entity are:

Name: [name of organizer]

Address: [address, city, state]

Include the following for nonprofit only.

7. *Members.* The filing entity will be composed of Members.

Continue with the following.

[7./8.] *Initial Board of Directors.* The number of directors constituting the initial board of directors is [number], and their names and addresses are:

Name: [name]

Address: [address, city, state]

Repeat as necessary.

Signed on [date].

---

[Name of organizer]

## Form 24-4

## Bylaws of [name of association] [, Inc.]

## Basic Information

Association: [name], established by the certificate of formation filed with the secretary of state of Texas on [date] under file number [number], a Texas [for-profit/non-profit] corporation.

Principal Office:

Declaration: The Declaration of [name of condominium], a condominium, [include recording information].

Definitions: Capitalized terms used but not defined in the Bylaws have the meaning set forth in the Declaration.

Voting Members: Members entitled to vote or their proxies. Any Member delinquent in payment of any Assessment is not a Voting Member.

**A. Members and Members Meetings**

*A.1. Membership.* Every Owner is a Member of the Association. Membership is appurtenant to and may not be separated from ownership of a Unit.

*A.2. Place of Members Meetings.* Members meetings will be held at the Association's principal office or at another place designated by the Board.

*A.3. Annual Meetings.* The first Members meeting will be held within [number] months after the formation of the Association. Subsequent regular annual Members meetings

will be held on [describe meeting date taking into consideration when dues are payable, e.g., the first Sunday in June].

*A.4. Special Meetings.* The president, a majority of the Board, or Owners having at least 20 percent of the votes of the Association may call special meetings.

*A.5. Notice of Members Meetings.*

*A.5.a. Requirements.* Except as provided in paragraph F.5., written notice stating the place, day, and hour of each Members meeting, other than a reconvened meeting, must be given to each Member not less than [number (if the association is a nonprofit corporation, must be ten)] nor more than [number (if the association is a nonprofit corporation, must be sixty)] days before the meeting. The special Members meeting notices must also state the meeting's purpose, and no business may be conducted except as stated in the notice. Notice to a Member is deemed given when hand delivered or mailed. If mailed, notice is deemed given (whether actually received or not) when deposited with the United States Postal Service, properly addressed, postage prepaid. Upon written request of a Member, the Association shall inform the Member of the time and place of the next regular or special meeting of the Association Members.

*A.5.b. Meetings at which Amendments Considered.* The Members cannot meet to adopt an amendment or other change to the Declaration, articles of incorporation, bylaws, or rules of the Association (the "Governing Documents") unless written notice is given to each Member, in a document showing the specific amendment or other change that would be made to the Governing Documents, after the twentieth day but before the tenth day preceding the meeting, by either (i) personal delivery as shown by a receipt signed by the Member, or (ii) deposit in the United States mail as shown on the postmark date.

*A.6. Waiver of Notice.* A Member may, in writing, waive notice of a meeting. Attendance at a meeting is a waiver of notice of the meeting, unless the Member objects to lack of notice when the meeting is called to order.

Unless the bylaws provide otherwise, a quorum is determined by Tex. Prop. Code § 82.109.

*A.7. Quorum.* Members holding [**percent (if the association is a nonprofit corporation, must be more than ten; if the association is a for-profit corporation, consult Tex. Bus. Orgs. Code § 21.358)**] percent of the votes in the Association, in person or by proxy, are a quorum. If a Members meeting cannot be held because a quorum is not present, a majority of the Voting Members who are present may adjourn the meeting. At the reconvened meeting, [**percent (if the association is a nonprofit corporation, must be more than ten; if the association is a for-profit corporation, consult Tex. Bus. Orgs. Code § 21.358)**] percent of the Voting Members is a quorum. If a quorum is not present, a majority of the Voting Members who are present may adjourn the meeting. At the second reconvened meeting, [**percent (if the association is a nonprofit corporation, must be more than ten; if the association is a for-profit corporation, consult Tex. Bus. Orgs. Code § 21.358)**] percent of the Voting Members is a quorum. Written notice of the place, date, and hour of each reconvened meeting must be given to each Member not more than [**number (if the association is a nonprofit corporation, must be sixty)**] nor less than [**number (if the association is a nonprofit corporation, must be ten)**] days before the reconvened meeting.

*A.8. Majority Vote.* Votes representing more than 50 percent of the votes at a meeting at which a quorum is present are a majority vote.

*A.9. Proxies.* Voting Members may vote by written proxy.

*A.10. Conduct of Meetings.* The president will preside over Members meetings. The secretary will keep minutes of the meetings and will record Member action at the meeting in the minutes book.

**B. Board**

*B.1. Governing Body; Composition.* The affairs of the Association are governed by the Board. Each director has one vote. The initial Board is composed of the directors appointed in the certificate of formation. Each director must be a Member or, in the case of an entity Member, a person designated in writing to the secretary.

*B.2. Number of Directors.* The Board consists of not less than three nor more than [number] directors. Within those limits, the Board may change the number of directors. No decrease may shorten the term of a director.

*B.3. Term of Office.* The initial directors serve until the first annual meeting of Members.

Select one of the following.

The terms of directors will be staggered. At least one-third of the Board will be elected each year. The initial Board will determine the initial term, not to exceed three years, of each director. At the expiration of the initial term of a director, each successor will have a term of [number] years.

Or

Successor directors will have a term of one year.

Continue with the following.

Directors may serve consecutive terms.

*B.4. Election.* Within 120 days after Declarant has conveyed 50 percent of the Units to Owners other than Declarant, the Members shall elect not less than one-third of the Board members at a meeting held for such purpose. Not later than the 120th day after conveyance of 75 percent of the Units to Owners other than Declarant, the Voting Members will elect the directors of the Association and its officers as herein provided. At subsequent annual Members meetings, successors for each director whose term is expiring will be elected. Cumulative voting is prohibited. The candidate or candidates receiving the most votes will be elected. The directors elected by the Voting Members will hold office until their respective successors have been elected.

*B.5. Removal of Directors and Vacancies*

*B.5.a. Removal by Members.* Any director may be removed, with or without cause, by a majority of the Voting Members. Any director whose removal is sought will be given notice of the proposed removal.

*B.5.b. Removal by Board.* Any director may be removed at a Board meeting if the director—

- i. failed to attend [number] consecutive Board meetings;
- ii. failed to attend [percent] percent of Board meetings within one year;
- iii. is delinquent in the payment of any Assessment for more than [number] days; or
- iv. is the subject of an enforcement action by the Association for violation of the Dedicatory Instruments.

*B.5.c. Vacancies.* A director's position becomes vacant if the director dies, becomes incapacitated, resigns, or is no longer a Member.

*B.5.d. Successors.* If a director is removed or a vacancy exists, a successor will be elected by the remaining directors for the remainder of the term.

*B.6. Compensation.* Directors will not receive compensation. A director may be reimbursed for expenses approved by the Board.

*B.7. Powers.* The Board has all powers necessary to administer the Association's affairs.

*B.8. Management.* The Board may employ a managing agent and delegate specified powers of the Board to the managing agent. Declarant, or an affiliate of Declarant, may be the managing agent.

*B.9. Accounts and Reports.* Accounting must conform to good accounting practices. The Association shall obtain an annual audit of its records in accordance with section 82.114(c) of the Act. Accounts will not be commingled with accounts of other persons. The following financial reports will be prepared at least annually:

- a. An income statement reflecting all income and expense activity for the preceding period.
- b. A statement reflecting all cash receipts and disbursements for the preceding period.
- c. A variance report reflecting the status of all accounts in an "actual" versus "approved" budget format.
- d. A balance sheet as of the last day of the preceding period.
- e. A delinquency report listing all Owners who are delinquent by more than [number] days in paying any Assessment and describing the status of any action to collect those delinquent Assessments.



*B.10. Borrowing.* The Board may borrow money to maintain, repair, or restore the Common Elements without the approval of the Members. If approved in advance by the Members in the same manner as approving a Special Assessment, the Board may borrow money for any other purpose.

*B.11. Rights of Association.* With respect to the Common Elements, and in accordance with the Declaration, the Association will have the right to contract with any person for the performance of various duties and functions. Such agreements require the approval of the Board.

### **C. Board Meetings**

*C.1. Regular Meetings.* Regular meetings of the Board will be held at such time and place as determined by the Board, but at least [number] such meeting[s] will be held during each fiscal year. Notice of the time and place of the meeting[s] will be given to directors not less than [number] days and not more than [number] days before the meeting[s]. Board meetings must be open to Members, subject to the right of the Board to adjourn a meeting of the Board and convene in executive session to consider actions involving personnel, pending litigation, contract negotiations, enforcement actions, matters involving the invasion of privacy of Members, or matters that are to remain confidential by request of the affected parties and agreement of the Board. The general nature of any business to be considered in executive session must first be announced at the open meeting.

*C.2. Special Meetings.* Special meetings will be held when called by written notice signed by the president or by any [number] directors. The notice will specify the time and place of the meeting and the matters to be covered at the meeting.

*C.3. Subsequent Meetings.* Upon written request of a Member, the Association shall inform the Member of the time and place of the next regular or special meeting of the Board.

*C.4. Meetings at which Amendments Considered.* The Board cannot meet to adopt an amendment or other change to the Declaration, articles of incorporation, bylaws, or rules of the Association (the “Governing Documents”) unless the Board gives written notice to each Member, in a document showing the specific amendment or other change that would be made to the Governing Documents, after the twentieth day but before the tenth day preceding the meeting, by either (a) personal delivery as shown by a receipt signed by the Member, or (b) deposit in the United States mail as shown on the postmark date.

*C.5. Waiver of Notice.* The actions of the Board at any meeting are valid if (a) a quorum is present and (b) either (i) proper notice of the meeting was given to each director and all Members who are entitled to notice of the meeting or (ii) a written waiver of notice is given by any director who did not receive proper notice of the meeting and all Members who are entitled to notice of the meeting. Proper notice of a meeting will be deemed given to any director or Member who attends the meeting without protesting before or at its commencement about the lack of proper notice.

*C.6. Quorum of Board.* At all meetings, a majority of the Board will constitute a quorum, and the votes of a majority of the directors present at a meeting at which a quorum is present constitutes the decision of the Board. If the Board cannot act because a quorum is not present, a majority of the directors who are present may adjourn the meeting to a date not less than [number] nor more than [number] days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business that may have been transacted at the meeting originally called may be transacted without further notice.

*C.7. Conduct of Meetings.* The president will preside at Board meetings. The secretary will keep minutes of the meetings and will record in a minute book the votes of the directors.

Select one of the following.

*C.8. Action without Meeting.* Unless the Association's certificate of formation or the Declaration provides otherwise, the Board may act by unanimous written consent of all the directors, without a meeting, if (a) the Board action does not involve voting on a fine, damage assessment; appeal from a denial of architectural control approval, or suspension of a right of a particular Association Member before the Member has an opportunity to attend a Board meeting to present the Member's position, including any defense on the issue; and (b) a record of the Board action is filed with the minutes of Board meetings.

Or

*C.8. Action without Meeting.* The Board may not act without a meeting.

Include if the association is a nonprofit corporation.

*C.9. Proxies.* Directors may vote by written proxy provided, however, that any director present through written proxy may not be counted towards a quorum.

Continue with the following.

## **D. Officers**

*D.1. Officers.* The officers of the Association are a president, [vice president,] secretary, treasurer, and any other position designated by the Board. The officers have the authority and duties prescribed by the Board. Any two or more offices may be held by the same person, except the offices of president and secretary.

*D.2. Election, Term of Office, and Vacancies.* Officers will be elected annually by the Board at the first meeting of the Board following each annual meeting of the Voting Members. A vacancy in any office may be filled by the Board for the unexpired portion of the term.

*D.3. Removal.* The Board may remove any officer whenever, in the Board's judgment, the interests of the Association will be served thereby.

*D.4. Powers and Duties.* Officers have such powers and duties as are generally associated with their respective offices and as may be specifically conferred by the Board. The president is the chief executive officer of the Association. The treasurer has primary responsibility for the preparation of the budget and financial reports and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

*D.5. Resignation.* Any officer may resign at any time by giving written notice to the Board, the president, or the secretary. Resignation takes effect on the date of the receipt of the notice or at any later time specified in the notice.

## **E. Committees**

The Board may establish committees by resolution and authorize the committees to perform the duties described in the resolution.

## **F. Miscellaneous**

*F.1. Fiscal Year.* The Board may establish the Association's fiscal year by resolution. In the absence of a Board resolution determining otherwise, the Association's fiscal year is a calendar year.

*F.2. Rules for Meeting.* The Board may adopt rules for the conduct of meetings of Members, Board, and committees.

*F.3. Conflict.* The Declaration controls over these Bylaws.

*F.4. Examination of Books and Records*

*F.4.a. Examination by Member.* After a written request to the Association, a Member may examine and copy, in person or by agent, any Association books and records relevant to that purpose. The Board may establish rules concerning the (i) form of the request;

(ii) reasonable hours and days of the week for the inspection; and (iii) payment of costs related to a Member's inspection and copying of books and records.

*F.4.b. Examination by Director.* A director has the right, at any reasonable time and at the Association's expense, to examine and copy the Association's books and records at the Association's Principal Office and to inspect the Association's properties.

*F.5. Notices.* Any notice required or permitted by the Dedicatory Instruments must be in writing. Notices regarding enforcement actions must be given by certified mail, return receipt requested. All other notices may be given by regular mail. Notice is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed to a Member at the Member's last known address according to the Association's records and the Association, the Board, or a managing agent at the Association's Principal Office or another address designated in a notice to the Members. Unless otherwise required by law or the Dedicatory Instruments, actual notice, however delivered, is sufficient.

*F.6. Amendment.* These Bylaws may be amended only by [the vote of [percent] percent of the Voting Members in the Association/the vote of [percent] percent of the Members of the Board].

The officers who are authorized to prepare, execute, certify, and record amendments to the Declaration on behalf of the Association are as follows: [specify officers].

\_\_\_\_\_  
[Name of association]

By \_\_\_\_\_  
[Name and title]

Include acknowledgment.

*[Reserved]*

Form 24-5

**Management Certificate**

[Tex. Prop. Code § 82.116]

Name of Condominium: [name of condominium]

Name of Property Owners

Association: [name of association]

Condominium Location: [street address, city, state]

Plat [and Plan] Recording Data: The plat [and plan] of the condominium is recorded in [recording data] of the real property records of [county] County, Texas

Declaration Recording Data: The Declaration recorded in [recording data] of the real property records of [county] County, Texas

Mailing Address of Association: [address, city, state]

Include the following if applicable.

Name of Person Managing  
Association or Association's

Designated Representative: [name of person managing association or  
association's designated representative]

Mailing Address of Person Managing  
Association or Association's

Designated Representative: [address, city, state]

Continue with the following.

[Include other information the association considers appropriate.]

---

[Name of officer]

[Title]

Repeat as necessary.

The undersigned hereby certifies that [he/she] is the duly elected and qualified president of [name of association], that [name] is the duly elected and qualified [secretary/[other officer]] of [name of association], that the signature above is [name]'s genuine signature, and that the foregoing certificate is true and correct.

---

[Name of president]



Form 24-6

**Resale Certificate**  
[Tex. Prop. Code § 82.157]

**Basic Information**

Date:

Unit:

Condominium:

Association:

Association's Address:

Managing agent of Condominium:

Managing agent's Address:

**Notice**

The Unit [is/is not] subject to a right of first refusal or other restraint that restricts the Owner's right to transfer the Unit.

Current regular assessment:                      \$[amount] per [time period, e.g., month]

Unpaid regular assessments and  
special assessments attributable  
to the Unit:    \$[amount]

Other unpaid fees or amounts

payable to the Association

by the Owner: \$[amount]

Capital expenditures approved by

Association for current fiscal year: \$[amount]

Reserves for capital expenditures and

any portions of the reserves dedicated

for specified projects: \$[amount]

Unsatisfied judgments against

Association: [\$[amount] or state "none"]

Nature of any pending suits against the

Association: There [are/are not any] suits pending against the Association. [Include if applicable: The style and cause number of each pending suit are [describe any pending suits].]

Insurance coverage provided for the

benefit of Unit Owners: [describe insurance coverage]

Transfer fee(s):

[describe each fee in detail, including who it is payable to and the amount]

The Board has [knowledge/no knowledge] that any alterations or improvements to the Unit or the limited common elements assigned to the Unit violate the Declaration, Bylaws, or Association Rules.

The Association [has/has not] received notice from any governmental authority regarding health or building code violations with respect to the Unit, the limited common elements

assigned to the Unit, or any other portion of the Condominium. **[Include if applicable:**

A summary or copy of each notice is attached.]

Include the following if applicable.

The remaining term of any leasehold estate that affects the condominium is **[description of remaining term]**, and the provisions governing an extension or renewal of the lease are as follows: **[Describe provisions.]**

Continue with the following.

A copy of the current Operating Budget and the current Balance Sheet for the Association is attached.

**[Name of association]**

By \_\_\_\_\_  
**[Name and title]**

*[Reserved]*

**Form 24-7**

Pursuant to Tex. Prop. Code § 82.156, if the purchaser from a seller other than a declarant has not received a resale certificate before the purchaser executes the contract, the purchaser has the right to cancel the contract before the sixth day after the purchaser receives the resale certificate or executes a waiver pursuant to Tex. Prop. Code § 82.157, whichever occurs first. A copy of a condominium resale certificate promulgated by the Texas Real Estate Commission is available at <https://www.trec.texas.gov/pdf/contracts/32-4.pdf>.

Pursuant to Tex. Prop. Code § 82.157, a condominium association is required to furnish a resale certificate no later than the tenth day after the date of receiving a written request from the selling unit owner. If a condominium association fails to furnish the resale certificate within the ten-day period, the selling unit owner may deliver to the purchaser a sworn affidavit in lieu of the resale certificate and the seller and purchaser may agree in writing to waive the requirement of the seller delivering the resale certificate.

This form may be modified to use as additional clauses in the sales contract.

---

**Waiver of Condominium Resale Certificate**

Seller:

Buyer:

Contract Effective Date:

Condominium Association:

Description of Condominium:

Seller has advised Buyer that the Condominium Association has failed to issue a resale certificate within ten days after Seller's written request for the Condominium Association to issue the resale certificate. Seller has delivered to Buyer a sworn affidavit setting out the information required in the resale certificate. Seller and Buyer hereby waive the requirement for the Condominium Association to issue a resale certificate incident to sale of the [Property/ Condominium described above].

---

[Name of seller]

Date:

---

[Name of buyer]

Date:

Form 24-8

**Acknowledgment of Receipt of Condominium Documents**

Seller:

Buyer:

Contract Effective Date:

Condominium Owners Association:

Description of Condominium:

Select one of the following.

Buyer has received copies of the declaration, bylaws, rules of the Condominium Owners Association, and the [Declarant's Condominium Information Statement/Resale Certificate]. Seller has recommended to Buyer that Buyer read these documents before executing the contract.

Or

Buyer has not received copies of the declaration, bylaws, rules of the Condominium Owners Association, and the [Declarant's Condominium Information Statement/Resale Certificate]. Seller will deliver these documents to Buyer within [number] days after the Contract Effective Date. Buyer has the right to cancel the contract before the sixth day after Buyer receives copies of these documents by delivering written notice of cancellation to Seller.

Continue with the following.

\_\_\_\_\_  
[Name of seller]

Date:

---

[Name of buyer]

Date:



Form 24-9

**Certificate of Condominium Association's  
Waiver of Right of First Refusal**

**Basic Information**

Date:

Association:

Condominium:

Address:

Recording Information under Which Right of First Refusal Arises: [include volume and page  
number where right of first refusal can be found in declaration.]

Include information in the contract of sale for which the association is waiving right of first refusal.

Contract of Sale

Seller:

Buyer:

Date:

Unit:

**Waiver**

The Association hereby certifies that—

1. the Seller of the Condominium Unit has complied with the requirements that the Unit be first offered for sale to the Association; and

2. the Association has declined to purchase the Unit and hereby waives its right of first refusal to purchase the Unit under the Contract of Sale.

The Association reserves its Right of First Refusal regarding any future sales of the Unit or under terms other than as set forth in the Contract of Sale.

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[Name of association]

Include acknowledgment as necessary.

Form 24-10

**Record of Unit \_\_\_\_\_  
of \_\_\_\_\_, a Condominium**

Pursuant to Texas Property Code section 82.114(e), each owner of a condominium unit is required to provide the condominium association with the following information related to the unit:

1. Owner name(s) \_\_\_\_\_
2. Owner mailing address(es) \_\_\_\_\_  
\_\_\_\_\_
3. Owner telephone number(s) \_\_\_\_\_
4. Owner driver's license  
number(s), including state \_\_\_\_\_
5. Owner e-mail address(es)  
(Optional) \_\_\_\_\_
6. Lienholder name(s) \_\_\_\_\_
7. Lienholder address(es) \_\_\_\_\_  
\_\_\_\_\_
8. Loan number(s) \_\_\_\_\_
9. Name and telephone number  
of each person occupying  
the unit other than owner \_\_\_\_\_  
\_\_\_\_\_

10. Name, address and  
telephone number of any  
person managing the  
unit as agent of owner

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If you need more space to provide this information, please add the information on a blank sheet and attach it to this sheet.

Texas Property Code section 82.114(f) states, "A unit owner shall notify the association not later than the 30th day after the date the owner has notice of a change in any information required by Subsection (e), and shall provide the information on request by the association from time to time."

Form 24-11

**Rules of [name of condominium owners association][, Inc.]**

Date:

Association: [name], established by the certificate of formation filed with the secretary of state of Texas on [date] under file number [number].

Association's Address:

Declaration: The Declaration of [name of condominium], a condominium, [include recording information].

Definitions: Capitalized terms used but not defined in the Rules have the meaning set forth in the Declaration or Bylaws.

The Association adopts these Rules, which will be enforceable on the recording of this document in the real property records of the [county/counties] in which the property described by the Declaration is located. On violation of these Rules, owners may be subject to Penalties for Violation.

**A. Rules**

Insert the rules that the association wants to adopt. Consider the following subject areas: use of common areas (including swimming pools and recreation facilities), architectural and building rules, parking of vehicles, pet control, nuisances, trash collection, etc. Review the Texas Property Code for prohibited rules (e.g. restrictions concerning rain barrels and xeriscaping (Tex. Prop. Code § 202.007(d)(6)); solar energy devices (Tex. Prop. Code § 202.010); roof shingles (Tex. Prop. Code § 202.011); flags and flagpoles (Tex. Prop. Code § 202.012); religious items (Tex. Prop. Code § 202.018); and speed feedback signs (Tex. Transp. Code § 430.002)).

## B. Penalties for Violation

Insert penalties for violation by type of violation.

## C. Enforcement Procedures

1. *Charges and Fines.* Before the Association may charge a Unit Owner for property damage or levy a fine for violation of the Declaration, Bylaws, or these Rules, the Association must give to the Unit Owner a written notice that (a) describes the violation or property damage; (b) states the amount of the proposed fine or damage charge; (c) states that not later than the thirtieth day after the date of the notice, the Unit Owner may request a hearing before the Board to contest the fine or damage charge; and (d) allows the Unit Owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the Unit Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve months.

2. *Notices.* The Association must give notice of a levied fine or damage charge to the Unit Owner not later than the thirtieth day after the date of levy.

Insert any additional procedures for enforcement of the rules, consistent with the foregoing.

**D. Amendments to Rules**

No Rule can be amended unless the Association gives written notice to each Unit Owner in a document stating the specific amendment or other change that would be made to the Rule, after the twentieth day but before the tenth day preceding the meeting at which the Rule amendment is to be considered, by either (a) personal delivery as shown by a receipt signed by the Unit Owner, or (b) deposit in the United States mail as shown on the postmark date.

[Name of association]

By \_\_\_\_\_  
[Name and title]

Include acknowledgment.

*[Reserved]*



Form 24-12

**Unanimous Written Consent of Condominium Association Board  
of Directors for Approval of Secured Loan under  
Texas Property Code § 82.102(f)**

Effective Date:

Condominium Association: [name], a Texas [for-profit/nonprofit] corporation

Lender:

Loan Amount:

Security Documents: Security Agreement  
Transfer of Assessment Lien

Authorized Representative:

WHEREAS the board of directors of the Condominium Association has determined that it is in the best interest of the Association to borrow the Loan Amount from Lender (the "Loan"), and to secure the Loan with the Security Documents;

Include the following if applicable under  
Tex. Prop. Code § 82.102(g).

AND WHEREAS the Condominium dedicatory instruments require a vote of the members of the Condominium Association to borrow money or assign the Condominium Association's lien rights;

Continue with the following.

THEREFORE, the undersigned, being all the members of the board of directors of the Condominium Association, acting pursuant to the provisions of section 82.108(c)(2) of the

Texas Property Code and section 6.201 of the Texas Business Organizations Code, adopt by consent the following resolutions:

RESOLVED, that [**include if applicable:** upon approval by [**select one of the following:** the number of the Condominium Association members required by the Condominium dedicatory instruments/67 percent of all voting interests], with members casting votes [**select one or more of the following:** electronically/by absentee ballot /in person or by proxy at a meeting called for the purpose of the vote/by written consent], the Condominium Association is authorized to borrow the Loan Amount from Lender and to sign a promissory note in the Loan Amount payable to the order of Lender (the "Note").

RESOLVED FURTHER, that to secure the payment of the Note, the Condominium Association is authorized to enter into and sign a Security Agreement and a Transfer of Assessment Lien on the individual condominium units (the "Lien") and any necessary modifications, extensions, increases, and renewals of the Note and Lien, as applicable.

RESOLVED FURTHER, that the Condominium Association is authorized to enter into any assignments, pledges, security agreements, and other documents and instruments concerning any personal property, or any interest therein, and [**include the following for condominiums for which the declaration was recorded after December 31, 1993, unless the condominium formed before January 1, 1994, has elected to be governed exclusively by Texas Property Code chapter 82 pursuant to section 82.002(a):** mortgages, deeds of trust, and other documents and instruments governing any real property, or any interest therein] owned by the Condominium Association that may be necessary or appropriate, or required by Lender, to evidence and secure the payment of the Note.

RESOLVED FURTHER, that the Authorized Representative is authorized to execute and deliver, on behalf of and in the name of the Association, the Note, the Security Documents, and any other agreements, documents, or instruments, and to take or cause to be taken

any action necessary or appropriate in connection with the Note and the Security Documents or to accomplish the purposes of these resolutions, in the form and with the provisions the Authorized Representative may deem proper.

\_\_\_\_\_  
[Name of director]

Date:

Repeat for each director. If the association is a nonprofit corporation, the consent must state the date of each director's signature. Tex. Bus. Orgs. Code § 22.220.

*[Reserved]*

**Form 24-13**

**Security Agreement and Transfer of Lien  
(from Condominium Association)**

[Tex. Prop. Code § 82.102(f)]

**Basic Information**

Date:

Borrower/Condominium Association:

Borrower/Condominium Association's Mailing Address:

Condominium Declaration: [insert recording information, including amendments]

Lender/Secured Party:

Lender/Secured Party's Mailing Address:

Collateral: All of Condominium Association's interest in the following personal property and all supporting obligations and proceeds of (1) Condominium Association's rights to future income, including the right to receive assessments from the owner(s) of the Condominium Units; and (2) Condominium Association's lien rights under Texas Property Code section 82.113 and the Condominium Declaration ("Lien Rights").

Property (including any improvements): Each of the individual Condominium Units and their appurtenant common elements (collectively a "Unit").

Note

Date:

Original principal amount:

Maturity date:

Prior Lien(s): [as stated in the condominium declaration and Texas Property Code section 82.113(b)]

Unit Owners Assessment Obligations: [as set forth in Texas Property Code sections 82.112 and 82.113 and the condominium declaration]

**Granting Clause; Transfer of Lien; Subordination of Payment Rights;  
Power of Attorney and Indemnification**

To secure the Note and all renewals, modifications, and extensions of the Note, Condominium Association (1) grants to Secured Party a security interest in the Collateral and all its proceeds; (2) authorizes Secured Party to file a financing statement describing the Collateral; (3) assigns, transfers, and conveys to Secured Party all amounts due on the Unit Owners Assessment Obligations; and (4) warrants that the Lien Rights are valid against the Property in the priority indicated. Condominium Association expressly subordinates its right to payment from enforcement of Lien Rights to Lender's right to payment. If a default exists on the Note or any other agreement with Lender related to the Note, Condominium Association assigns to Lender the right to levy assessments against the owners of and the individual condominium Units in the Property to pay the Note.

**Condominium Association indemnifies Lender from all claims made against or incurred by Lender from any action in connection with the Unit Owners Assessment Obligations or the Lien Rights documents.**

**A. Condominium Association Represents the Following:**

A.1. Condominium Association's place of business is located at [**select one of the following:** the management office identified in Condominium Association's Management Certificate recorded in the county in which Condominium Association is located/[**address, city, state**]].

A.2. [**Select one of the following:** Condominium Association's state of organization is Texas/Condominium Association is an unincorporated association], and Condominium Association's name, as shown in any public organic record, as amended, is exactly as set forth above.

A.3. Condominium Association's records concerning the Collateral are located at [**select one of the following:** the management office identified in Condominium Association's Management Certificate recorded in the county in which Condominium Association is located/[**address, city, state**]].

A.4. No financing statement covering the Collateral is filed in any public office [**include if the secured party has prefiled a financing statement or otherwise has a financing statement on file:** except any financing statement in favor of Secured Party].

A.5. Condominium Association owns the Collateral and has the authority to grant this security interest, free from any setoff, claim, restriction, security interest, or encumbrance except liens for taxes not yet due and the Prior Liens.

A.6. All information about Condominium Association's financial condition is or will be accurate when provided to Secured Party.

A.7. If Texas Property Code section 82.102(g) applies to this transaction, the Note and pledge of Collateral have been approved in the manner set forth in Condominium Association's dedicatory instruments.

A.8. There are no defenses or offsets to the Unit Owners Assessment Obligations.

*A.9.* The Unit Owners Assessment Obligations represents the valid, legally enforceable obligation of each Condominium Unit owner.

*A.10.* Secured Party is the holder of the Lien Rights and the sole party with power to appoint a person to exercise the power of sale under the Lien Rights or request such person to act. Any foreclosure action requested by Condominium Association is voidable at the election of Lender.

**B. Condominium Association Agrees to—**

*B.1.* Defend the Collateral against all claims adverse to Secured Party's interest; pay any taxes imposed on the Collateral; keep the Collateral free from liens, except for liens in favor of Secured Party or for taxes not yet due; and keep the Collateral in Condominium Association's possession and ownership except as otherwise provided in this agreement.

*B.2.* Pay all Secured Party's expenses, including reasonable attorney's fees and legal expenses, incurred to (a) obtain, preserve, perfect, defend, or enforce this agreement; (b) retake, hold, prepare for disposition, dispose of, collect, or enforce the Collateral; or (c) collect or enforce the Note or Lien Rights. These expenses will bear interest from the date of advance at the rate stated in the Note for matured, unpaid amounts and are payable on demand at the place where the Note is payable. These expenses and interest are part of the Note and are secured by this agreement.

*B.3.* Sign and deliver to Secured Party any documents or instruments that Secured Party considers necessary to obtain, maintain, and perfect this security interest in the Collateral.

*B.4.* Notify Secured Party immediately of (a) any delay in payment of any Unit Owners Assessment Obligation, (b) any event of default, and (c) any change (i) in the Collateral or claim made in regard to the Collateral, (ii) in Condominium Association's Name or



Mailing Address, (iii) in the location of any Collateral, (iv) in any other representation or warranty in this agreement, or (v) that may affect this security interest.

*B.5.* Maintain accurate records of the Collateral at the address set forth above, furnish Secured Party any requested information related to the Collateral, and permit Secured Party to inspect and copy all records relating to the Collateral.

*B.6.* Cause the Unit owners to pay and perform all obligations related to the Unit Owners Assessment Obligations, and preserve (a) the liability of all obligors on the Collateral and (b) the priority of all security for the Collateral.

*B.7.* On Secured Party's demand, deposit and hold payments, including instruments, items, and money received as proceeds of the Collateral, separate and in an express trust for Secured Party and deposit all such payments received as proceeds of the Collateral in a special bank account designated by Secured Party, who alone will have power of withdrawal.

*B.8.* Levy assessments sufficient to pay the Note and all other Condominium Association obligations.

*B.9.* Apply all proceeds from the Unit Owners Assessment Obligations in excess of funds needed for usual and customary Condominium Association obligations to pay the Note, but if the proceeds exceed the amount due under the Note, Condominium Association may retain the excess.

**C. Condominium Association Agrees Not to—**

*C.1.* Sell, transfer, or encumber the Collateral.

*C.2.* Change its name or jurisdiction of organization, merge or consolidate with any person, or convert to a different entity without notifying Secured Party in advance and taking action to continue the perfected status of the security interest in the Collateral.

C.3. Modify any provision of the Condominium documents relating to the levy of assessments, Condominium Association's lien to secure payment of assessments, or the enforcement of Condominium Association's lien.

C.4. Forgive, extend, or modify the Unit Owners Assessment Obligations or grant releases of any part of the property securing the Unit Owners Assessment Obligations.

C.5. Modify any terms of the Unit Owners Assessment Obligations except as may be required by law.

#### D. Default and Remedies

D.1. A default exists if—

- a. Condominium Association fails to timely pay or perform any obligation, covenant, or liability in any written agreement between Secured Party and Condominium Association related to the Note;
- b. any representation in this agreement or in any other written agreement between Secured Party and Condominium Association is materially false when made;
- c. a receiver is appointed for Condominium Association or any Collateral;
- d. any Collateral is assigned for the benefit of creditors;
- e. a bankruptcy or insolvency proceeding is commenced by Condominium Association [**include if applicable:** or any Unit Owner];
- f. a bankruptcy or insolvency proceeding is commenced against Condominium Association [**include if applicable:** or Unit Owner(s) representing [**percent**] percent ownership interests in the common elements] and the

proceeding continues without dismissal for sixty days, the party against whom the proceeding is commenced admits the material allegations of the petition against it, or an order for relief is entered;

- g. any of the following parties is terminated, begins to wind up its affairs, is authorized to terminate or wind up its affairs by its governing body or persons, or any event occurs or condition exists that permits the termination or winding up of the affairs of any of the following parties: Condominium Association [**include if applicable:** or Unit Owner(s) representing [**percent**] percent ownership interests in the common elements]; or
- h. any Collateral or Condominium Unit is impaired by loss, theft, damage, levy and execution, issuance of an official writ or order of seizure, or destruction, unless it is promptly replaced with collateral of like kind and quality or restored to its former condition.

D.2. If a default exists, Secured Party may—

- a. demand, collect, convert, redeem, settle, compromise, release, receipt for, realize on, sue for, foreclose on, and adjust any Collateral either in Secured Party's or Condominium Association's name, as Secured Party desires, or take control of any proceeds of the Collateral and apply the proceeds against the Note;
- b. take possession and control of any Collateral not already in Secured Party's possession, without demand or legal process, and for that purpose Condominium Association grants Secured Party the right to enter any premises where the Collateral may be located;

- c. without taking possession, sell, lease, or otherwise dispose of the Collateral through or at any public or private sale in accordance with law;
- d. exercise any rights and remedies granted by law or this agreement;
- e. notify obligors on the Collateral to pay Secured Party directly and enforce Condominium Association's rights against such obligors;
- f. as Condominium Association's agent, make any endorsements in Condominium Association's name and on Condominium Association's behalf; or
- g. permit Condominium Association to use any Collateral to pay other Association obligations.

*D.3.* Foreclosure on any Collateral Lien Rights or of this security interest by suit does not limit Secured Party's remedies, including the right to sell the Collateral under the terms of this agreement. Secured Party may exercise all remedies at the same or different times, and no remedy is a defense to any other. Secured Party's rights and remedies include all those granted by law and those specified in this agreement.

*D.4.* Secured Party's delay in exercising, partial exercise of, or failure to exercise any of its remedies or rights does not waive Secured Party's rights to subsequently exercise those remedies or rights. Secured Party's waiver of any default does not waive any other default by Condominium Association. Secured Party's waiver of any right in this agreement or of any default is binding only if it is in writing. Secured Party may remedy any default without waiving it.

*D.5.* Secured Party has no obligation to prepare the Collateral for sale.

*D.6.* At any time Secured Party may contact obligors on the Collateral directly to verify information furnished by Condominium Association.

*D.7.* Secured Party has no obligation to collect the Collateral and is not liable for failure to collect the Collateral, for failure to preserve any rights pertaining to the Collateral, or for any act or omission on the part of Secured Party or Secured Party's officers, agents, or employees, except willful misconduct.

*D.8.* Secured Party has no obligation to satisfy the Note by attempting to collect the Note from any other person liable for it. Secured Party may release, modify, or waive any collateral provided by any other person to secure the Note. If Secured Party attempts to collect the Note from any other person liable for it or releases, modifies, or waives any collateral provided by any other person, that will not affect Secured Party's rights against Condominium Association. Condominium Association waives any right Condominium Association may have to require Secured Party to pursue any third person for the Note.

*D.9.* If Secured Party must comply with any applicable state or federal law requirements in connection with a disposition of the Collateral, such compliance will not be considered to adversely affect the commercial reasonableness of a sale of the Collateral.

*D.10.* Secured Party may sell the Collateral without giving any warranties as to the Collateral. Secured Party may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of a sale of the Collateral.

*D.11.* If Secured Party sells the Collateral on credit, Condominium Association will be credited only with payments actually made by the purchaser and received by Secured Party for application to the indebtedness of the purchaser. If the purchaser fails to pay for the Collateral, Secured Party may resell the Collateral and Condominium Association will be credited with the proceeds of the sale.

*D.12.* If Secured Party purchases any Collateral foreclosed on or being sold, Secured Party may pay for the Collateral by crediting the purchase price against the Note.

*D.13.* Secured Party has no obligation to marshal any assets in favor of Condominium Association or against or in payment of the Note or any other obligation owed to Secured Party by Condominium Association or any other person.

*D.14.* If any foreclosure under Lien Rights occurs or any Collateral is sold after default, recitals in the deed, bill of sale, or transfer will be prima facie evidence of their truth and all prerequisites to the sale specified by this agreement and by law will be presumed satisfied.

*D.15.* Secured Party may elect not to collect the Unit Owners Assessment Obligations, but that election will not prejudice Secured Party's right to collect the Unit Owners Assessment Obligations subsequently. Secured Party will never be liable for failure to collect the Unit Owners Assessment Obligations but will be accountable for the Unit Owners Assessment Obligations received.

*D.16.* By exercising rights and remedies under this assignment, Secured Party does not waive the right to enforce the Note or any other agreement.

*D.17.* Secured Party's collection of the Unit Owners Assessment Obligations does not relieve Condominium Association of any obligations in the Note or any other agreement.

*D.18.* Secured Party may exercise its rights and remedies without taking possession of the Collateral or of any Unit after foreclosure.

## **E. General**

*E.1.* Notice is reasonable if it is mailed, postage prepaid, to Condominium Association at Condominium Association's Mailing Address at least ten days before any public sale of any Collateral or ten days before the time when the Collateral may be otherwise disposed of without further notice to Condominium Association.

*E.2.* This security interest will neither affect nor be affected by any other security for the Note. Neither extensions of the Note nor releases of the Collateral will affect the priority or validity of this security interest.

*E.3.* This agreement binds, benefits, and may be enforced by the successors in interest of Secured Party and will bind all persons who become bound as debtors to this agreement. Assignment of any part of the Note and Secured Party's delivery of any part of the Collateral will fully discharge Secured Party from responsibility for that part of the Collateral. If such an assignment is made, Condominium Association will render performance under this agreement to the assignee. Condominium Association waives and will not assert against any assignee any claims, defenses, or setoffs that Condominium Association could assert against Secured Party except defenses that cannot be waived.

*E.4.* This agreement may be amended only by an instrument in writing signed by Secured Party and Condominium Association.

*E.5.* The unenforceability of any provision of this agreement will not affect the enforceability or validity of any other provision.

*E.6.* This agreement will be construed according to Texas law, without regard to choice-of-law rules of any jurisdiction. This agreement is to be performed in Texas.

*E.7.* Interest on the Note secured by this agreement will not exceed the maximum 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 on the principal of the Note or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess will be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the Note or, if the principal of the Note has been paid, refunded. This provision overrides any conflicting provisions in this and all other instruments concerning the Note.

E.8. At Condominium Association's expense, upon payment of the Note and any other obligations to Secured Party, Secured Party will sign a release in recordable form.

E.9. Secured Party does not have or assume any obligations as a condominium association to any Unit owner or occupant of any Unit.

E.10. When the context requires, singular nouns and pronouns include the plural.

E.11. Any term defined in sections 1.101 to 9.709 of the Texas Business and Commerce Code and not defined in this agreement has the meaning given to the term in the Code.

\_\_\_\_\_  
[Name of condominium association]

By \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its Authorized Representative

Include acknowledgement.





## Chapter 25

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## Chapter 25

### Leases

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#### § 25.1 General Considerations

The basic lease form (form 25-1 in this chapter) contains the minimal terms necessary for a lease. Although the form could be used as written in appropriate circumstances, its primary purpose is as a drafting tool, a core lease from which to draft for the particular situation. This lease has been adapted for use in various circumstances. Form 25-5 is a residential lease form derived from the basic lease form but containing the necessary modifications to convert the basic lease into a residential lease. The basic lease has also been adapted for use as a retail lease (form 25-2), an office lease (form 25-3), an industrial lease (form 25-6), and a manufactured-home community lease (form 25-29).

#### § 25.1:1 Definition of a Lease

A lease is a conveyance of real property for a designated period of time with a reversionary interest in the lessor. Over time, the newer concepts of contract law have crept into use with the older property law, and the lease has become a hybrid of a conveyance and a contract between the landlord and the tenant. The landlord-tenant relationship is governed by title 8 of the Texas Property Code as well as by other statutes and a large body of case law. Title 8 of the Texas Property Code is divided into four chapters: chapter 91 (Provisions Generally Applicable to Landlords and Tenants), chapter 92 (Residential Tenancies), chapter 93 (Commercial Tenancies), and chapter 94 (Manufactured Home Tenancies).

#### § 25.1:2 Statute of Frauds

If the term of the lease is more than one year, the lease is unenforceable unless it is in writing and signed by the party to be charged with its covenants. Tex. Bus. & Com. Code § 26.01, Tex. Prop. Code § 5.021. Certain provisions of the Property Code require that the lease be signed by both parties for the lease to serve as an exception to the statutory provisions. *See, e.g.*, Tex. Prop. Code § 91.001(e)(1). Other provisions of the Property Code may not be waived by the lease. *See, e.g.*, Tex. Prop. Code § 92.008(g). Manufactured-home community leases must be in writing and signed by both the landlord and the tenant. Tex. Prop. Code § 94.053(a).

#### § 25.1:3 Caution: Property Description

As a general rule a lease must contain, within itself or by reference to some other existing writing, the means or data by which the premises to be leased may be identified with reasonable certainty. *Hebisen v. Nassau Development Co.*, 754 S.W.2d 345, 351 (Tex. App.—Houston [14th Dist.] 1988, writ denied), *overruled on other grounds by Formosa Plastics Corp. v. Presidio Engineers & Contractors, Inc.*, 960 S.W.2d 41 (Tex. 1998). The rule for leases is derived from the general rule for sales and conveyance of real estate. *See, e.g. Pick v. Bartel*, 659 S.W.2d 636, 637 (Tex. 1983); *Morrow v. Shotwell*, 477 S.W.2d 538, 539 (Tex. 1972). A manufactured-home community lease agreement must contain the address or number of the manufactured-home lot. Tex. Prop. Code § 94.053(c)(1).

If the lease agreement contains no adequate description of the leased premises, it is unenforceable. If the leased premises are identified only by a suite number or a diagram on an example or an attached exhibit, such as a schematic of an undesignated floor of the building or project of which the leased premises are a part, the lease may be unenforceable. Sometimes the schematic of the undesignated floor shows a certain section by crosshatches, but if there is no metes-and-bounds or lot and block number from a plat description of the entire project there is no legal description of the leased premises. *See, e.g. River Road Neighborhood Ass'n v. South Texas Sports*, 720 S.W.2d 551 (Tex. App.—San Antonio 1986, writ dismissed); *Lubel v. J.H. Uptmore & Associates*, 680 S.W.2d 518 (Tex. App.—San Antonio 1984, no writ).

#### § 25.1:4 Cautions: Risk Allocation

**Indemnities and Waivers:** The indemnity provisions of the multitenant building or project lease forms are designed to protect the respective parties from their own ordinary negligence (but not gross negligence or willful misconduct) on a geographic basis; that is, the tenant indemnifies the landlord for any damage or injury occurring within the premises, whether or not the ordinary negligence of the landlord is a cause of the damage or injury, and the landlord indemnifies the tenant for any damage or injury occurring within the common areas, whether or not the ordinary negligence of the tenant is a cause of the damage or injury. The waiver of subrogation provision contained in the multitenant building or project lease forms releases both parties from liability for property damage and loss of revenues up to the limits of the property insurance coverages required to be carried under the lease, notwithstanding the ordinary negligence of the party causing the property damage or loss of revenues. The indemnity and waiver provisions are designed to comply with the two-pronged “fair notice doctrine” under Texas case law: (1) the “express negligence

rule” set forth in *Ethyl Corp. v. Daniel Construction Co.*, 725 S.W.2d 705 (Tex. 1987), and (2) the “conspicuousness rule” enunciated in *Dresser Industries, Inc. v. Page Petroleum, Inc.*, 853 S.W.2d 505 (Tex. 1993).

**Insurance:** It is critical that the parties consult with their insurance professionals to determine the exact insurance coverages to be included on the insurance addendum incorporated into the lease form or, if applicable, the separate insurance addendum (forms 25-34 and 25-35 in this chapter) and that the attorneys tailor the indemnity and casualty provisions in response to the actual insurance policies that will be carried by the parties.

**Rebuilding Obligations:** The restoration obligations of the parties after a casualty are tied to the description of “Tenant’s Rebuilding Obligations” contained in the Basic Terms of the lease. The tenant is expected to restore those leasehold improvements described in “Tenant’s Rebuilding Obligations” in addition to replacing its personal property (including inventory, furniture, trade fixtures, and equipment). Because the tenant should carry property insurance to cover its restoration obligations, a detailed description is imperative. See clauses 25-10-8, 25-10-9, and 25-10-10. The landlord’s restoration obligations are defined in terms of the portions of the premises that the tenant is not required to rebuild.

For example, the tenant may be receiving the space in shell condition and be responsible for the initial construction of all leasehold improvements. The parties may decide that the tenant will restore all of the leasehold improvements inside the shell if the premises are destroyed. At the other extreme, the tenant may be receiving the premises with existing leasehold improvements, and the parties may decide that the landlord should restore all leasehold improvements after a casualty. Obviously the possibilities are infinite and depend on the economic underpinnings of the transaction as well as the relative

sophistication of the parties. However, the question must be asked at the outset of the transaction so that both parties are clear about the allocation of the risk for restoration and that adequate property insurance is obtained.

### § 25.1:5 Fair Credit Reporting Act

The Fair Credit Reporting Act, 15 U.S.C. §§ 1681–1681x, applies to landlords who use consumer reports in screening prospective tenants. If the landlord takes adverse action based in whole or in part on a consumer report, the landlord is required to provide the prospective tenant with a notice of adverse action meeting the requirements of section 1681m of the Act. 15 U.S.C. § 1681m(a)(1). A consumer report includes a credit report from a credit bureau or from a tenant-screening service. *See* 15 U.S.C. § 1681(d). Adverse action includes a denial of the application or a requirement for a deposit, a higher deposit, or higher rent than would have been required of other tenants. *See* 15 U.S.C. § 1681(k).

Landlords who furnish information regarding a tenant to a credit reporting agency must comply with the duties set out in section 1681s–2 of the Act, including the duty to furnish correct information, to correct and update information, and to investigate disputed information. *See* 15 U.S.C. § 1681s–2.

### § 25.1:6 Condemnation

The lease forms in this chapter provide that a lease will terminate if, as a result of condemnation or conveyance in lieu thereof, the premises cannot be used for the purposes provided by the lease. They also provide that the tenant is not entitled to any proceeds from the condemnation except for relocation benefits or awards that are available to the tenant but that do not reduce the award or proceeds payable to the landlord. The federal government provides relocation benefits, moving expenses, and similar payments to per-

sons relocated as a result of condemnation under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601–4655. The state of Texas and local governments are authorized to provide similar payments as part of the cost of acquisition of the real property. *See* Tex. Prop. Code § 21.046. Under Texas law, however, if a lease provides that the lease terminates on condemnation, the tenant is not entitled to any condemnation proceeds because the tenant no longer has a compensable leasehold interest. *Motiva Enterprises, LLC v. McCrabb*, 248 S.W.3d 211 (Tex. App.—Houston [1st Dist.] 2007, pet. denied). Consequently, it is possible that a condemnor could find that a tenant who is not a party to the condemnation proceeding is not eligible for relocation or other benefits or awards.

### § 25.2 General Instructions for Completing Forms

For information about completing the forms generally, see chapter 3 in this manual. In most forms, the information that the attorney must provide is listed at the beginning of the form. Of course the attorney may add other specific provisions and references to exhibits and riders at the end of the form.

For general information about designation of parties, see section 3.9. Information relevant to some conveyances, such as those involving homestead property, is not relevant to a lease and need not be included with the party designations.

### § 25.3 General Considerations for Retail Lease

The retail lease, form 25-2 in this chapter, is an adaptation of the basic lease including provisions tailored to leasing retail space in a shopping center. The modifications deal with the specifics associated with a typical retail business operation, including provisions concerning trade



name, description of the shopping center, payment of percentage rental, and pass-through of common area maintenance charges. To provide for payment of percentage rental, a definition of gross sales is added, as is a covenant for operating a business within the premises so as to maximize gross sales. The definition of “gross sales” used in this lease is basic, and the attorney should consider whether some amendment or amplification is appropriate for the situation at hand. Other specific provisions apply to the landlord and the tenant concerning various operational and maintenance issues. The attorney may desire to include more specific provisions dealing with such matters as parking and signage, which may be proper subjects for inclusion in the rules and regulations exhibit. In this lease, the percentage rent is due on the tenth of the month, rather than the first, to give the tenant time to close its books for the previous month and to compute percentage rent.

#### **§ 25.4 General Considerations for Office Lease**

The office lease, form 25-3 in this chapter, is an adaptation of the basic lease containing specific provisions tailored to a commercial office tenancy. The variations are provisions for passing through operating expenses, a fairly common practice in leasing office space; for parking rights; and for rights to use common areas. The lease is also more specific about the services required to be provided by the landlord, again with a view toward comporting with what is typical industry practice. Form 25-4 provides a rider for parking facilities.

#### **§ 25.5 General Considerations for Residential Lease**

The residential lease, form 25-5 in this chapter, is an adaptation of the basic lease tailored to a residential tenancy. The form is designed for simple residential tenancies such as a lease of a home or a townhouse unit. It is not particularly

suited for use with a multifamily project with on-site management. It varies from the basic lease in providing specific provisions relating to residential occupancy, such as the landlord’s duty to maintain the premises to comply with applicable law.

##### **§ 25.5:1 Rent Payment by Check**

If the landlord wants to require payment by check or other traceable means of payment, a residential lease must state so in writing. Tex. Prop. Code § 92.011(a). This clause appears as paragraph A.12. in the “Clauses and Covenants” section of the residential lease but may be omitted if the parties desire.

##### **§ 25.5:2 Right to Terminate Residential Leases in Certain Circumstances**

Residential tenants have special statutory rights to terminate leases under certain circumstances. A tenant may terminate his rights and obligations under a residential lease, vacate the residence, and avoid liability for future rent (1) if the tenant or an occupant of the dwelling unit is a victim of family violence or (2) if the tenant is a victim of sexual assault or the parent or guardian of a victim of sexual assault, indecency with a child, sexual performance by a child, continual sexual abuse of a child, or any attempt to commit any of the foregoing offenses under section 21.02 of the Texas Penal Code. The Texas Property Code imposes specific prerequisites, documentation, and deadlines for a tenant to exercise these statutory rights of early termination. Tex. Prop. Code §§ 92.016, 92.0161. The Property Code requires specific language in the residential lease advising the tenant of these remedies. For circumstances involving family violence, the relevant statutorily provided lease provision reads, “Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or a military deployment or transfer.” *See* Tex. Prop. Code

§ 92.017(g). For circumstances involving sexual violence, the relevant statutorily provided lease provision reads, "Tenants may have special statutory rights to terminate the lease early in certain situations involving sexual assault or sexual abuse." *See* Tex. Prop. Code § 92.0161(g). Paragraph D.20. of the residential lease, form 25-5 in this chapter, combines these two advisories. If the advisories are not in the residential lease, the tenant, if he follows the procedural requirements, may not only terminate the lease and avoid paying future rent, but will also not be liable for delinquent unpaid rent.

A tenant who is a servicemember or dependent of a servicemember similarly may terminate a lease, vacate the dwelling, and avoid liability for future rent if the tenant enters the military service after executing a residential lease or, if the tenant was a servicemember at the time of execution, the tenant receives orders for a permanent change of station or deployment with a military unit for a period of ninety days or more. Tex. Prop. Code § 92.017(b). The relevant statutorily provided lease provision reads, "Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or military deployment or transfer." *See* Tex. Prop. Code § 92.017(g). Specific notice and delivery requirements are set forth in the statute. The right to terminate in the case of family violence may not be waived, but the right of a servicemember or a dependent may be waived in certain circumstances specified in the Property Code. Additionally, if the residential lease form does not contain a specific notice provision, the vacating tenant may also avoid liability for delinquent unpaid rent. Form 25-5 contains this provision.

Form 25-5 also contains the required provisions regarding landlord liabilities and tenant remedies for repair of conditions that materially affect the physical health and safety of an ordinary tenant as authorized by Property Code sections 92.056-.0563. Tex. Prop. Code

§ 92.056(g) requires a lease to "contain language in underlined or bold print that informs the tenant of the remedies available under this section [§ 92.056] and Section 92.0561. If these provisions or substantially equivalent language is not in the lease, the tenant who terminates a lease under these sections is released from all liability for any delinquent, unpaid rent owed to the landlord by the tenant on the effective date of the lease termination. *See* Tex. Prop. Code §§ 92.056, 92.0561.

### § 25.5:3 Caution: Residential Lease

Texas Property Code provisions and case law applicable to residential tenancies vary in significant ways from the law applicable to commercial tenancies. The attorney should carefully review chapter 92 of the Property Code. No attempt has been made to cover all aspects or duties relating to a residential situation. For example, a residential landlord has a duty to install smoke alarms. *See* Tex. Prop. Code § 92.255. The liability of a guarantor of a residential lease is subject to certain limitations. *See* Tex. Prop. Code § 92.021. A residential landlord is subject to restrictions on the right to lock out a tenant for nonpayment of rent that are not applicable to the commercial landlord. *Compare* Tex. Prop. Code § 92.0081, *with* Tex. Prop. Code §§ 93.002-.003. Also, the law concerning interruptions of utilities in residential tenancies differs from that for commercial tenancies. *Compare* Tex. Prop. Code §§ 92.008, 92.0091, 92.301, *with* Tex. Prop. Code § 93.002.

### § 25.6 General Considerations for Industrial Lease

The industrial lease, form 25-6 in this chapter, is an adaptation of the basic lease including clauses necessary to convert the basic lease to an industrial lease. The industrial lease has more similarities to the retail lease than other lease forms minus, of course, percentage rental, covenant of continuous operations, and common area

maintenance provisions. The main additions to the industrial lease deal with the tenant's obligation to pay for industrial waste introduced into the sanitary sewer system; to maintain dilution tanks, grease traps, and so forth; and to share in the joint maintenance of rail services, if any. Attorneys using the industrial lease as a drafting form might also consider using the asbestos disclosure notice, form 25-27, particularly if the building was constructed before 1981.

### § 25.7      **General Considerations for Hunting, Agricultural, and Grazing Leases**

The hunting lease, form 25-7 in this chapter, is an adaptation of the basic lease tailored for the use of agricultural land for hunting. There is a technical distinction between a hunting lease, which is actually a license or profit à prendre, and a lease that conveys an interest in real property. See *Digby v. Hatley*, 574 S.W.2d 186 (Tex. Civ. App.—San Antonio 1978, no writ). In most transactions this distinction is not significant, and the form uses the common term *lease* rather than draw attention to the distinction. This form applies to the surface only. If improvements on the premises are to be available for the tenant's use, additions must be made to describe and provide for that use.

The agricultural lease, form 25-8, is an adaptation of the basic lease for growing crops. The rent clause is different, and the obligations of the tenant and the landlord have been modified slightly to take into account this different use.

The grazing lease, form 25-9, is an adaptation of the basic lease for grazing. It differs only slightly from the basic lease.

The agricultural lease and the grazing lease both contain clauses granting a contractual landlord's lien in the tenant's crops and livestock located on the leased premises. Complete perfection of a security interest in farm products requires com-

pliance with both article 9 of the Texas Business and Commerce Code and the federal Food Security Act of 1985. See section 9.7:2 and accompanying forms in chapter 9 in this manual.

### § 25.7:1      **Instructions for Completing Hunting Lease**

A list of persons authorized to hunt on the premises should be contained in an exhibit to the hunting lease. This list may be specific (for example, "Bob Smith, Ed Jones") or more general (for example, "Martha Stuart and four guests" or "six guns").

### § 25.7:2      **Caution: Hunting Lease**

There are many laws that regulate the taking of game and the recreational use of land of which parties to hunting leases should be aware. As with the other forms in the manual, no attempt has been made to reiterate the duties imposed by statute and case law. In particular, the attorney should carefully review Texas Parks and Wildlife Code chapter 43, subchapter D, which governs hunting lease licenses. For a general discussion of this topic, see the articles cited in "Additional Resources" at the end of these practice notes. See also the section titled "Landowner Liability" in chapter 2 of this manual referring to chapter 75 of the Texas Civil Practice and Remedies Code.

### § 25.8      **General Considerations for Manufactured-Home Community Lease**

The manufactured-home community lease, form 25-29 in this chapter, is an adaptation of the basic lease tailored to a manufactured-home community tenancy. It varies from the basic lease by providing specific provisions necessitated by the enactment of Texas Property Code chapter 94. Chapter 94 governs the landlord-tenant relationship in manufactured-home communities in which four or more lots are offered

for lease for the purpose of the tenant's placing on the landlord's property a manufactured home that is not owned by the landlord. Tex. Prop. Code § 94.002. *See also* Tex. Prop. Code § 94.001. This legislation regulates the form and content of the lease agreement (Tex. Prop. Code §§ 94.051-.057), security deposits (Tex. Prop. Code §§ 94.101-.109), the landlord's warranty of suitability and duty to maintain and repair (Tex. Prop. Code §§ 94.151-.162), and other aspects of the landlord-tenant relationship in manufactured-home community tenancies.

### **§ 25.8:1 Disclosures at Time of Application**

At the time a landlord receives an application from a prospective tenant of a lot in a manufactured-home community, the landlord must provide a copy of the proposed lease, the rules of the manufactured-home community, and a separate statutory notice of the tenant's legal right to a six-month initial lease term and sixty days' notice of nonrenewal or, in the case of a change in land use of the manufactured-home community, 180 days' notice of nonrenewal. Tex. Prop. Code § 94.051. Form 25-30 in this chapter gives the statutorily required notice.

### **§ 25.8:2 Manufactured-Home Community Rules**

Manufactured-home communities may adopt written rules, which are considered part of the lease agreement, establishing the policies and regulations of the manufactured-home community, including regulations relating to use, occupancy, quiet enjoyment, and health, safety, and welfare of tenants of the manufactured-home community. Tex. Prop. Code § 94.008.

### **§ 25.8:3 Cash Rent Payment**

Unless the manufactured-home community lease requires payment of rent by check or other traceable means, a landlord must accept and

give receipts for cash rental payments. Tex. Prop. Code § 94.007. A clause requiring payment of rent by traceable means appears as paragraph B.1.m. of the manufactured-home community lease (form 25-29 in this chapter) but may be omitted if the parties desire.

### **§ 25.8:4 Disclosure of Ownership and Management**

The landlord must disclose the name and address of the record title holder of the leased lot in the manufactured-home community and the names and addresses of any off-site property managers. Tex. Prop. Code § 94.010(a). The disclosure may be contained in the lease agreement, in the rules, in a notice continuously posted in the community or the manager's office, or in writing, delivered within seven days of the landlord's receipt of a written request for the information. Tex. Prop. Code § 94.010(b).

### **§ 25.8:5 Minimum Initial Lease Term**

Manufactured-home community landlords are required to offer prospective tenants an initial lease term of at least six months, but the parties may agree to a shorter or longer initial lease term if requested by the tenant. Tex. Prop. Code § 94.052(a).

### **§ 25.8:6 Landlord's Notice to Vacate or Offer to Renew**

Manufactured-home community landlords are required to provide a tenant with a notice to vacate the leased premises or an offer to renew the lease at least sixty days before the expiration of the lease. Tex. Prop. Code § 94.055(a). If the landlord offers to renew the lease, the renewal offer must notify the tenant of any changes in the current lease terms and include a statement notifying the tenant that the tenant's failure to timely reject the renewal offer will result in the automatic renewal of the lease as modified by the terms contained in the landlord's renewal

offer beginning on the first day after the expiration of the current lease. Tex. Prop. Code § 94.055(b). To avoid the automatic renewal of the lease as modified by the terms contained in the renewal offer, the tenant *must* notify the landlord not later than the thirtieth day before the date the current lease term expires that the tenant rejects the landlord's renewal offer and intends to vacate the leased premises on expiration of the current lease term. Tex. Prop. Code § 94.055(c). This statutory provision is a noted departure from the well-established common-law principle that silence does not bind a party to a contract.

### § 25.8:7 Notice of Nonrenewal

Regardless of the term of a manufactured-home community lease, a landlord must give a tenant at least sixty days' prior written notice if the landlord is not going to renew the lease or, in the case of a change in land use, 180 days' notice of nonrenewal. Tex. Prop. Code §§ 94.051, 94.052(b).

### § 25.8:8 Landlord's Maintenance Obligations

A manufactured-home community landlord is required to maintain all common areas, utility lines not maintained by a public utility or political subdivision, roads, mailboxes, and garbage collection and to repair or remedy any condition materially affecting the physical health and safety of an ordinary tenant of the manufactured-home community. Tex. Prop. Code § 94.152. The landlord must make a diligent effort to repair or remedy such a condition after a written request specifying the condition to be repaired is given to the landlord by a tenant who is not delinquent in the payment of rent at the time the notice is given. Tex. Prop. Code § 94.153(b). A manufactured-home community landlord has no duty to maintain or repair a condition present in or on a tenant's manufactured home. Tex. Prop. Code § 94.153(a).

### § 25.8:9 Eviction Procedures

Unlike with other types of tenancies, a manufactured-home community landlord may prevent a tenant from entering the tenant's manufactured-home lot, evict a tenant, or require removal of the tenant's manufactured home from the lot only after obtaining a writ of possession. Tex. Prop. Code § 94.203(a). The writ of possession cannot issue before the expiration of thirty days after the date of the judgment granting possession if the tenant has paid the rent due for that thirty-day period. Tex. Prop. Code § 94.203(d).

### § 25.8:10 Caution: Manufactured-Home Community Lease

The Texas Property Code provisions applicable to manufactured-home community tenancies vary in significant ways from the law applicable to either residential or commercial tenancies. The attorney should carefully review chapter 94 of the Property Code because the rights, duties, and liabilities of the parties under chapter 94 cannot be waived. *See* Tex. Prop. Code § 94.003. No attempt has been made in this manual to cover all aspects of or duties relating to the landlord-tenant relationship in a manufactured-home community. Appropriate modifications are required if the attorney elects to use the manufactured-home community lease for transactions not governed by chapter 94.

### § 25.9 General Considerations for Commercial Lease

Commercial leases are considered by the legislature to be quite different from residential leases and manufactured-home community leases. Chapter 92 of the Texas Property Code contains the statutes concerned with residential leases, and chapter 94 contains the statutes concerned with manufactured-home community leases, whereas chapter 93 deals with commercial leases. Chapters 92 and 94 impart an air of

legislative protectionism for the residential tenant, with numerous restrictions on the landlord; chapter 93 has a more laissez-faire policy and allows the parties to contract as they see fit. The drafter using the *Texas Real Estate Forms Manual* should be aware of these three Property Code chapters (as well as chapter 91, which deals with all tenancies) and should realize that the numerous legislative restrictions on a residential or manufactured-home community landlord do not apply to a commercial landlord.

### § 25.9:1 Broker Lien in Commercial Lease

The Broker's and Appraiser's Lien on Commercial Real Estate Act, chapter 62 of the Texas Property Code, gives brokers a lien by reason of the sale or lease of real property. Section 62.021 sets forth the prerequisites for a broker to acquire a lien. *See* Tex. Prop. Code § 62.021. Section 62.021 gives the broker a lien against the landlord's property for the commission on the lease if—

1. the broker earned the commission (pursuant to a written commission agreement (*see* Tex. Prop. Code § 62.003(4))), and
2. the broker recorded a notice of the lien (*see* Tex. Prop. Code § 62.024).

Tex. Prop. Code § 62.021(a). The commission agreement must disclose the right of the broker to claim a lien. Tex. Prop. Code § 62.021(e).

Section 62.022(b)(2) automatically waives the broker's lien in a commercial lease if the broker's commission agreement is included as a provision in the lease. Tex. Prop. Code § 62.022(b)(2). For this reason, the drafter may wish to include the real estate commission rider, form 25-28 in this chapter, as part of the lease. The drafter, however, should be careful to consider what effect renewal options might have on the real estate commission rider.

### § 25.9:2 Security Deposit in Commercial Lease

A landlord is liable for failure to return a tenant's security deposit within sixty days after the date the tenant surrenders possession of the premises and provides a forwarding address to the landlord or landlord's agent. Tex. Prop. Code § 93.005(a). If a landlord retains all or part of the security deposit, the landlord must provide the tenant with an itemized list of deductions. Tex. Prop. Code § 93.006(c). There is a presumption of bad faith on the part of the landlord if the security deposit is not returned to the tenant or if the landlord fails to provide the tenant with an itemized list of deductions on or before sixty days after the date the tenant surrenders possession. Tex. Prop. Code § 93.011(d). *See also* Tex. Prop. Code §§ 93.004–.011. The lease forms in this chapter have an agreement by the landlord to return the security deposit within sixty days.

### § 25.9:3 Assessment of Charges in Commercial Lease

Texas Property Code section 93.012 deals with assessment of charges by a commercial landlord against a commercial tenant. Section 93.012(a) reads as follows:

A landlord may not assess a charge, excluding a charge for rent or physical damage to the leased premises, to a tenant unless the amount of the charge or the method by which the charge is to be computed is stated in the lease, an exhibit or attachment that is part of the lease, or an amendment to the lease.

Tex. Prop. Code § 93.012(a). Most commercial landlords assess charges against the tenant on a regular basis for things such as extra keys; over-time heating, ventilating, and air conditioning; proportionate utilities and taxes; proportionate common-area expenses; and estimated operating

expenses. Because Tex. Prop. Code § 93.012 requires either the amount of the charge or the method by which the charge is to be computed to be stated in the lease, the drafter may wish to add language covering most of the expected expenses to be assessed and a statement that the charge to be assessed will be the landlord's actual cost. The lease forms in this chapter provide for assessment of charges to the tenant, but the method by which the charge is calculated is stated (for example, 'Tenant's pro rata share' of utility charges, common-area maintenance, taxes and insurance, and so forth). However, commercial landlords who assess to tenants charges other than rent for which the amount or method of computation is not specified in the lease, should be aware of section 93.012 of the Property Code.

### § 25.10 Environmental Considerations for Leases

Attorneys drafting leases should be aware of environmental statutes dealing with hazardous materials and waste, such as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. §§ 9601-9675; the Resource Conservation Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 and the Land Disposal Program Flexibility Act of 1996, 42 U.S.C. §§ 6901-6992k; and the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692. These environmental statutes, along with similar state statutes, may impose cleanup costs at the termination of a lease term on the "owner" or "operator" (landlord or tenant) of the "facility" (leased premises).

Landlords must provide tenants of residential property constructed before 1978 with a 'Lead Warning Statement. 42 U.S.C. §§ 4851b(27), 4852d. See the section titled 'Lead-Based Paint

Disclosures' in chapter 2 of this manual. The disclosure form appears as form 25-26 in this chapter.

Federal law requires building and facility owners (landlords) to notify tenants of public and commercial buildings of the presence, location, and quantity of asbestos-containing materials or presumed asbestos-containing materials in tenant-occupied areas. This notice must be either in writing or in a personal communication before any demolition, construction, alteration, repair, maintenance, or renovation of structures, substrates, or portions thereof. *See* 29 C.F.R. §§ 1910.1001, 1926.1101. *See* form 25-27 for the disclosure.

### § 25.11 Additional Clauses

Additional clauses that may be useful in lease transactions, such as arbitration, landlord's lien subordination, and expansion rights, appear in form 25-10 in this chapter.

#### § 25.11:1 Subordination of Landlord's Lien

If the tenant's lender requires a first lien over the statutory landlord's lien found in chapter 54 of the Texas Property Code and the security interest granted in the lease, insert clause 25-10-1 in this chapter. Form 25-20 (landlord's lien waiver) also may be used for this purpose.

#### § 25.11:2 Base Rent Adjustment

In a commercial lease, there is frequently a provision for adjusting the base rent. The landlord and tenant may agree to scheduled, specific, periodic increases or to adjustments based on the Consumer Price Index; in the latter case, the attorney may insert the inflation adjustment clause found at 25-10-2 in this chapter.

### § 25.11:3 Expansion Option

If the landlord wants to grant the tenant the right to lease additional space, insert clause 25-10-4 in this chapter and attach the expansion space rider at form 25-11.

### § 25.11:4 Extension Option

If the landlord wants to grant the tenant the right to extend the lease term, insert clause 25-10-5 in this chapter and attach the extension option rider at form 25-12.

### § 25.11:5 Waiver of Tenant's Right to Protest Appraised Value

If a property owner does not file a valuation protest, a tenant who is contractually obligated to reimburse the owner for property taxes is entitled to pursue an administrative protest before the appraisal review board. Tex. Tax Code § 41.413. The provisions also require that the owner-landlord send the tenant a copy of any reappraisal notice received. A tenant contractually obligated to reimburse a landlord for taxes imposed on the property may also appeal an appraisal review board order determining a protest brought by the party. The statutory language is fairly vague, but it seems apparent that any tenant who, pursuant to its lease, is obligated to reimburse a landlord for a portion of real property taxes is entitled to exercise these rights and in so doing may request the appraisal review board to issue subpoenas to the landlord to provide relevant information and documentation regarding value. This, in turn, may require the landlord to disclose information, such as the rent roll for the property, that the landlord may wish to keep confidential. In addition, multitenant situations could result in unwieldy protests. The landlord who wishes to avoid these possibilities should consider including in the lease a provision like clause 25-10-6 in this chapter.

### § 25.11:6 Margin Tax

Chapter 171 of the Tax Code applies the Texas "margin tax" to most businesses, including limited partnerships previously exempt from the franchise tax. General partnerships, sole proprietorships, and businesses that do not meet the annual revenue minimum continue to be exempt. Landlords and tenants might negotiate any of the following treatments of the margin tax: (1) an express carve-out of the margin tax from real property taxes (tenant position), (2) reliance on the landlord's general right to pass through the margin tax as a tax imposed in lieu of real property taxes (landlord position), or (3) the landlord's right to pass through the margin tax as a tax in lieu of real estate taxes, but limiting the pass-through amount based on a formula or a cap (compromise position).

### § 25.12 Additional Forms

Additional forms that may be useful in lease transactions, such as an assignment, guaranty, and tenant estoppel certificate, are found at forms 25-13 through 25-18 in this chapter.

#### § 25.12:1 Subordination, Attornment, and Nondisturbance Agreement

If the landlord's lender requires a first or prior lien on the landlord's estate and a lease has been executed, use the subordination, attornment, and nondisturbance agreement at form 25-13 in this chapter to subordinate the lease but still protect the tenant's rights following a foreclosure.

#### § 25.12:2 Tenant's Subordination to Deed-of-Trust Lien

A lender may require that an existing lease be subordinated to its new lien. Foreclosure of the lien will then extinguish the lease. Form 25-14 in this chapter may be used to subordinate the lease.



**§ 25.12:3 Tenant's Acceptance Letter**

If the landlord requires the tenant to acknowledge that the premises are satisfactory, especially if the lease requires any improvements as a condition to the beginning of the lease, use the tenant's acceptance letter at form 25-16 in this chapter.

**§ 25.12:4 Landlord's Lien Waiver**

By using form 25-20 in this chapter, the owner of real property waives statutory and contractual landlord's liens on any of the lessee's personal property subject to the security interests of a third-party lender. Clause 25-10-1 also may be used for this purpose.

**§ 25.12:5 Lockout Notice**

The lockout notice, form 25-23 in this chapter, is to be posted at the premises. *See* Tex. Prop. Code § 93.002. It is for use with commercial leases only. Do not use it with residential leases, which are governed by Tex. Prop. Code § 92.0081.

**§ 25.12:6 Notice of Change of Locks**

Form 25-24 in this chapter is used if the lease does not contain language superseding Tex. Prop. Code § 93.002. The letter is to be given by the owner or property manager and is for use with commercial leases only. Do not use it for residential leases. *See* Tex. Prop. Code § 92.0081.

**§ 25.12:7 Tenant Improvements Rider to Lease or Work Letter**

Form 25-25 in this chapter may be used with the basic lease, the retail lease, the office lease, or the industrial lease if the parties wish to provide for construction of tenant improvements to the leased premises. The work letter provides a gen-

eral outline for a description of the work and the allocation of responsibility for preparation of plans, performance of work, and payment of any allowances or other amounts by the landlord. The form also requires the contractor to maintain insurance and sets out the effect of construction delays on the commencement date of the lease.

**§ 25.12:8 Lead-Based Paint Hazards Disclosure**

Form 25-26 in this chapter is based on the sample disclosure format for target housing rentals and leases issued by the Environmental Protection Agency and the Department of Housing and Urban Development. *See* 61 Fed. Reg. 9074 (1996); *see also* 40 C.F.R. § 745.113. The rule does not require the use of any specific format as long as all the required elements are included in the disclosure. *See* the section titled 'Lead-Based Paint Disclosures' in chapter 2 of this manual for additional information.

**§ 25.12:9 Asbestos Disclosure**

Form 25-27 in this chapter is for disclosure of asbestos-containing material or presumed asbestos-containing material by commercial building or facility owners. The Occupational Safety and Health Administration rules require commercial building or facility owners to notify tenants of the presence of asbestos-containing materials or, if the building was constructed before 1981, of presumed asbestos-containing materials. *See* 29 C.F.R. §§ 1910.1001, 1926.1011. The rules do not require the use of any specific format.

**§ 25.12:10 Modification of Lease**

The modification of lease, form 25-31 in this chapter, is used to document changes to the lease during the lease term.

**§ 25.12:11 Termination of Lease**

The termination of lease, form 25-32 in this chapter, is used if the parties agree to terminate the lease before the end of the lease term.

## Additional Resources

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*[Reserved]*

**Form 25-1**

**Lease**  
[Basic]

**Basic Information**

Date:

Landlord:

Landlord's Address:

Tenant:

Tenant's Address:

[Include if applicable: Guarantors: [see guaranty agreement at form 25-18 in this chapter]]

[Include if applicable: Guarantors' Addresses:]

Premises

Approximate square feet:

Street address/suite:

City, state, zip:

Include or attach any additional necessary legal description.

Term (months):

Commencement Date:

Termination Date:

Base Rent (monthly):

Tenant's Pro Rata Share: [percent] percent ([percent]%)

Security Deposit:

Permitted Use:

Tenant's Insurance: As required by Insurance Addendum

Landlord's Insurance: As required by Insurance Addendum

Tenant's Rebuilding Obligations: If the Premises are damaged by fire or other elements, Tenant will be responsible for repairing or rebuilding the following leasehold improvements: [see section 25.1:4]

#### **A. Definitions**

*A.1.* "Agent" means agents, contractors, employees, licensees, and, to the extent under the control of the principal, invitees.

*A.2.* "Essential Services" means utility connections reasonably necessary for occupancy of the Premises for the Permitted Use.

*A.3.* "Injury" means (a) harm to or impairment or loss of property or its use, (b) harm to or death of a person, or (c) "personal and advertising injury" as defined in the form of liability insurance Tenant is required to maintain.

*A.4.* "Lienholder" means the holder of a deed of trust covering the Premises.

*A.5.* "Rent" means Base Rent plus any other amounts of money payable by Tenant to Landlord.

**B. Tenant's Obligations*****B.1. Tenant agrees to—***

*B.1.a.* Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*B.1.b.* Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

*B.1.c.* Obey (i) all laws relating to Tenant's use, maintenance of the condition, and occupancy of the Premises and Tenant's use of any common areas and (ii) any requirements imposed by utility companies serving or insurance companies covering the Premises.

*B.1.d.* Pay monthly, in advance, on the first day of the month, the Base Rent to Landlord at Landlord's Address.

*B.1.e.* Pay a late charge of 5 percent of any Rent not received by Landlord by the tenth day after it is due.

*B.1.f.* Obtain and pay for all utility services used by Tenant and not provided by Landlord.

*B.1.g.* Pay Tenant's Pro Rata Share of any utility services provided by Landlord.

*B.1.h.* Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

*B.1.i.* Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted.

*B.1.j.* Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.



*B.1.k.* Allow Landlord to file a financing statement perfecting the security interest created by this lease.

*B.1.l.* Vacate the Premises on the last day of the Term.

*B.1.m.* INDEMNIFY, DEFEND, AND HOLD LANDLORD AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN ANY PORTION OF THE PREMISES. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF TENANT'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE TERM, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS.**

*B.2.* **Tenant agrees not to—**

*B.2.a.* Use the Premises for any purpose other than the Permitted Use.

*B.2.b.* Create a nuisance.

*B.2.c.* Permit any waste.

*B.2.d.* Use the Premises in any way that would increase insurance premiums or void insurance on the Premises.

*B.2.e.* Change Landlord's lock system.

*B.2.f.* Alter the Premises.

*B.2.g.* Allow a lien to be placed on the Premises.

*B.2.h.* Assign this lease or sublease any portion of the Premises without Landlord's written consent.

**C. Landlord's Obligations**

*C.1. Landlord agrees to—*

*C.1.a.* Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*C.1.b.* Obey all laws relating to Landlord's operation of the Premises.

*C.1.c.* Provide the Essential Services.

*C.1.d.* Repair, replace, and maintain the (i) roof, (ii) foundation, and (iii) structural soundness of the exterior walls, excluding windows and doors.

*C.1.e.* Return the Security Deposit to Tenant, less itemized deductions, if any, on or before the sixtieth day after the date Tenant surrenders the Premises.

*C.2. Landlord agrees not to—*

*C.2.a.* Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

*C.2.b.* Unreasonably withhold consent to a proposed assignment or sublease.

**D. General Provisions**

**Landlord and Tenant agree to the following:**

*D.1. Alterations.* Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

*D.2. Abatement.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to abate Rent for any reason.

*D.3. Insurance.* Tenant and Landlord will maintain the respective insurance coverages described in the attached Insurance Addendum.

*D.4. Release of Claims/Subrogation.* LANDLORD AND TENANT RELEASE EACH OTHER AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE PREMISES, AND LOSS OF BUSINESS OR REVENUES THAT ARE COVERED BY THE RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN COVERED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS LEASE. THE PARTY INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. LANDLORD AND TENANT WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY OR ITS AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR**

**LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY OR ITS AGENTS.**

*D.5. Casualty/Total or Partial Destruction*

*D.5.a.* If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, at its expense, restore the roof, foundation, and structural soundness of the exterior walls of the Premises and any leasehold improvements within the Premises that are not within Tenant's Rebuilding Obligations to substantially the same condition that existed before the casualty and Tenant will, at its expense, be responsible for replacing any of its damaged furniture, fixtures, and personal property and performing Tenant's Rebuilding Obligations. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice to Landlord before Landlord completes Landlord's restoration obligations.

*D.5.b.* If Landlord cannot complete the portion of the restoration for which Landlord is responsible within ninety days, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant in writing of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord in writing within ten days from receipt of Landlord's estimate. If Tenant does not notify Landlord timely of Tenant's election to terminate this lease, the lease will continue and Landlord will restore the Premises as provided in D.5.a. above.

*D.5.c.* To the extent the Premises are untenable after the casualty, the Rent will be adjusted as may be fair and reasonable.

*D.6. Condemnation/Substantial or Partial Taking*

*D.6.a.* If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

*D.6.b.* If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

*D.6.c.* Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

*D.7. Uniform Commercial Code.* Tenant grants Landlord a security interest in Tenant's personal property now or subsequently located on the Premises. This lease is a security agreement under the Uniform Commercial Code. Landlord may file financing statements or continuation statements to perfect or continue the perfection of the security interest.

*D.8. Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice and failing to provide Essential Services to Tenant within ten days after written notice.

*D.9. Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide an Essential Service for thirty days after default, terminate this lease.

*D.10. Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning the Premises or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b).

*D.11. Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises and sue for Rent as it accrues; (b) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the Rent directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet; (c) enter the Premises and perform Tenant's obligations; and (d) terminate this lease by written notice and sue for damages. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be occupying the Premises, until the default is cured, without being liable for damages.

*D.12. Default/Waiver.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of a remedy does not preclude pursuit of another remedy.

*D.13. Mitigation.* Landlord has mitigated the loss of rent if Landlord, within thirty days after Tenant's loss of possession, (a) places a "For Lease" sign at the Premises, (b) places the Premises on Landlord's inventory of properties for lease, (c) makes Landlord's inventory available to area brokers on a monthly basis, (d) advertises the Premises for lease in a suitable trade journal in the county in which the Premises are located, and (e) shows the Premises to prospective tenants who request to see it.

*D.14. Security Deposit.* If Tenant defaults, Landlord may use the Security Deposit to pay arrears of Rent, to repair any damage or injury, or to pay any expense or liability incurred by Landlord as a result of the default.

*D.15. Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

*D.16. Alternative Dispute Resolution.* Landlord and Tenant agree to mediate in good faith before filing a suit for damages.

*D.17. Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

*D.18. Venue.* Exclusive venue is in the county in which the Premises are located.

*D.19. Entire Agreement.* This lease [**include if applicable:** , its exhibits, addenda, and riders] [is/are] the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or representations of any agent of Landlord, that are not in this lease [**include if applicable:** and any exhibits, addenda, and riders].

*D.20. Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

*D.21. Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

*D.22. Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, per-

sonal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

*D.23. Abandoned Property.* Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

Attach insurance addendum, form 25-34 or 25-35. If applicable, include additional clauses like those suggested in form 25-10 and/or a list of exhibits and riders.

\_\_\_\_\_  
[Name of landlord]

\_\_\_\_\_  
[Name of tenant]



*[Reserved]*

Form 25-2

Retail Lease

Basic Information

Date:

Landlord:

Landlord's Address:

Tenant:

Tenant's Address:

Tenant's Trade Name:

[Include if applicable: Guarantors: [see guaranty agreement at form 25-18 in this chapter]]

[Include if applicable: Guarantors' Addresses:]

Premises

Approximate square feet:

Name of Shopping Center:

Street address/suite:

City, state, zip:

Include or attach any additional necessary legal description.

Term (months):

Commencement Date:

Termination Date:

Base Rent (monthly):

Percentage Rent: The excess of [percent] percent ([percent]%) of monthly Gross Sales over  
Base Rent

Tenant's Pro Rata Share: [percent] percent ([percent]%)

Initial Monthly CAM Charge:

Initial Monthly Tax and Insurance Charge:

Security Deposit:

Permitted Use:

Operating Hours

Weekdays: \_\_\_\_\_ to \_\_\_\_\_

Saturdays: \_\_\_\_\_ to \_\_\_\_\_

Sundays: \_\_\_\_\_ to \_\_\_\_\_

Tenant's Insurance: As required by Insurance Addendum

Landlord's Insurance: As required by Insurance Addendum

Tenant's Rebuilding Obligations: If the Premises are damaged by fire or other elements,

Tenant will be responsible for repairing or rebuilding the following leasehold improve-  
ments: [see section 25.1:4]

**A. Definitions**

A.1. "Agent" means agents, contractors, employees, licensees, and, to the extent under the control of the principal, invitees.

A.2. "CAM Charge" means the reasonable cost of ownership, operation, and maintenance of the Common Areas.

A.3. "Common Areas" means all facilities and areas of the Shopping Center that are intended and designated by Landlord from time to time for the common, general, and nonexclusive use of all tenants of the Shopping Center, including parking lots. Landlord has the exclusive control over and right to manage the Common Areas.

A.4. "Essential Services" means utility connections reasonably necessary for occupancy of the Premises for the Permitted Use.

A.5. "Gross Sales" means the entire amount of the sales price, whether for cash or otherwise, of all sales of merchandise (including [Internet sales and] gift and merchandise certificates), services, and all other receipts of all business conducted in or from the Premises. Each sale on installment or credit will be treated as a sale for the full price in the month during which the sale was made, irrespective of when Tenant receives payment from its customer. Gross Sales, however, will not include any sums collected and paid out for any sales or excise tax.

A.6. "Injury" means (a) harm to or impairment or loss of property or its use, (b) harm to or death of a person, or (c) "personal and advertising injury" as defined in the form of liability insurance Tenant is required to maintain.

A.7. "Lienholder" means the holder of a deed of trust covering the Premises.

A.8. "Rent" means Base Rent plus any other amounts of money payable by Tenant to Landlord.

A.9. "Taxes and Insurance" means all ad valorem taxes and all insurance costs incurred by Landlord with respect to the Shopping Center.

**B. Tenant's Obligations**

**B.1. Tenant agrees to—**

B.1.a. Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

B.1.b. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

B.1.c. Obey (i) all laws relating to Tenant's use, maintenance of the condition, and occupancy of the Premises and Tenant's use of any Common Areas in the Shopping Center; (ii) any requirements imposed by utility companies serving or insurance companies covering the Premises or Shopping Center; and (iii) any rules and regulations of the Shopping Center adopted by Landlord.

B.1.d. Pay monthly, in advance, on the first day of the month, the Base Rent to Landlord at Landlord's Address.

B.1.e. Pay the Percentage Rent applicable to the previous month on or before the tenth day of each month. With each payment of Percentage Rent, Tenant will deliver a written statement substantiating the amount of the payment. Tenant will keep a permanent, accurate set of books and records of all sales available for Landlord's inspection.

B.1.f. Pay Tenant's Pro Rata Share of the monthly CAM Charge and monthly Taxes and Insurance on or before the first day of each month. The initial charges are based on Land-

lord's estimates and are set forth in the Basic Terms. Landlord may adjust the monthly payment from time to time by notice to Tenant. If the actual amount of Tenant's Pro Rata Share of actual costs for any period exceeds the amount paid by Tenant, Tenant will pay to Landlord the deficiency within fifteen days following notice from Landlord; if the amount paid by Tenant exceeds Tenant's Pro Rata Share of the actual cost, then the surplus will be credited to the next payment due by Tenant, or Landlord may refund the net surplus.

*B.1.g.* Pay a late charge of 5 percent of any Rent not received by Landlord by the tenth day after it is due.

*B.1.h.* Obtain and pay for all utility services used by Tenant and not provided by Landlord.

*B.1.i.* Pay Tenant's Pro Rata Share of any utility services provided by Landlord.

*B.1.j.* Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

*B.1.k.* Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted.

*B.1.l.* Keep the sidewalks, service ways, and loading areas adjacent to the Premises clean and unobstructed.

*B.1.m.* Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

*B.1.n.* (i) Continuously and in good faith conduct on the entire Premises the type of business for which the Premises are leased in an efficient and reputable manner and (ii) except during reasonable periods for repairing, cleaning, and decorating, keep the Premises open to

the public for business during Operating Hours so as to produce the maximum amount of Gross Sales.

*B.1.o.* Vacate the Premises on the last day of the Term.

*B.1.p.* On request, execute an estoppel certificate that states the Commencement Date and Termination Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested.

*B.1.q.* INDEMNIFY, DEFEND, AND HOLD LANDLORD AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN ANY PORTION OF THE PREMISES. THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF TENANT'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE TERM, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD AND LIENHOLDER AND THEIR RESPECTIVE AGENTS.

*B.2.* **Tenant agrees not to—**

*B.2.a.* Use the Premises for any purpose other than the Permitted Use.

*B.2.b.* Create a nuisance.

*B.2.c.* Interfere with any other tenant's normal business operations or Landlord's management of the Shopping Center.

*B.2.d.* Permit any waste.

*B.2.e.* Use the Premises in any way that would increase insurance premiums or void insurance on the Shopping Center.

*B.2.f.* Change Landlord's lock system.

*B.2.g.* Alter the Premises.

*B.2.h.* Allow a lien to be placed on the Premises.

*B.2.i.* Assign this lease or sublease any portion of the Premises without Landlord's written consent.

*B.2.j.* Use the roof of the Shopping Center.

*B.2.k.* Place any signs on the Premises without Landlord's written consent.

**C. Landlord's Obligations**

*C.1. Landlord agrees to—*

*C.1.a.* Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*C.1.b.* Obey all laws relating to Landlord's operation of the Shopping Center.

*C.1.c.* Provide the Essential Services.

*C.1.d.* Repair, replace, and maintain the (i) roof, (ii) foundation, (iii) Common Areas, and (iv) structural soundness of the exterior walls, excluding windows, store fronts, and doors.

*C.1.e.* Return the Security Deposit to Tenant, less itemized deductions, if any, on or before the sixtieth day after the date Tenant surrenders the Premises.



*C.1.f.* INDEMNIFY, DEFEND, AND HOLD TENANT HARMLESS FROM ANY INJURY AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS, OCCURRING IN ANY PORTION OF THE COMMON AREAS. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF LANDLORD'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE TERM, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF TENANT BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TENANT.**

**C.2. Landlord agrees not to—**

*C.2.a.* Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

*C.2.b.* Unreasonably withhold consent to a proposed assignment or sublease.

**D. General Provisions**

**Landlord and Tenant agree to the following:**

*D.1. Alterations.* Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

*D.2. Abatement.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to abate Rent for any reason.

*D.3. Insurance.* Tenant and Landlord will maintain the respective insurance coverages described in the attached Insurance Addendum.

*D.4. Release of Claims/Subrogation.* LANDLORD AND TENANT RELEASE EACH OTHER AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES OR SHOPPING CENTER, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE SHOPPING CENTER, AND LOSS OF BUSINESS OR REVENUES THAT ARE COVERED BY THE RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN COVERED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS LEASE. THE PARTY INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. LANDLORD AND TENANT WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY OR ITS AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY OR ITS AGENTS.**

*D.5. Casualty/Total or Partial Destruction*

*D.5.a.* If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, at its expense, restore the roof, foundation, Common Areas, and structural

soundness of the exterior walls of the Premises and any leasehold improvements within the Premises that are not within Tenant's Rebuilding Obligations to substantially the same condition that existed before the casualty and Tenant will, at its expense, be responsible for replacing any of its damaged furniture, fixtures, and personal property and performing Tenant's Rebuilding Obligations. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

*D.5.b.* If Landlord cannot complete the portion of the restoration for which Landlord is responsible within ninety days, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant in writing of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord in writing within ten days from receipt of Landlord's estimate. If Tenant does not notify Landlord timely of Tenant's election to terminate this lease, the lease will continue and Landlord will restore the Premises as provided in D.5.a. above.

*D.5.c.* To the extent the Premises are untenable after the casualty, the Rent will be adjusted as may be fair and reasonable.

*D.6. Condemnation/Substantial or Partial Taking*

*D.6.a.* If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

*D.6.b.* Whether or not any portion of the Premises is taken by condemnation or purchase in lieu of condemnation, Landlord or Tenant may elect to terminate this lease if 50 percent or more of the Common Area is taken.

*D.6.c.* If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

*D.6.d.* Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation, except for relocation or other benefits that are payable to Tenant by the condemning authority but that do not reduce the award or proceeds payable to Landlord.

*D.7. Uniform Commercial Code.* Tenant grants Landlord a security interest in Tenant's personal property now or subsequently located on the Premises. This lease is a security agreement under the Uniform Commercial Code. Landlord may file financing statements or continuation statements to perfect or continue the perfection of its security interest.

*D.8. Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice and failing to provide Essential Services to Tenant within ten days after written notice.

*D.9. Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide an Essential Service for thirty days after default, terminate this lease.

*D.10. Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning the Premises or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b).

*D.11. Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises and sue for Rent as it accrues; (b) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the Rent directly by reason of the reletting, and Tenant agrees to

reimburse Landlord for any expenditures made in order to relet; (c) enter the Premises and perform Tenant's obligations; and (d) terminate this lease by written notice and sue for damages. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be occupying the Premises, until the default is cured, without being liable for damages.

*D.12. Default/Waiver.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of a remedy does not preclude pursuit of another remedy.

*D.13. Mitigation.* Landlord has mitigated the loss of rent if Landlord, within thirty days after Tenant's loss of possession, (a) places a "For Lease" sign at the Premises, (b) places the Premises on Landlord's inventory of properties for lease, (c) makes Landlord's inventory available to area brokers on a monthly basis, (d) advertises the Premises for lease in a suitable trade journal in the county in which the Premises are located, and (e) shows the Premises to prospective tenants who request to see it.

*D.14. Security Deposit.* If Tenant defaults, Landlord may use the Security Deposit to pay arrears of Rent, to repair any damage or injury, or to pay any expense or liability incurred by Landlord as a result of the default.

*D.15. Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

*D.16. Alternative Dispute Resolution.* Landlord and Tenant agree to mediate in good faith before filing a suit for damages.

*D.17. Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

*D.18. Venue.* Exclusive venue is in the county in which the Premises are located.

*D.19. Entire Agreement.* This lease, its exhibits, addenda, and riders are the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or representations of any agent of Landlord, that are not in this lease and any exhibits, addenda, and riders.

*D.20. Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

*D.21. Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

*D.22. Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

D.23. *Use of Common Areas.* Tenant will have the nonexclusive right to use the Common Areas subject to such reasonable rules and regulations that Landlord may prescribe.

D.24. *Merchants Association.* If Landlord organizes a merchants' association, Tenant must join and maintain membership and comply with its rules.

D.25. *Abandoned Property.* Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

Attach insurance addendum, form 25-34 or 25-35. If applicable, include additional clauses like those suggested in form 25-10 and/or a list of exhibits and riders.

\_\_\_\_\_  
[Name of landlord]

\_\_\_\_\_  
[Name of tenant]

Form 25-3

Office Lease

Basic Information

Date:

Landlord:

Landlord's Address:

Tenant:

Tenant's Address:

[Include if applicable: Guarantors: [see guaranty agreement at form 25-18 in this chapter]]

[Include if applicable: Guarantors' Addresses:]

Premises

Approximate square feet:

Name of Building:

Street address/suite:

City, state, zip:

Include or attach necessary legal description.

Term (months):

Commencement Date:



Termination Date:

Base Rent (monthly):

Security Deposit:

Tenant's Pro Rata Share: [percent] percent ([percent]%)

Permitted Use:

Tenant's Insurance: As required by Insurance Addendum

Landlord's Insurance: As required by Insurance Addendum

Tenant's Rebuilding Obligations: If the Premises are damaged by fire or other elements, Tenant will be responsible for repairing or rebuilding the following leasehold improvements: [see section 25.1:4]

## A. Definitions

A.1. "Agent" means agents, contractors, employees, licensees, and, to the extent under the control of the principal, invitees.

A.2. "Building Operating Hours" means 8:00 A.M. to 6:00 P.M. Monday through Friday, except holidays.

A.3. "Common Areas" means all facilities and areas of the Building [include if applicable: and Parking Facilities] and the related land that are intended and designated by Landlord from time to time for the common, general, and nonexclusive use of all tenants of the Building. Landlord has the exclusive control over and right to manage the Common Areas.

A.4. "Essential Services" means the following services: (a) air-conditioning and heating to the Premises reasonable for the Permitted Use (exclusive of air-conditioning or

heating for electronic data-processing or other specialized equipment) during Building Operating Hours and at such other times at such additional cost as Landlord and Tenant may agree on, (b) hot and cold water for lavatory and drinking purposes, (c) janitorial service and periodic window washing, (d) elevator service, if necessary, to provide access to and from the Premises, (e) electric current for normal office machines and the Building's standard lighting reasonable for the Permitted Use, and (f) lighting in Common Areas and fluorescent lights in the Building's standard light fixtures on the Premises.

A.5. "Injury" means (a) harm to or impairment or loss of property or its use, (b) harm to or death of a person, or (c) "personal and advertising injury" as defined in the form of liability insurance Tenant is required to maintain.

A.6. "Lienholder" means the holder of a deed of trust covering the Premises.

A.7. "Operating Expenses" means all reasonable expenses, including real property taxes, that Landlord pays in connection with the ownership, operation, and maintenance of the Building, except principal and interest on any debt, expenditures classified as capital expenditures for federal income tax purposes, and expenses for which Tenant is required to reimburse Landlord.

Include the following if applicable.

A.8. "Parking Facility" means the facility or area described in the attached parking facility rider.

Continue with the following.

A.9. "Rent" means Base Rent plus any other amounts of money payable by Tenant to Landlord.

**B. Tenant's Obligations*****B.1. Tenant agrees to—***

*B.1.a.* Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*B.1.b.* Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

*B.1.c.* Obey (i) all laws relating to Tenant's use, maintenance of the condition, and occupancy of the Premises and Tenant's use of any Common Areas in the Building; (ii) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (iii) any rules and regulations for the Building and Common Areas adopted by Landlord.

*B.1.d.* Pay monthly, in advance, on the first day of the month, the Base Rent to Landlord at Landlord's Address.

*B.1.e.* Pay a late charge of 5 percent of any Rent not received by Landlord by the tenth day after it is due.

*B.1.f.* Obtain and pay for all utility services used by Tenant and not provided by Landlord.

*B.1.g.* Pay (i) monthly, in advance, Tenant's Pro Rata Share of the monthly estimated Operating Expenses and (ii) annually, any amount by which the actual Operating Expenses exceed the estimated Operating Expenses, within thirty days of receiving notice of such difference from the Landlord.

*B.1.h.* Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

*B.1.i.* Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted.

*B.1.j.* Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

*B.1.k.* If requested, deliver to Landlord a financing statement perfecting the security interest created by this lease.

*B.1.l.* Vacate the Premises and return all keys to the Premises on the last day of the Term.

*B.1.m.* On request, execute an estoppel certificate that states the Commencement Date and Termination Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested.

*B.1.n.* Arrange with Landlord in advance for any heating, air-conditioning, or electrical needs in excess of the services provided by Landlord and pay for such additional services as billed by Landlord.

*B.1.o.* INDEMNIFY, DEFEND, AND HOLD LANDLORD AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN ANY PORTION OF THE PREMISES. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF TENANT'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE TERM, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIA-**

**BILITY OF LANDLORD BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD AND LIENHOLDER AND THEIR RESPECTIVE AGENTS.**

**B.2. Tenant agrees not to—**

*B.2.a.* Use the Premises for any purpose other than the Permitted Use.

*B.2.b.* Create a nuisance.

*B.2.c.* Interfere with any other tenant's normal business operations or Landlord's management of the Building.

*B.2.d.* Permit any waste.

*B.2.e.* Use the Premises in any way that would increase insurance premiums or void insurance on the Building.

*B.2.f.* Change Landlord's lock system.

*B.2.g.* Alter the Premises.

*B.2.h.* Allow a lien to be placed on the Premises.

*B.2.i.* Assign this lease or sublease any portion of the Premises without Landlord's written consent.

**C. Landlord's Obligations**

**C.1. Landlord agrees to—**

*C.1.a.* Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*C.1.b.* Obey all laws relating to Landlord's operation of the Building and Common Areas.

*C.1.c.* Provide the Essential Services.

*C.1.d.* Repair, replace, and maintain the (i) roof, (ii) foundation, (iii) Common Areas, (iv) structural soundness of the exterior walls, doors, corridors, and windows, and (v) other structures or equipment serving the Premises.

*C.1.e.* Return the Security Deposit to Tenant, less itemized deductions, if any, on or before the sixtieth day after the date Tenant surrenders the Premises.

*C.1.f.* Provide Tenant promptly after receipt of a written request from Tenant with a reconciliation of Tenant's Pro Rata Share of the actual Operating Expenses incurred by Landlord during the preceding calendar year and the estimated Operating Expenses paid by Tenant for the same period and reimburse Tenant for the amount of any estimated Operating Expenses paid by Tenant in excess of Tenant's Pro Rata Share of actual Operating Expenses for the preceding calendar year.

*C.1.g.* Provide Tenant with detailed invoices for all heating, air-conditioning, and electrical charges in excess of the Essential Services for which Landlord requests reimbursement.

*C.1.h.* INDEMNIFY, DEFEND, AND HOLD TENANT HARMLESS FROM ANY INJURY AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS, OCCURRING IN ANY PORTION OF THE COMMON AREAS. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF LANDLORD'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE TERM, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDI-**

**NARY NEGLIGENCE OR STRICT LIABILITY OF TENANT BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TENANT.**

**C.2. Landlord agrees not to—**

*C.2.a.* Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

*C.2.b.* Unreasonably withhold consent to a proposed assignment or sublease.

**D. General Provisions**

**Landlord and Tenant agree to the following:**

*D.1. Alterations.* Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

*D.2. Abatement.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to abate Rent for any reason.

*D.3. Insurance.* Tenant and Landlord will maintain the respective insurance coverages described in the attached Insurance Addendum.

*D.4. Release of Claims/Subrogation.* LANDLORD AND TENANT RELEASE EACH OTHER AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES OR BUILDING, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE BUILDING, AND LOSS OF BUSINESS OR REVENUES THAT ARE COVERED BY THE

RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN COVERED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS LEASE. THE PARTY INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. LANDLORD AND TENANT WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY OR ITS AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY OR ITS AGENTS.**

*D.5. Casualty/Total or Partial Destruction*

*D.5.a.* If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, at its expense, restore the roof, foundation, Common Areas, and structural soundness of the exterior walls of the Premises and any leasehold improvements within the Premises that are not within Tenant's Rebuilding Obligations to substantially the same condition that existed before the casualty and Tenant will, at its expense, be responsible for replacing any of its damaged furniture, fixtures, and personal property and performing Tenant's Rebuilding Obligations. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

*D.5.b.* If the Premises cannot be restored within ninety days, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord



chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue and Landlord will restore the Premises as provided in D.5.a. above.

*D.5.c.* To the extent the Premises are untenable after the casualty, the Rent will be adjusted as may be fair and reasonable.

*D.6. Condemnation/Substantial or Partial Taking*

*D.6.a.* If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

*D.6.b.* If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

*D.6.c.* Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

*D.7. Uniform Commercial Code.* Tenant grants Landlord a security interest in Tenant's personal property now or subsequently located on the Premises. This lease is a security agreement under the Uniform Commercial Code. Landlord may file financing statements or continuation statements to perfect or continue the perfection of the security interest.

*D.8. Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice and failing to provide Essential Services to Tenant within ten days after written notice.

*D.9. Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide an Essential Service within thirty days after default, terminate this lease.

*D.10. Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning the Premises or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b).

*D.11. Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises and sue for Rent as it accrues; (b) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the Rent directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet; (c) enter the Premises and perform Tenant's obligations; and (d) terminate this lease by written notice and sue for damages. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be occupying the Premises, until the default is cured, without being liable for damages.

*D.12. Default/Waiver.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of a remedy does not preclude pursuit of another remedy.

*D.13. Mitigation.* Landlord has mitigated the loss of rent if Landlord, within thirty days after Tenant's loss of possession, (a) places a "For Lease" sign at the Premises, (b) places the Premises on Landlord's inventory of properties for lease, (c) makes Landlord's inventory available to area brokers on a monthly basis, (d) advertises the Premises for lease in a suitable trade journal in the county in which the Premises are located, and (e) shows the Premises to prospective tenants who request to see it.

*D.14. Security Deposit.* If Tenant defaults, Landlord may use the Security Deposit to pay arrears of Rent, to repair any damage or injury, or to pay any expense or liability incurred by Landlord as a result of the default.

*D.15. Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

*D.16. Alternative Dispute Resolution.* Landlord and Tenant agree to mediate in good faith before filing a suit for damages.

*D.17. Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

*D.18. Venue.* Exclusive venue is in the county in which the Premises are located.

*D.19. Entire Agreement.* This lease, its exhibits, addenda, and riders are the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or representations of any agent of Landlord, that are not in this lease and any exhibits, addenda, and riders.

*D.20. Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

*D.21. Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING

OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

*D.22. Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

*D.23. Use of Common Areas.* Tenant will have the nonexclusive right to use the Common Areas subject to any reasonable rules and regulations that Landlord may prescribe.

*D.24. Abandoned Property.* Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

Attach insurance addendum, form 25-34 or 25-35. If applicable, include additional clauses like those suggested in form 25-10 and/or a list of exhibits and riders.

\_\_\_\_\_  
[Name of landlord]

\_\_\_\_\_  
[Name of tenant]

*[Reserved]*

Form 25-4

**Parking Facility Rider to Office Lease**

Parking Facility:

Number of Reserved Spaces:

Identification of spaces:

Basic charge:

Number of Nonreserved Spaces:

Basic charge:

Basic Charge Adjustment:

Adjustment Stop:

**General Provisions**

1. Tenant leases from Landlord, for the Term, the parking spaces indicated above in the Parking Facility.
2. Basic charge payment is due on the first day of each month during the Term.
3. Landlord may adjust the basic charge as provided above but not more frequently than once a year and never in excess of the Adjustment Stop.
4. Default in the payment of any basic charge constitutes a default in the payment of Rent under the lease.

5. Tenant may not assign or sublet any parking space without Landlord's prior written consent.

---

[Name of landlord]

---

[Name of tenant]

Form 25-5

Residential Lease

Basic Information

Date:

Landlord:

Landlord's Address:

Tenant:

Tenant's Address:

Premises

Street address/suite:

City, state, zip:

Include or attach any additional necessary legal description.

Monthly Rent:

Term (months):

Commencement Date:

Termination Date:

Security Deposit:

Permitted Use: Private residence



Occupants (other than Tenant):

Utilities to Be Provided by Landlord:

Tenant's Insurance: As required by Insurance Addendum

Landlord's Insurance: As required by Insurance Addendum

## **A. Definitions**

*A.1.* "Agent" means agents, contractors, employees, licensees, and, to the extent under the control of the principal, invitees.

*A.2.* "Injury" means (a) harm to or impairment or loss of property or its use or (b) harm to or death of a person.

*A.3.* "Rent" means Monthly Rent plus any other amounts of money payable by Tenant to Landlord.

## **B. Tenant's Obligations**

### *B.1.* **Tenant agrees to—**

*B.1.a.* Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*B.1.b.* Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

*B.1.c.* Obey all laws relating to Tenant's Permitted Use, maintenance of condition, and occupancy of the Premises.

*B.1.d.* Pay monthly, in advance, on the first day of the month, the Monthly Rent to Landlord at Landlord's Address.

*B.1.e.* Pay, as additional Rent, all other amounts due under this lease.

*B.1.f.* Pay a late charge of 5 percent of any Rent not received by Landlord by the tenth day after it is due.

*B.1.g.* Pay for all utility services used by Tenant and not provided by Landlord.

*B.1.h.* Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

*B.1.i.* Repair any damage to the Premises caused by Tenant or the occupants listed under "Occupants (other than Tenant)."

*B.1.j.* Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

*B.1.k.* Move out of the Premises at the end of the Term.

*B.1.l.* Pay Rent by check, money order, or other traceable or negotiable instrument.

**B.2. Tenant agrees not to—**

*B.2.a.* Use the Premises other than as a residence occupied by the named Tenant and the occupants listed under "Occupants (other than Tenant)."

*B.2.b.* Create or permit a nuisance or interfere with any neighbor's use of its Premises.

*B.2.c.* Change Landlord's lock system.

*B.2.d.* Alter the Premises.

*B.2.e.* Allow a lien to be placed on the Premises.

*B.2.f.* Assign this lease or sublease any portion of the Premises without Landlord's written consent.

### **C. Landlord's Obligations**

#### **Landlord agrees to—**

*C.1.* Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*C.2.* Obey all laws, ordinances, orders, rules, regulations, and covenants applicable to the use, condition, and occupancy of the Premises.

*C.3.* Provide the utilities specified in the lease.

*C.4.* Use reasonable efforts to make repairs to the Premises, but Landlord will not be required to repair a condition unless Tenant notifies Landlord of the condition and Tenant has paid all Rent then due. Landlord will not be required to repair conditions caused by Tenant or the occupants listed under "Occupants (other than Tenant)," unless caused by normal wear and tear, and will not be required to recarpet or repaint the Premises.

*C.5.* Return the Security Deposit to Tenant on or before the thirtieth day after the date Tenant surrenders the Premises, after subtracting from the Security Deposit all amounts applied to cure any breach of the lease by Tenant as provided below, provided that Tenant has given Landlord written notice of Tenant's new address.

### **D. General Provisions**

#### **Landlord and Tenant agree to the following:**

*D.1. Insurance.* Tenant and Landlord will maintain the respective insurance coverages described in the attached Insurance Addendum.

*D.2. Release of Claims/Subrogation.* LANDLORD AND TENANT RELEASE EACH OTHER, AND THEIR RESPECTIVE AGENTS, FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES OR DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE PREMISES THAT ARE COVERED BY THE RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN COVERED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS LEASE. THE PARTY INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. LANDLORD AND TENANT WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY OR ITS AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY OR ITS AGENTS.**

*D.3. Casualty/Condemnation.* If the Premises are damaged by fire or other casualty or are condemned, then either Landlord or Tenant may terminate this lease by notifying the other. Any Rent prepaid by Tenant will be returned to Tenant on termination.

*D.4. Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice and failing to remedy a condition that materially affects the physical health or safety of an ordinary tenant within ten days after written notice, unless such condition results from Tenant's actions.

*D.5. Default by Landlord/Tenant's Remedies.* **Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not remedy a condition (not**

resulting from Tenant's actions) that materially affects the physical health or safety of an ordinary tenant for thirty days after notice, terminate this lease.

- a. **Provided Tenant is not delinquent in the payment of Rent when Tenant provides Landlord any required notices and subject to applicable limitations in section 92.056 of the Texas Property Code, if Landlord has not repaired or remedied within a reasonable time or if Landlord is not making a diligent effort to repair or remedy any condition that materially affects the physical health or safety of an ordinary tenant, and Landlord is obligated under this lease to repair or remedy the condition, then Tenant may, following notice to Landlord (i) by certified mail, return receipt requested, or by registered mail or (ii) by notice to the person to whom or at the place where Tenant's Rent is normally paid, followed by a subsequent written notice if the condition is not remedied or repaired within a reasonable period of time following the first notice—**

- i. **terminate this lease;**
- ii. **have the condition repaired or remedied according to section 92.0561 of the Texas Property Code if the condition involves any of the following and at least one of Tenant's notices to Landlord includes a reasonable description of the proposed repair or remedy, along with a statement that Tenant intends to repair or remedy the condition:**
  - (a) **the backup or overflow of raw sewage inside the Premises or the flooding from broken pipes or natural drainage inside the Premises;**



- ii. **entitled to deduct Tenant's Security Deposit from Tenant's Rent without the necessity of lawsuit or to obtain a refund of Tenant's Security Deposit according to law; and**
  - iii. **not entitled to the other repair-and-deduct remedies under section 92.0561 of the Texas Property Code or the judicial remedies under subdivisions (1) and (2) of subsection (a) of section 92.0563 of the Texas Property Code.**
- c. **If Tenant elects to have the condition repaired or remedied following the requirements of section 92.0561 of the Texas Property Code, Tenant may have the condition repaired or remedied—**
- i. **immediately following Tenant's notice of intent to repair if the condition involves sewage or flooding;**
  - ii. **within three days following Tenant's delivery of notice of intent to repair if the condition involves a cessation of potable water or inadequate heat or cooled air; or**
  - iii. **within seven days following Tenant's notice of intent to repair or remedy the condition if the condition involves any other matter affecting the physical health or safety of an ordinary tenant; and**

**Tenant may deduct the cost to repair or remedy the condition from a subsequent Rent payment, but the deduction may not exceed the amount of one month's Rent under the lease or \$500, whichever is greater. When deducting the cost of repairs from the Rent, Tenant must furnish Landlord, along with payment of the balance of the Rent, a copy of the repair bill and the receipt for its payment. A repair bill and receipt may be the**

same document. Repairs and deductions may be made as often as necessary as long as Tenant otherwise complies with section 92.0561 of the Texas Property Code and the total repairs and deductions in any one month do not exceed one month's Rent or \$500, whichever is greater.

- d. If Tenant's Rent is subsidized in whole or in part by a governmental agency, the deduction limitation of one month's Rent shall mean the fair market rent for the dwelling and not the Rent that Tenant pays. The fair market rent shall be determined by the governmental agency subsidizing the Rent, or in the absence of such a determination, it shall be a reasonable amount of rent under the circumstances.
- e. Tenant repairs pursuant to section 92.0561 of the Texas Property Code must be made by a company, contractor, or repairman listed in the yellow or business pages of the telephone directory or in the classified advertising section of a newspaper of the local city, county, or adjacent county at the time of Tenant's notice of intent to repair and must be made in compliance with applicable building codes, including a building permit when required. Unless otherwise agreed between Tenant and Landlord, any repairs made pursuant to section 92.0561 of the Texas Property Code may not be made by Tenant, Tenant's immediate family, Tenant's employer or employees, or a company in which Tenant has an ownership interest. In addition, repairs may not be made by Tenant under section 92.0561 of the Texas Property Code to the foundation or load-bearing structural elements of a building of which the Premises is a part if the building contains two or more dwelling units.
- f. If Landlord repairs or remedies the condition or delivers to Tenant an affidavit for delay under section 92.0562 of the Texas Property Code



after Tenant has contacted a repairman but before the repairman commences work, Landlord shall be liable for the cost incurred by Tenant for the repairman's trip charge and Tenant may deduct the charge from Tenant's Rent as if it were a repair cost.

- g. If Tenant elects to pursue judicial remedies against Landlord pursuant to section 92.0563 of the Texas Property Code, those remedies include—**
- i. an order directing Landlord to take reasonable action to repair or remedy the condition;**
  - ii. an order reducing Tenant's Rent, from the date of the first repair notice, in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;**
  - iii. a judgment against Landlord for a civil penalty of one month's Rent plus \$500;**
  - iv. a judgment against Landlord for the amount of Tenant's actual damages; and**
  - v. court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.**

*D.6. Default by Tenant/Events.* Defaults by Tenant are (a) failing to timely pay Rent, (b) abandoning the Premises or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b).

*D.7. Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises and sue for Rent as it accrues; (b)

enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the Rent directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet; (c) enter the Premises and perform Tenant's obligations; and (d) terminate this lease by written notice and sue for possession or damages or both.

*D.8. Mitigation.* Landlord and Tenant have a duty to mitigate damages.

*D.9. Security Deposit.* If Tenant defaults, Landlord may use the Security Deposit to pay arrears of Rent, to repair any damage or injury, or to pay any expense or liability incurred by Landlord as a result of the default.

*D.10. Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

*D.11. Alternative Dispute Resolution.* Landlord and Tenant agree to mediate in good faith before filing a suit for damages.

*D.12. Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and any other costs.

*D.13. Venue.* Exclusive venue is in the county in which the Premises are located.

*D.14. Entire Agreement.* This lease, its exhibits, addenda, and riders are the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or

representations of any agent of Landlord, that are not in this lease and any exhibits, addenda, and riders.

*D.15. Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

*D.16. Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

*D.17. Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

*D.18. Texas Property Code.* Landlord and Tenant each acknowledge that chapter 92 of the Texas Property Code, which deals with residential tenancies, affords certain rights and imposes certain duties on them.

*D.19. Abandoned Property.* Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

*D.20. Tenant's Statutory Right to Terminate.* Tenant may have special statutory rights to terminate the lease early in certain situations involving family violence, military deployment or transfer, or certain sexual offenses or stalking.

*D.21. Emergencies.* Tenant may call [telephone number] to report emergencies that affect the Premises and that threaten Tenant's physical health or safety.

Attach insurance addendum. If applicable, include additional clauses like those suggested in form 25-25 in this chapter and/or a list of exhibits and riders.

\_\_\_\_\_  
[Name of landlord]

\_\_\_\_\_  
[Name of tenant]

**Insurance Addendum to Lease**

Lease

Date:

Landlord:

Tenant:

This insurance addendum is part of the lease.

**A. Tenant agrees to—**

1. Maintain the property and liability insurance policy required below during the Term and any period before or after the Term when Tenant is present on the Premises:

**Type of Insurance****Minimum Policy Limit**

Tenant's homeowner's (also known as tenant's or renter's)

*Personal Liability:*

Per occurrence: \$ \_\_\_\_\_

Aggregate: \$ \_\_\_\_\_

*Property:*

100 percent of replacement cost of all Tenant's furniture, fixtures, equipment, and other personal property located in the Premises

2. Deliver a certificate of insurance to Landlord before entering the Premises and thereafter at least ten days before the expiration of the policies.

**B. Landlord agrees to** maintain the property insurance policy required below during the Term:

**Type of Insurance**

**Minimum Policy Limit**

Causes of loss—special form property

100 percent of replacement cost of the building in which Premises are located; exclusive of foundation, footings, infrastructure, and sitework

*[Reserved]*

Form 25-6

**Industrial Lease**

**Basic Information**

Date:

Landlord:

Landlord's Address:

Tenant:

Tenant's Address:

[Include if applicable: Guarantors: [see guaranty agreement at form 25-18 in this chapter]]

[Include if applicable: Guarantors' Addresses:]

Premises

Approximate square feet:

Name of Building:

Street address/suite:

City, state, zip:

Include or attach any additional necessary legal description.

Term (months):

Commencement Date:



Termination Date:

Base Rent (monthly):

Tenant's Pro Rata Share: [percent] percent ([percent]%)

Security Deposit:

Permitted Use:

Tenant's Insurance: As required by Insurance Addendum

Landlord's Insurance: As required by Insurance Addendum

Tenant's Rebuilding Obligations: If the Premises are damaged by fire or other elements, Tenant will be responsible for repairing or rebuilding the following leasehold improvements: [see section 25.1:4]

#### **A. Definitions**

*A.1.* "Agent" means agents, contractors, employees, licensees, and, to the extent under the control of the principal, invitees.

*A.2.* "Common Areas" means all facilities and areas of the Building that are intended and designated by Landlord from time to time for the common, general, and nonexclusive use of all tenants of the Building, including parking lots. Landlord has the exclusive control over and right to manage the Common Areas.

*A.3.* "Essential Services" means utility connections reasonably necessary for occupancy of the Premises for the Permitted Use.

A.4. "Injury" means (a) harm to or impairment or loss of property or its use, (b) harm to or death of a person, or (c) "personal and advertising injury" as defined in the form of liability insurance Tenant is required to maintain.

A.5. "Lienholder" means the holder of a deed of trust covering the Premises.

A.6. "Rent" means Base Rent plus any other amounts of money payable by Tenant to Landlord.

## **B. Tenant's Obligations**

### **B.1. Tenant agrees to—**

B.1.a. Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

B.1.b. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

B.1.c. Obey (i) all laws relating to Tenant's use, maintenance of the condition, and occupancy of the Premises and Tenant's use of any Common Areas in the Building; (ii) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (iii) any rules and regulations for the Building and Common Areas adopted by Landlord.

B.1.d. Pay monthly, in advance, on the first day of the month, the Base Rent to Landlord at Landlord's Address.

B.1.e. Pay a late charge of 5 percent of any Rent not received by Landlord by the tenth day after it is due.

B.1.f. Reimburse Landlord for real property taxes paid on the Premises.

*B.1.g.* Obtain and pay for all utility services used by Tenant and not provided by Landlord.

*B.1.h.* Pay Tenant's Pro Rata Share of any utility services provided by Landlord.

*B.1.i.* Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

*B.1.j.* Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, reasonable wear excepted.

*B.1.k.* Keep the sidewalks, service ways, and loading areas adjacent to the Premises clean and unobstructed.

*B.1.l.* Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

*B.1.m.* If requested, deliver to Landlord a financing statement perfecting the security interest created by this lease.

*B.1.n.* Vacate the Premises and return all keys to the Premises on the last day of the Term.

*B.1.o.* Pay all costs caused by Tenant's introduction of materials, other than ordinary human waste, into the sanitary sewer system.

*B.1.p.* Install and maintain any dilution tanks, holding tanks, settling tanks, sewer sampling devices, sand traps, grease traps, or other devices required by law for the Permitted Use of the sanitary sewer system.

*B.1.q.* If the Premises are served by rail and if requested by the railroad, enter into a joint maintenance agreement with the railroad and bear Tenant's Pro Rata Share of the cost of maintaining the railroad spur.

*B.1.r.* On request, execute an estoppel certificate that states the Commencement Date and Termination Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested.

*B.1.s.* INDEMNIFY, DEFEND, AND HOLD LANDLORD AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN ANY PORTION OF THE PREMISES. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF TENANT'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE TERM, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD OR LANDLORD'S AGENTS BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD AND LIENHOLDER AND THEIR RESPECTIVE AGENTS.**

*B.2.* **Tenant agrees not to—**

*B.2.a.* Use the Premises for any purpose other than the Permitted Use.

*B.2.b.* Create a nuisance.

*B.2.c.* Interfere with any other tenant's normal business operations or Landlord's management of the Premises.

*B.2.d.* Permit any waste.

*B.2.e.* Use the Premises in any way that would increase insurance premiums or void insurance on the Premises.

*B.2.f.* Change Landlord's lock system.

*B.2.g.* Alter the Premises.

*B.2.h.* Allow a lien to be placed on the Premises.

*B.2.i.* Assign this lease or sublease any portion of the Premises without Landlord's written consent.

*B.2.j.* Use the roof on the Premises.

*B.2.k.* Place any signs on the Premises without Landlord's written consent.

## **C. Landlord's Obligations**

### ***C.1.* Landlord agrees to—**

*C.1.a.* Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*C.1.b.* Obey all laws relating to Landlord's operation of the Building.

*C.1.c.* Repair, replace, and maintain the (i) roof, (ii) foundation, (iii) Common Areas, and (iv) structural soundness of the exterior walls, excluding windows, window glass, plate glass, and doors.

*C.1.d.* Return the Security Deposit to Tenant, less itemized deductions, if any, on or before the sixtieth day after the date Tenant surrenders the Premises.

*C.1.e.* INDEMNIFY, DEFEND, AND HOLD TENANT HARMLESS FROM ANY INJURY AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS, OCCURRING IN ANY PORTION OF THE COMMON AREAS. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF LANDLORD'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE TERM, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF TENANT BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TENANT.**

**C.2. Landlord agrees not to—**

*C.2.a.* Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

*C.2.b.* Unreasonably withhold consent to a proposed assignment or sublease.

**D. General Provisions**

**Landlord and Tenant agree to the following:**

*D.1. Alterations.* Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

*D.2. Abatement.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to abate Rent for any reason.

*D.3. Insurance.* Tenant and Landlord will maintain the respective insurance coverages described in the attached Insurance Addendum.

*D.4. Release of Claims/Subrogation.* LANDLORD AND TENANT RELEASE EACH OTHER AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES OR BUILDING, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE BUILDING, AND LOSS OF BUSINESS OR REVENUES THAT ARE COVERED BY THE RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN COVERED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS LEASE. THE PARTY INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. LANDLORD AND TENANT WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY OR ITS AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY OR ITS AGENTS.**

*D.5. Casualty/Total or Partial Destruction*

*D.5.a.* If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, at its expense, restore the roof, foundation, Common Areas, and structural

soundness of the exterior walls of the Premises and any leasehold improvements within the Premises that are not within Tenant's Rebuilding Obligations to substantially the same condition that existed before the casualty and Tenant will, at its expense, be responsible for replacing any of its damaged furniture, fixtures, and personal property and performing Tenant's Rebuilding Obligations. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

*D.5.b.* If Landlord cannot complete the portion of the restoration for which Landlord is responsible within ninety days, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant in writing of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord in writing within ten days from receipt of Landlord's estimate. If Tenant does not notify Landlord timely of Tenant's election to terminate this lease, the lease will continue and Landlord will restore the Premises as provided in D.5.a. above.

*D.5.c.* To the extent the Premises are untenantable after the casualty, the Rent will be adjusted as may be fair and reasonable.

*D.6. Condemnation/Substantial or Partial Taking*

*D.6.a.* If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

*D.6.b.* If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.



D.6.c. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

D.7. *Uniform Commercial Code.* Tenant grants Landlord a security interest in Tenant's personal property now or subsequently located on the Premises. This lease is a security agreement under the Uniform Commercial Code. Landlord may file financing statements or continuation statements to perfect or continue the perfection of the security interest.

D.8. *Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice and failing to provide Essential Services to Tenant within ten days after written notice.

D.9. *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide an Essential Service for thirty days after default, terminate this lease.

D.10. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning the Premises or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b).

D.11. *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises and sue for Rent as it accrues; (b) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the Rent directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet; (c) enter the Premises and perform Tenant's obligations; and (d) terminate this lease by written notice and sue for damages. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be occupying the Premises, until the default is cured, without being liable for damages.

*D.12. Default/Waiver.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of a remedy does not preclude pursuit of another remedy.

*D.13. Mitigation.* Landlord has mitigated the loss of rent if Landlord, within thirty days after Tenant's loss of possession, (a) places a "For Lease" sign at the Premises, (b) places the Premises on Landlord's inventory of properties for lease, (c) makes Landlord's inventory available to area brokers on a monthly basis, (d) advertises the Premises for lease in a suitable trade journal in the county in which the Premises are located, and (e) shows the Premises to prospective tenants who request to see it.

*D.14. Security Deposit.* If Tenant defaults, Landlord may use the Security Deposit to pay arrears of Rent, to repair any damage or injury, or to pay any expense or liability incurred by Landlord as a result of the default.

*D.15. Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

*D.16. Alternative Dispute Resolution.* Landlord and Tenant agree to mediate in good faith before filing a suit for damages.

*D.17. Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

*D.18. Venue.* Exclusive venue is in the county in which the Premises are located.

*D.19. Entire Agreement.* This lease, its exhibits, addenda, and riders are the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There

are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or representations of any agent of Landlord, that are not in this lease and any exhibits, addenda, and riders.

*D.20. Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

*D.21. Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

*D.22. Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

*D.23. Use of Common Areas.* Tenant will have the nonexclusive right to use the Common Areas subject to any reasonable rules and regulations that Landlord may prescribe.

*D.24. Abandoned Property.* Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

Attach insurance addendum, form 25-34 or 25-35. If applicable, include additional clauses like those suggested in form 25-10 and/or a list of exhibits and riders.

---

[Name of landlord]

---

[Name of tenant]

*[Reserved]*

Form 25-7

Hunting Lease

Basic Information

Date:

Landlord:

Landlord's Address:

Tenant:

Tenant's Address:

Premises: SURFACE ONLY of approximately [number] acres of land, situated in [county] County, Texas, as described in Exhibit [exhibit number/letter] ("Land").

Include or attach any additional necessary legal description.

The Premises do not include livestock, crops, or Excluded Improvements located on the Land. Tenant will not be permitted to use the Excluded Improvements.

Excluded Improvements: Any structure, improvement, or equipment situated on the Land and constructed or installed by any person other than Tenant, except for the following:  
[specify].

Base Rent:

Term (months):

Commencement Date:

Termination Date:

Permitted Use: Solely for hunting of the following game: [specify].

Tenant's Insurance: As required by Insurance Addendum

**A. Definitions**

*A.1.* "Agent" means agents, contractors, employees, licensees, and, to the extent under the control of the principal, invitees.

*A.2.* "Injury" means (a) harm to or impairment or loss of property or its use or (b) harm to or death of a person.

*A.3.* "Rent" means Base Rent plus any other amounts of money payable by Tenant to Landlord.

**B. Tenant's Obligations**

*B.1.* Tenant agrees to—

*B.1.a.* Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*B.1.b.* Accept the Premises in their present condition "AS IS," the Premises being suitable for the Permitted Use.

*B.1.c.* Obey all laws relating to (i) Tenant's Permitted Use; (ii) Tenant's activities while on the Premises, including times and manner for hunting and removing game (and keeping of any applicable records), handling and discharging firearms, operating motor vehicles, and consuming alcoholic beverages; (iii) Tenant's use of any existing structure, improvement, or equipment that Tenant is permitted to use pursuant to this lease; or (iv) Tenant's use of any structure, improvement, or equipment erected or installed by Tenant on the Premises in accordance with this lease.

*B.1.d.* Pay, in advance, Base Rent to Landlord at Landlord's Address.

*B.1.e.* Pay for all utility services used by Tenant.

*B.1.f.* Pay all taxes on Tenant's property located on the Premises.

*B.1.g.* Repair, replace, and maintain any part of the crops, livestock, or Improvements damaged by Tenant.

*B.1.h.* Operate vehicles on the Land in a manner that will not damage existing roads, trails, or vegetation.

*B.1.i.* Keep all gates on the Land closed and locked.

*B.1.j.* Enter and exit the Premises only at those places designated by Landlord.

*B.1.k.* Vacate the Premises on the last day of the Term.

*B.1.l.* Maintain the insurance coverages described in the attached Insurance Addendum.

*B.1.m.* Properly supervise all persons present on the Premises at the invitation or request of Tenant.

*B.1.n.* Deliver to Landlord a Release, Indemnity, and Assumption of Risks in the form attached to this lease as Exhibit B, executed by each individual (including Tenant) who will enter the Premises at the invitation or request of Tenant before entry by any such individual.

*B.1.o.* INDEMNIFY, DEFEND, AND HOLD LANDLORD AND LANDLORD'S AGENTS HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) ARISING FROM OR RELATED TO TENANT'S OR TENANT'S AGENTS' USE OF THE PREMISES. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF**



TENANT'S INSURANCE, (ii) WILL SURVIVE THE END OF THE TERM, AND (iii) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD OR LANDLORD'S AGENTS BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR LANDLORD'S AGENTS.

*B.2. Tenant agrees not to—*

*B.2.a.* Use the Premises for any purpose other than the Permitted Use.

*B.2.b.* Create or allow a nuisance or permit any waste or injury to the Premises or the crops or livestock thereon.

*B.2.c.* Change Landlord's lock system.

*B.2.d.* Alter the Premises, including clearing new roads or trails, digging ponds or tanks, moving or erecting any fences, or locating on the Premises any type of manufactured housing or mobile home.

*B.2.e.* Allow a lien to be placed on the Premises.

*B.2.f.* Assign this lease or sublease any portion of the Premises without Landlord's written consent.

*B.2.g.* Litter or leave trash, debris, or shell casings on the Premises.

*B.2.h.* Allow anyone other than those persons listed in Exhibit A to hunt on the Premises.

*B.2.i.* Construct any kennel, blind, feeder, or stand on the Premises without Landlord's prior written consent.

**C. Landlord's Obligations****C.1. Landlord agrees to—**

*C.1.a.* Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*C.1.b.* Obey all laws relating to Landlord's operation of the Premises.

**C.2. Landlord agrees not to—**

*C.2.a.* Allow any use of the Premises inconsistent with Tenant's Permitted Use as long as Tenant is not in default.

*C.2.b.* Unreasonably withhold consent to a proposed assignment or sublease.

**D. General Provisions****Landlord and Tenant agree to the following:**

*D.1. Alterations.* Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at termination of this lease and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

*D.2. Abatement.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to an abatement or refund of Rent for any reason.

*D.3. Release of Claims.* TENANT RELEASES LANDLORD AND LANDLORD'S AGENTS FROM ALL CLAIMS OR LIABILITIES FOR ANY INJURY TO TENANT AND TENANT'S AGENTS WHILE PRESENT ON THE PREMISES OR TO TENANT'S OR TENANT'S AGENTS' PROPERTY

LOCATED ON THE PREMISES. THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD OR LANDLORD'S AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR LANDLORD'S AGENTS.

*D.4. Condemnation/Substantial or Partial Taking*

*D.4.a.* If the Premises cannot be used for the Permitted Use because of condemnation or purchase in lieu of condemnation, this lease will terminate.

*D.4.b.* If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

*D.4.c.* Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

*D.5. Default by Landlord/Events.* A default by Landlord is the failure to comply with any provision of this lease that is not cured within thirty days after written notice.

*D.6. Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and terminate this lease.

*D.7. Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning the Premises or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b).

*D.8. Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises and sue for Rent as it accrues;

(b) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the Rent directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet; (c) enter the Premises and perform Tenant's obligations; and (d) terminate this lease by written notice and sue for damages. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be hunting on the Premises, until the default is cured, without being liable for damages.

*D.9. Default/Waiver.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of a remedy does not preclude pursuit of another remedy.

*D.10. Mitigation.* Landlord has mitigated the loss of rent if Landlord, within thirty days after Tenant's loss of possession, (a) places a "For Lease" sign at the Premises, (b) places the Premises on Landlord's inventory of properties for lease, (c) makes Landlord's inventory available to area brokers on a monthly basis, (d) advertises the Premises for lease in a suitable trade journal in the county in which the Premises are located, and (e) shows the Premises to prospective tenants who request to see it.

*D.11. Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

*D.12. Alternative Dispute Resolution.* Landlord and Tenant agree to mediate in good faith before filing a suit for damages.

*D.13. Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

*D.14. Venue.* Exclusive venue is in the county in which the Premises are located.

*D.15. Entire Agreement.* This lease, its exhibits, addenda, and riders are the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or representations of any agent of Landlord, that are not in this lease and any exhibits, addenda, and riders.

*D.16. Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

*D.17. Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

*D.18. Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

*D.19. Mineral Interests.* This lease is subordinate to any present or future oil, gas, or other mineral exploration agreements and leases relating to the Land. Landlord will not be liable to Tenant for any damages for actions attributable to those agreements and will receive all consideration paid therefor.

*D.20. Landlord's Use.* Landlord, both for Landlord and for third parties, retains the right to enter on and use the Land for grazing, farming, erecting telecommunications towers or antennas, and other uses that do not materially interfere with the Permitted Use.

*D.21. Identity.* Landlord reserves the right to verify the identity of all persons on the Premises.

*D.22. Option to Terminate.* Landlord will have the option to terminate this lease with respect to any portion of the Land that is sold. Landlord's option will be exercisable by written notice delivered to Tenant no later than thirty days before the date of termination. The Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable. Tenant will receive a refund of any prepaid Base Rent fairly and reasonably allocable to the portion of the Premises for which this lease has been terminated.

If applicable, include additional clauses like those suggested in form 25-10 in this chapter and/or a list of exhibits and riders.

\_\_\_\_\_  
[Name of landlord]

\_\_\_\_\_  
[Name of tenant]

**Insurance Addendum to Hunting Lease**

The landowner's liability for injuries and damages from the tenant's use of the property may be limited by compliance with the requirements of Tex. Civ. Prac. & Rem. Code ch. 75.

Lease

Date:

Landlord:

Tenant:

This insurance addendum is part of the lease.

**Tenant agrees to—**

1. Maintain the property and/or liability insurance policies required below (mark applicable boxes) during the lease Term and any period before or after the lease Term when Tenant is present on the Premises:

**Type of Insurance**

**Minimum Policy Limit**

*If Tenant is an individual:*

<input type="checkbox"/> Hunting lease liability	Per occurrence:	\$ _____
	Aggregate:	\$ _____

*Or*

Endorsement extending homeowner's policy liability to Premises

Texas personal auto                      Minimum limits required by law





**Exhibit A**

**Individuals Who Will Hunt on the Premises**

List names of those individuals who are permitted to hunt on the premises.

**Exhibit B****Release, Indemnity, and Assumption of Risks**

Lease

Date:

Landlord:

Tenant:

1. *Assumption of Risks.* THE UNDERSIGNED ACKNOWLEDGES THAT (a) DANGEROUS NATURAL OR MAN-MADE CONDITIONS MAY EXIST OR OCCUR ON THE PREMISES DESCRIBED IN THE LEASE, INCLUDING STREAMS AND RIVERS WITH CURRENTS AND WATER THAT MAY BE DEEP OR FLOOD, HAZARDOUS DRIVING AND WALKING CONDITIONS, UNEVEN TERRAIN, THE PRESENCE OF WILD, DOMESTIC, POISONOUS, OR DISEASED ANIMALS, ELEVATED HUNTING STANDS, AND/OR CAMOUFLAGED SUNKEN HUNTING BLINDS; AND (b) HUNTING IS AN INHERENTLY DANGEROUS ACTIVITY INVOLVING THE USE OF FIREARMS AND OTHER LETHAL IMPLEMENTS AND THE PRESENCE OF OTHER HUNTERS. THE UNDERSIGNED ASSUMES ALL SUCH DANGERS AND RISKS.

2. *Indemnity.* THE UNDERSIGNED WILL INDEMNIFY, DEFEND, AND HOLD LANDLORD AND ITS AGENTS, EMPLOYEES, INVITEES, LICENSEES, OR VISITORS (COLLECTIVELY, "LANDLORD") HARMLESS AGAINST ALL CLAIMS, DAMAGES, AND COSTS (COLLECTIVELY, "CLAIMS") INCURRED BY OR ALLEGED AGAINST LANDLORD AND ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION OF THE UNDERSIGNED OR ANY OF THE UNDERSIGNED'S AGENTS, EMPLOYEES, CONTRACTORS, LICENSEES, OR VISITORS (COLLECTIVELY, "HUNTER") WHILE AT THE PREMISES, INCLUDING ANY CLAIMS BASED ON ANY (a) INJURY TO OR DEATH OF ANY PERSON(S), (b) DAMAGE TO OR LOSS OF PROPERTY, OR (c) FAILURE OF HUNTER TO COMPLY WITH ANY APPLICABLE LAWS OR THE LEASE.

3. *Release.* THE UNDERSIGNED WAIVES ALL CLAIMS AGAINST LANDLORD AND RELEASES LANDLORD FROM ANY LIABILITY, BASED ON ANY (a) INJURY TO OR DEATH OF HUNTER OR (b) DAMAGE TO OR LOSS OF ANY PROPERTY BELONGING TO HUNTER.

4. *Negligence of Landlord.* THE FOREGOING INDEMNITIES, WAIVERS, AND RELEASES WILL APPLY EVEN IF THE INCIDENT GIVING RISE TO THE CLAIM IS CAUSED IN WHOLE OR IN PART BY THE CONDITION OF THE PREMISES OR BY THE SOLE OR CONCURRENT ORDINARY NEGLIGENCE OF LANDLORD (BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD).

\_\_\_\_\_  
[Name of tenant]

[Date]

Form 25-8

Agricultural Lease

Basic Information

Date:

Landlord:

Landlord's Address:

Tenant:

Tenant's Address:

Premises: SURFACE ONLY of approximately [number] acres of land, situated in [county] County, Texas, as described in Exhibit [exhibit number/letter] ("Land").

Include or attach any additional necessary legal description.

The Premises do not include and Tenant will not be permitted to use the Excluded Improvements.

Excluded Improvements: Any structure, improvement, or equipment situated on the Land and constructed or installed by any person other than Tenant, except for the following: [specify].

Base Rent:

Select as applicable.

[\$amount] payable on execution of this lease.

And/Or

\$[amount] (monthly) due on the first day of the month

And/Or

[percent] percent of all cotton produced on the Premises delivered to the gin of Tenant's choice.

And/Or

[percent] percent of all corn, wheat, and other grains produced on the Premises delivered at the turnrow.

And/Or

[percent] percent of all crops produced on and harvested from the Premises.

And/Or

[percent] percent of the gross sales proceeds from the sale of all [specify] raised on and harvested from the Premises less [percent] percent of the cost of [specify] payable on the sale of the [specify].

And/Or

[percent] percent of all USDA agricultural program payments.

Continue with the following.

Term (months):

Commencement Date:

Termination Date:

Security Deposit:

Permitted Use: Solely for planting, raising, and harvesting [specify] and no other purpose.

Tenant's Insurance: As required by Insurance Addendum

**A. Definitions**

*A.1.* "Agent" means agents, contractors, employees, licensees, and, to the extent under the control of the principal, invitees.

*A.2.* "Injury" means (a) harm to or impairment or loss of property or its use or (b) harm to or death of a person.

*A.3.* "Rent" means Base Rent plus any other amounts of money payable by Tenant to Landlord.

**B. Tenant's Obligations**

*B.1.* **Tenant agrees to—**

*B.1.a.* Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*B.1.b.* Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

*B.1.c.* Obey all laws relating to Tenant's use, maintenance of condition, and occupancy of the Premises, including the rules and regulations of the United States Department of Agriculture and the Texas Agriculture Commissioner.

*B.1.d.* Pay the Base Rent when it is due to Landlord at Landlord's Address.

*B.1.e.* Pay a late charge of 5 percent of any Rent not received by Landlord by the tenth day after it is due.

*B.1.f.* Pay for all labor, fuel, and utility services used by Tenant.

*B.1.g.* Pay all taxes on the crops raised on and Tenant's property located on the Premises.

*B.1.h.* Allow Landlord to enter the Premises to inspect the Premises and show the Premises to prospective purchasers or tenants.

*B.1.i.* Repair, replace, and maintain any part of the Premises used by Tenant.

*B.1.j.* Repair any damage to the Premises, Land, or Excluded Improvements caused by Tenant.

*B.1.k.* Maintain the insurance coverages described in the attached Insurance Addendum.

*B.1.l.* INDEMNIFY, DEFEND, AND HOLD LANDLORD AND LANDLORD'S AGENTS HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) ARISING OUT OF TENANT'S OR TENANT'S AGENTS' USE OF THE PREMISES. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF TENANT'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE TERM, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD OR LANDLORD'S AGENTS BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR LANDLORD'S AGENTS.**

*B.1.m.* Deliver to Landlord a financing statement perfecting the security interest.

*B.1.n.* Vacate the Premises on the last day of the Term.

*B.1.o.* Pay all costs of planting, raising, and harvesting the crops, unless Landlord elects to receive payment in kind, in which case costs will be shared in the same proportion as the crops.

*B.1.p.* Cultivate the Premises in a timely, thorough, and farmerlike manner, employing the best methods of farming customarily practiced on like crops in the area.

*B.1.q.* Maintain adequate records on all matters related to farming the Premises and provide Landlord with a copy.

*B.1.r.* Keep all gates on the Premises closed and locked.

*B.1.s.* Enter and exit the Premises only at those places designated by Landlord.

**B.2. Tenant agrees not to—**

*B.2.a.* Use the Premises for any purpose other than the Permitted Use.

*B.2.b.* Create or allow a nuisance or permit any waste of the Premises.

*B.2.c.* Change Landlord's lock system.

*B.2.d.* Alter the Premises, including clearing new roads, moving or erecting any fences, or locating on the Premises any type of manufactured housing or mobile home.

*B.2.e.* Assign this lease or sublease any portion of the Premises without Landlord's written consent.

*B.2.f.* Make any new or change any existing agreement with any governmental entity.

*B.2.g.* Hunt or fish on the Land or allow anyone else to do so.

*B.2.h.* Litter or leave trash or debris on the Premises.



*B.2.i.* Allow a lien to be placed on the Premises.

Include the following if applicable.

*B.2.j.* Allow a lien to be placed on the crops raised on or harvested from the Premises.

Continue with the following.

**C. Landlord's Obligations**

*C.1. Landlord agrees to—*

*C.1.a.* Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*C.1.b.* Return the Security Deposit to Tenant, less itemized deductions, if any, on or before the sixtieth day after the date Tenant surrenders the Premises.

*C.1.c.* Obey all laws relating to Landlord's operation of the Premises.

*C.2. Landlord agrees not to—*

*C.2.a.* Allow any use of the Premises inconsistent with the Permitted Use as long as Tenant is not in default.

*C.2.b.* Unreasonably withhold consent to a proposed assignment or sublease.

**D. General Provisions**

**Landlord and Tenant agree to the following:**

*D.1. Alterations.* Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at termination of this lease and at Tenant's expense, remove any physical additions and improvements,

repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

*D.2. Abatement.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to abate Rent for any reason.

*D.3. Release of Claims/Subrogation.* TENANT RELEASES LANDLORD AND LANDLORD'S AGENTS FROM ALL CLAIMS OR LIABILITIES FOR ANY INJURY TO TENANT AND TENANT'S AGENTS OR TO TENANT'S OR TENANT'S AGENTS' PROPERTY LOCATED ON THE PREMISES. **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD OR LANDLORD'S AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR LANDLORD'S AGENTS.**

*D.4. Condemnation/Substantial or Partial Taking*

*D.4.a.* If the Premises cannot be used for the Permitted Use because of condemnation or purchase in lieu of condemnation, this lease will terminate.

*D.4.b.* If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

*D.4.c.* Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

*D.5. Landlord's Lien.* Tenant grants to Landlord a security interest in the collateral to secure payment and performance by Tenant of all obligations and payments due from Tenant under this lease. The collateral will include all of Tenant's crops, livestock, and per-

sonal property located or to be located on the Premises, and all products, proceeds, offspring, increase, governmental payments, insurance proceeds, documents of title, and warehouse receipts relating to such property.

This lease is a security agreement under both article 9 of the Texas Business and Commerce Code and the federal Food Security Act of 1985. Landlord may file financing statements or continuation statements to perfect or continue the perfection of the security interest. Tenant agrees to furnish to Landlord a list of the names and addresses of any buyer, commission merchant, or selling agent to or through whom Tenant may sell the collateral. Tenant agrees to notify Landlord of the identity of any buyer, commission merchant, selling agent, or warehouse to or with whom Tenant intends to sell or store the collateral within seven days before any sale or storage of the collateral.

*D.6. Default by Landlord/Events.* A default by Landlord is the failure to comply with any provision of this lease that is not cured within thirty days after written notice.

*D.7. Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and terminate this lease.

*D.8. Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning the Premises or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b).

*D.9. Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises and sue for Rent as it accrues; (b) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the Rent directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet; (c) enter the Premises and perform Tenant's obligations; and (d) terminate this lease by written notice and sue for dam-

ages. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be farming the Premises, until the default is cured, without being liable for damages.

*D.10. Default/Waiver.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of a remedy does not preclude pursuit of another remedy.

*D.11. Mitigation.* Landlord has mitigated the loss of rent if Landlord, within thirty days after Tenant's loss of possession, (a) places a "For Lease" sign at the Premises, (b) places the Premises on Landlord's inventory of properties for lease, (c) makes Landlord's inventory available to area brokers on a monthly basis, (d) advertises the Premises for lease in a suitable trade journal in the county in which the Premises are located, and (e) shows the Premises to prospective tenants who request to see it.

*D.12. Security Deposit.* If Tenant defaults, Landlord may use the Security Deposit to pay arrears of Rent, to repair any damage or injury, or to pay any expense or liability incurred by Landlord as a result of the default.

*D.13. Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

*D.14. Alternative Dispute Resolution.* Landlord and Tenant agree to mediate in good faith before filing a suit for damages.

*D.15. Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

*D.16. Venue.* Exclusive venue is in the county in which the Premises are located.

*D.17. Entire Agreement.* This lease, its exhibits, addenda, and riders are the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or representations of any agent of Landlord, that are not in this lease and any exhibits, addenda, and riders.

*D.18. Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

*D.19. Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

*D.20. Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

*D.21. Mineral Interests.* This lease is subordinate to any present or future oil, gas, or other mineral exploration agreements and leases relating to the Land. Landlord will not be liable to Tenant for any damages for actions attributable to those agreements and will receive all consideration paid therefor. Any damages to growing crops arising from an oil, gas, or min-

eral interest will be divided between Landlord and Tenant in the same proportions as the crops are divided.

*D.22. Landlord's Use.* Landlord retains the right to enter on and use and/or permit third parties to enter on and use the Premises for hunting, fishing, and other uses that do not materially interfere with Tenant's farming rights.

*D.23. Crops Grown for Tenant's Use.* If Tenant uses any of the Premises for crops for Tenant's use, Tenant will obtain Landlord's written consent and will pay Landlord the average market price for the crop harvested.

*D.24. Marketing Landlord's Share.* If Landlord elects to receive payment in kind, Landlord will give written notice to Tenant within [number] days after the Commencement Date. Landlord's share will be delivered to Landlord in [county] County, Texas.

*D.25. Governmental Payments.* If Tenant receives any payment from any governmental agency because of growing or not growing crops on the Premises and the Rent payable hereunder is based on a crop share, that payment will be divided between Tenant and Landlord in the same proportion as set out in the Rent clause.

Include the following if applicable.

*D.26. Tenant's Use of Water*

*D.26.a. Surface.* [Describe permitted use, if any.]

*D.26.b. Subsurface.* [Describe permitted use, if any.]

If applicable, include additional clauses like those suggested in form 25-10 in this chapter and/or a list of exhibits and riders.

\_\_\_\_\_  
[Name of landlord]

\_\_\_\_\_  
[Name of tenant]

**Insurance Addendum to Lease**

Lease

Date:

Landlord:

Tenant:

This insurance addendum is part of the lease.

**Tenant agrees to—**

1. Maintain the liability insurance policies required below (mark applicable boxes) during the Term and any period before or after the Term when Tenant is present on the Premises:

<b>Type of Insurance</b>	<b>Minimum Policy Limit</b>	
<input type="checkbox"/> Commercial general liability (occurrence basis) endorsed to cover farm operations	Per occurrence:	\$ _____
	Aggregate:	\$ _____
<i>Or</i>		
<input type="checkbox"/> Farm owner's on a renter's form such as AAIS Form No. FO-4		
<i>Or</i>		
<input type="checkbox"/> Farm liability policy		
<input type="checkbox"/> Workers' compensation		\$500,000
<input type="checkbox"/> Employer's liability		\$ _____
<input type="checkbox"/> Business automobile liability		\$ _____
<input type="checkbox"/> Umbrella/excess liability (occurrence basis)		\$ _____



2. Comply with the following additional insurance requirements:
  - a. All liability policies must be endorsed to name Landlord as an “additional insured” on a form that does not exclude coverage for the sole or contributory ordinary negligence of Landlord and must not be endorsed to exclude the sole negligence of Landlord from the definition of “insured contract.”
  - b. Certificates of insurance and copies of any additional insured and waiver of subrogation endorsements must be delivered by Tenant to Landlord before entering the Premises and thereafter at least ten days before the expiration of the policies.

Form 25-9

**Grazing Lease**

**Basic Information**

Date:

Landlord:

Landlord's Address:

Tenant:

Tenant's Address:

Premises: SURFACE ONLY of approximately [number] acres of land, situated in [county] County, Texas, as described in Exhibit [exhibit number/letter] ("Land").

Include or attach any additional necessary legal description.

The Premises do not include crops or Excluded Improvements located on the Land.

Tenant will not be permitted to use the Excluded Improvements.

Excluded Improvements: Any structure, improvement, or equipment situated on the Land and constructed or installed by any person other than Tenant, except for the following:  
[specify].

Term (months):

Commencement Date:

Termination Date:

Permitted Use: Solely for grazing of [specify].

Base Rent (monthly):

Security Deposit:

Tenant's Insurance: As required by Insurance Addendum

**A. Definitions**

*A.1.* "Agent" means agents, contractors, employees, licensees, and, to the extent under the control of the principal, invitees.

*A.2.* "Injury" means (a) harm to or impairment or loss of property or its use or (b) harm to or death of a person.

*A.3.* "Rent" means Base Rent plus any other amounts of money payable by Tenant to Landlord.

**B. Tenant's Obligations**

*B.1.* Tenant agrees to—

*B.1.a.* Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*B.1.b.* Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

*B.1.c.* Obey all laws relating to Tenant's use, maintenance of condition, and occupancy of the Premises.

*B.1.d.* Pay monthly, in advance, on the first day of the month, the Base Rent to Landlord at Landlord's Address.

*B.1.e.* Pay a late charge of 5 percent of any Rent not received by Landlord by the tenth day after it is due.

*B.1.f.* Pay for all labor, fuel, and utility services used by Tenant.

*B.1.g.* Pay all taxes on Tenant's property located on the Premises.

*B.1.h.* Allow Landlord to inspect the Premises and show the Premises to prospective purchasers or tenants.

*B.1.i.* Repair, replace, and maintain any part of the Premises used by Tenant.

*B.1.j.* Repair any damage to the Premises, Land, or Excluded Improvements caused by Tenant.

*B.1.k.* Maintain the insurance coverages described in the attached Insurance Addendum.

*B.1.l.* INDEMNIFY, DEFEND, AND HOLD LANDLORD AND LANDLORD'S AGENTS HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) ARISING OUT OF TENANT'S OR TENANT'S AGENTS' USE OF THE PREMISES. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF TENANT'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE TERM, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD OR LANDLORD'S AGENTS BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR LANDLORD'S AGENTS.**

*B.1.m.* Deliver to Landlord a financing statement perfecting the security interest.

*B.1.n.* Vacate the Premises on the last day of the Term.

*B.1.o.* Use the highest standards of animal husbandry in grazing the Premises.

*B.1.p.* Keep all gates on the Premises closed and locked.

*B.1.q.* Enter and exit the Premises at those places designated by Landlord.

*B.2.* **Tenant agrees not to—**

*B.2.a.* Use the Premises for any purpose other than the Permitted Use.

*B.2.b.* Create or allow a nuisance or permit any waste of the Premises.

*B.2.c.* Change Landlord's lock system.

*B.2.d.* Alter the Premises, including clearing new roads, moving or erecting any fences, or locating on the Premises any type of manufactured housing or mobile home.

*B.2.e.* Allow a lien to be placed on the Premises.

*B.2.f.* Assign this lease or sublease any portion of the Premises without Landlord's written consent.

*B.2.g.* Graze more than [number] head of [specify] on the Premises.

*B.2.h.* Hunt or fish on the Land or allow anyone else to do so.

*B.2.i.* Litter or leave trash or debris on the Premises.

**C. Landlord's Obligations****C.1. Landlord agrees to—**

*C.1.a.* Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*C.1.b.* Return the Security Deposit to Tenant, less itemized deductions, if any, on or before the sixtieth day after the date Tenant surrenders the Premises.

*C.1.c.* Obey all laws relating to Landlord's operation of the Premises.

**C.2. Landlord agrees not to—**

*C.2.a.* Allow any use of the Premises inconsistent with the Permitted Use as long as Tenant is not in default.

*C.2.b.* Unreasonably withhold consent to a proposed assignment or sublease.

**D. General Provisions****Landlord and Tenant agree to the following:**

*D.1. Alterations.* Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at termination of this lease and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

*D.2. Abatement.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to abate Rent for any reason.

*D.3. Release of Claims.* TENANT RELEASES LANDLORD AND LANDLORD'S AGENTS FROM ALL CLAIMS OR LIABILITIES FOR ANY INJURY TO TENANT AND TENANT'S AGENTS OR TO TENANT'S OR TENANT'S AGENTS' PROPERTY LOCATED ON THE PREMISES. **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD OR LANDLORD'S AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR LANDLORD'S AGENTS.**

*D.4. Condemnation/Substantial or Partial Taking*

*D.4.a.* If the Premises cannot be used for the Permitted Use because of condemnation or purchase in lieu of condemnation, this lease will terminate.

*D.4.b.* If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

*D.4.c.* Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

*D.5. Landlord's Lien.* Tenant grants to Landlord a security interest in the collateral to secure payment and performance by Tenant of all obligations and payments due from Tenant under this lease. The collateral will include all of Tenant's crops, livestock, and personal property located or to be located on the Premises, and all products, proceeds, offspring, increase, governmental payments, insurance proceeds, documents of title, and warehouse receipts relating to such property.

This lease is a security agreement under both chapter 9 of the Texas Business and Commerce Code and the federal Food Security Act of 1985. Landlord may file financing state-

ments or continuation statements to perfect or continue the perfection of the security interest. Tenant agrees to furnish to Landlord a list of the names and addresses of any buyer, commission merchant, or selling agent to or through whom Tenant may sell the collateral. Tenant agrees to notify Landlord of the identity of any buyer, commission merchant, selling agent, or warehouse to or with whom Tenant intends to sell or store the collateral within seven days before any sale or storage of the collateral.

*D.6. Default by Landlord/Events.* A default by Landlord is the failure to comply with any provision of this lease that is not cured within thirty days after written notice.

*D.7. Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and terminate this lease.

*D.8. Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning the Premises or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b).

*D.9. Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises and sue for Rent as it accrues; (b) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the Rent directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet; (c) enter the Premises and perform Tenant's obligations; and (d) terminate this lease by written notice and sue for damages. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be using the Premises for grazing, until the default is cured, without being liable for damages.



*D.10. Default/Waiver.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of a remedy does not preclude pursuit of another remedy.

*D.11. Mitigation.* Landlord has mitigated the loss of rent if Landlord, within thirty days after Tenant's loss of possession, (a) places a "For Lease" sign at the Premises, (b) places the Premises on Landlord's inventory of properties for lease, (c) makes Landlord's inventory available to area brokers on a monthly basis, (d) advertises the Premises for lease in a suitable trade journal in the county in which the Premises are located, and (e) shows the Premises to prospective tenants who request to see it.

*D.12. Security Deposit.* If Tenant defaults, Landlord may use the Security Deposit to pay arrears of Rent, to repair any damage or injury, or to pay any expense or liability incurred by Landlord as a result of the default.

*D.13. Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

*D.14. Alternative Dispute Resolution.* Landlord and Tenant agree to mediate in good faith before filing a suit for damages.

*D.15. Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

*D.16. Venue.* Exclusive venue is in the county in which the Premises are located.

*D.17. Entire Agreement.* This lease, its exhibits, addenda, and riders are the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There

are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or representations of any agent of Landlord, that are not in this lease and any exhibits, addenda, and riders.

*D.18. Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

*D.19. Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

*D.20. Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

*D.21. Mineral Interests.* This lease is subordinate to any present or future oil, gas, or other mineral exploration agreements and leases relating to the Land. Landlord will not be liable to Tenant for any damages for actions attributable to those agreements and will receive all consideration paid therefor.

*D.22. Landlord's Use.* Landlord retains the right to permit third parties to use the Premises for hunting, fishing, and other uses that do not materially interfere with Tenant's grazing rights.

If applicable, include additional clauses like those suggested in form 25-10 in this chapter and/or a list of exhibits and riders.

\_\_\_\_\_  
[Name of landlord]

\_\_\_\_\_  
[Name of tenant]

**Insurance Addendum to Lease**

Lease

Date:

Landlord:

Tenant:

This insurance addendum is part of the lease.

**Tenant agrees to—**

1. Maintain the liability insurance policies required below (mark applicable boxes) during the Term and any period before or after the Term when Tenant is present on the Premises:

<b>Type of Insurance</b>	<b>Minimum Policy Limit</b>	
<input type="checkbox"/> Commercial general liability (occurrence basis) endorsed to cover farm and ranch operations	Per occurrence:	\$ _____
	Aggregate:	\$ _____
<i>Or</i>		
<input type="checkbox"/> Farm owner's on a renter's form such as AAIS Form No. FO-4		
<i>Or</i>		
<input type="checkbox"/> Farm liability policy		
<input type="checkbox"/> Workers' compensation	\$500,000	
<input type="checkbox"/> Employer's liability	\$ _____	
<input type="checkbox"/> Business automobile liability	\$ _____	
<input type="checkbox"/> Umbrella/excess liability (occurrence basis)	\$ _____	

2. Comply with the following additional insurance requirements:
  - a. All liability policies must be endorsed to name Landlord as an “additional insured” on a form that does not exclude coverage for the sole or contributory ordinary negligence of Landlord and must not be endorsed to exclude the sole negligence of Landlord from the definition of “insured contract.”
  - b. Certificates of insurance and copies of any additional insured and waiver of subrogation endorsements must be delivered by Tenant to Landlord before entering the Premises and thereafter at least ten days before the expiration of the policies.

## Form 25-10

**Additional Clauses for Leases***Subordination***Clause 25-10-1**

Landlord subordinates its security interest and liens to purchase-money security interests in Tenant's personal property.

*Base Rent Adjustment***Clause 25-10-2**

Beginning one year from the Commencement Date, the Base Rent will be adjusted on each anniversary of the Commencement Date (the "Adjustment Date") to reflect increases in the Consumer Price Index for "All Urban Consumers, U.S. City Average, All Items," issued by the Bureau of Labor Statistics of the United States Department of Labor.

- a. The adjustments in the Base Rent will be determined by multiplying the Base Rent specified in the lease ("Initial Base Rent") by a fraction, the numerator of which is the index number for the last month before the adjustment and the denominator of which is the index number for the first month of the first year of the Term. If the product is greater than the Initial Base Rent, Tenant will pay this greater amount as Base Rent until the next rental adjustment. Base Rent will never be less than the Initial Base Rent.
- b. Landlord will notify Tenant of each adjustment to Base Rent no later than sixty days after the Adjustment Date.

*Advertisement of Premises***Clause 25-10-3**

During the last thirty days of the Term, Landlord may place a sign on the Premises advertising the Premises for rent or sale.

*Expansion Option***Clause 25-10-4**

Use the following with form 25-11 in this chapter.

Tenant has the option to lease the expansion space identified in the expansion space rider. Tenant may exercise the option by giving Landlord the prior written notice described in the expansion space rider. Tenant will lease the expansion space for the rent stated in the expansion space rider. The expansion space will be accepted in "AS IS" condition with any tenant improvements to be at the expense of Tenant. The expansion space will become part of the Premises and be subject to all the terms of this lease.

*Extension Option***Clause 25-10-5**

Use the following with form 25-12.

Tenant has the option to extend the Term as provided in the attached extension option rider.

*Waiver of Property Tax Protest Rights***Clause 25-10-6**

Tenant waives all rights to protest the appraised value of the Premises or to appeal the same and all rights to receive notices of reappraisal as set forth in sections 41.413 and 42.015 of the Texas Tax Code.

*Asbestos***Clause 25-10-7**

Buildings or structures located on the Premises may contain asbestos-containing material or presumed asbestos-containing material as defined by OSHA regulations. Tenant has inspected the Premises and conducted such tests and inspections as Tenant deems necessary or desirable. Tenant will provide Landlord with copies of all such test results and inspections. Tenant will comply with all rules and regulations relating to asbestos in performing any maintenance, housekeeping, construction, renovation, or remodeling of the premises, and Tenant will bear all costs related to removal and disposal of asbestos from the Premises.

*Tenant's Rebuilding Obligations***Clause 25-10-8**

Include the following if the tenant will rebuild everything other than the building shell.

All partitions, walls, ceiling systems, wiring, light fixtures, floors, finishes, wall coverings, floor coverings, signs, doors, hardware, windows, window coverings, plumbing, heating, ventilating, and air-conditioning



equipment, and other improvements in the Premises, whether installed by Landlord or Tenant.

Include the following if the tenant will rebuild everything installed by the tenant.

**Clause 25-10-9**

All partitions, walls, ceiling systems, wiring, light fixtures, floors, finishes, wall coverings, floor coverings, signs, doors, hardware, windows, window coverings, plumbing, heating, ventilating, and air-conditioning equipment, and other improvements originally installed in the Premises by Tenant.

Include the following if the tenant will rebuild nonstandard improvements.

**Clause 25-10-10**

All improvements that are not building standard leasehold improvements. For purposes of this lease, building standard leasehold improvements are all partitions, walls, ceiling systems, wiring, light fixtures, floors, finishes, wall coverings, floor coverings, signs, doors, hardware, windows, window coverings, plumbing, heating, ventilating, and air-conditioning equipment, and other improvements preselected by Landlord for use throughout the [Building/ Shopping Center] [and described in Exhibit [exhibit number/letter] attached hereto].

Form 25-11

**Expansion Space Rider**

Description: Approximately **[number]** square feet as outlined in Exhibit **[exhibit number/letter]**.

Rent: [At the Base Rent applicable to the Premises/At the rate of \$**[amount]** per month/**[specify other rent]**].

Exercise of Option: [At any time during the Term/**[specify other time to exercise option]**].

Prior Written Notice: At least **[number]** days before desired date of occupancy.

---

**[Name of landlord]**

---

**[Name of tenant]**

*[Reserved]*

Form 25-12

Extension Option Rider

Landlord grants Tenant an option to extend the Term for the period from [date] to [date] (the "Additional Term").

Tenant's rights under this option terminate if (1) the lease or Tenant's right to possession of the Premises is terminated, (2) Tenant assigns its interest in the lease or sublets any portion of the Premises, (3) Tenant fails to timely exercise the option, or (4) default exists at the time Tenant seeks to exercise the option.

Landlord and Tenant agree to the following:

Select one of the following.

- 1. During the Additional Term the lease will continue as written.

Or

- 1. During the Additional Term the lease will continue as written except that the Base Rent will be [the prevailing rental rate, at the commencement of the Additional Term, for space of equivalent quality, size, utility, and location, with the length of the extended term and the credit standing of Tenant to be taken into account/[specify other rent]].

Continue with the following.

- 2. The option to extend for the Additional Term must be exercised by written notice delivered to Landlord ninety days before the Termination Date.

[Name of landlord]

[Name of tenant]

*[Reserved]*

Form 25-13

**Subordination, Attornment, and Nondisturbance Agreement**

Date:

Lender:

Lender's Address:

Lease

Date:

Landlord:

Tenant:

Tenant's Address for Notices:

Deed of Trust

Date:

Grantor:

Beneficiary:

Recording information (if known):

Property:

Tenant agrees to the following:

1. The Lease is subordinate to the Deed of Trust and all modifications, renewals, and extensions.

2. Tenant will not prepay rent more than one month before its regular monthly payment date.

3. Tenant will pay rent as instructed by a notice in substantial compliance with Texas Property Code section 64.056, received by Tenant at Tenant's Address for Notices.

4. Tenant will attorn to the purchaser at any foreclosure sale under the Deed of Trust.

5. Lender will have no obligations and incur no liability under the Lease beyond Lender's equity in the Property.

6. Tenant will not terminate the Lease until Tenant has given written notice of Landlord's default to Lender and Lender has failed to cure the default within thirty days.

Lender agrees to the following:

1. Tenant may change Tenant's Address for Notices by delivering to Lender at Lender's Address a signed notification of the change.

2. The Lease will not be terminated in any foreclosure pursuant to the Deed of Trust.

3. The purchaser at foreclosure sale will take title to the Property subject to the terms of the Lease, and Tenant's occupancy will not be disturbed except in accordance with the Lease.

---

[Name of lender]

---

[Name of tenant]

Include acknowledgments if agreement is to be recorded.



*[Reserved]*

Form 25-14

**Tenant's Subordination to Deed of Trust Lien**

Date:

Borrower:

Borrower's Address:

Lender:

Lender's Address:

Lease

Date:

Landlord:

Tenant:

Recording information:

Note

Date:

Maker: Borrower

Payee: Lender

Original principal amount:

Deed of Trust

Date:

Trustee:

Recording information (if known):

Property:

To secure a loan from Lender, Borrower executed the Note and Deed of Trust, which created a lien on the premises described in the Lease. Tenant is in possession of all or part of the premises. As a condition for closing the loan, advancing the funds, and accepting the Note and Deed of Trust, Lender requires that Tenant make the following agreements and warranties.

In return for valuable consideration, Tenant (1) subordinates the Lease and all of Tenant's rights under it to the Deed of Trust lien, (2) agrees that the Deed of Trust lien will remain superior to the Lease and all of Tenant's rights under it, regardless of the frequency and manner of renewal, extension, or alteration of the Note and the liens securing it, and (3) warrants that the rent specified in the Lease is being paid to Landlord.

\_\_\_\_\_  
[Name of tenant]

Include acknowledgment.

Form 25-15

**Lease Assignment**

Date:

Assignor:

Assignee:

Lease

Date:

Landlord:

Tenant:

Premises:

Assignor assigns to Assignee Tenant's interest in the Lease. Assignor agrees that Assignor remains liable on the Lease.

Assignee agrees to assume Tenant's obligations under the Lease and to accept the premises in their present "AS IS" condition.

Landlord consents to this assignment.

\_\_\_\_\_  
[Name of assignee]

\_\_\_\_\_  
[Name of assignor]

---

[Name of landlord]

Include acknowledgement(s) as necessary.

Form 25-16

**Tenant's Acceptance Letter**

Date:

Lease

Date:

Landlord:

Tenant:

Premises:

Tenant acknowledges that—

1. Tenant has taken possession of the Premises.
2. Tenant has inspected the Premises.
3. The Premises are satisfactory to Tenant in the present condition and for the purpose for which they were leased.
4. Tenant has ratified the Lease.
5. Landlord has completed all improvements required by the terms of the Lease to the satisfaction of Tenant [**include if applicable: except as follows: [list any improvements not completed]**].

\_\_\_\_\_  
[Name of tenant]

*[Reserved]*

Form 25-17

**Tenant Estoppel Certificate**

Date:

Lease

Date:

Landlord:

Tenant:

Premises:

Addressee:

Tenant certifies to Addressee that—

1. Tenant has accepted and is in possession of the Premises.
2. All required improvements have been completed to the satisfaction of Tenant.
3. Neither Landlord nor Tenant is in default in the performance of the Lease.
4. No rent under the Lease has been paid more than thirty days in advance of its due date.
5. Tenant, as of this date, has no claim of offset against the rent.
6. Tenant understands that Addressee is relying on the representations in this certificate.
7. The current monthly base rent is \$[amount]. The next payment is due on [date].



8. The Lease is valid, enforceable, and unmodified [include if applicable: except as follows: [list any modifications]].

---

[Name of tenant]

Form 25-18

Guaranty

Date:

Lease

Date:

Landlord:

Tenant:

Premises:

Guarantor:

Guarantor's Address:

To induce Landlord to enter into the Lease and for other consideration, Guarantor agrees that—

1. Guarantor guarantees the performance of Tenant's obligations under the Lease.
2. This is a primary, irrevocable, and unconditional guaranty of payment and performance and not of collection and is independent of Tenant's obligations under the Lease.
3. Guarantor will make all payments to Landlord at Landlord's address set forth in the Lease.
4. This guaranty will remain in effect regardless of any modification or extension of the Lease.

5. Guarantor's obligations will not be diminished by any compromise or release agreed on by Tenant and Landlord or by the discharge, limitation, or modification of Tenant's obligations in any bankruptcy or other debtor relief proceeding.

6. If there is more than one guarantor, the obligations of each guarantor will be joint and several.

7. Texas law applies to the guaranty.

Guarantor waives its rights—

1. To notices of acceptance, modification, extension, and default and any other notice.

2. To claim any defense arising out of lack of diligence; any failure to pursue Tenant; loss or impairment of any right of subrogation or reimbursement; release of any other guarantor or collateral; death, insolvency, or lack of corporate authority of Tenant; and waiver, release, or election, based on Landlord's or Tenant's rights and obligations under the Lease and the enforcement of its terms.

3. Under chapter 43 of the Texas Civil Practice and Remedies Code.

The prevailing party in any dispute arising out of this guaranty will be entitled to recover reasonable attorney's fees.

---

[Name of guarantor]

Form 25-19

Sublease

Basic Information

Date:

Sublessor:

Sublessor's Address:

Sublessee:

Sublessee's Address:

Subleased Premises:

Sublease Commencement Date:

Sublease Termination Date:

Sublease Term:

Sublease Rent:

Permitted Sublease Use:

Base Lease

Date:

Landlord:

Tenant:

Premises:

**A. Sublessee’s Obligations**

*A.1. Sublessee agrees to—*

*A.1.a.* Sublease the Subleased Premises for the Sublease Term beginning on the Sublease Commencement Date and ending on the Sublease Termination Date.

*A.1.b.* Pay the Sublease Rent to Sublessor in advance of the first day of each month.

*A.1.c.* Obey all laws relating to Sublessee’s use of the Subleased Premises and terms of the Base Lease as they apply to the Subleased Premises.

*A.1.d.* Vacate the Subleased Premises and return all keys to the Subleased Premises on termination of this sublease.

*A.1.e.* INDEMNIFY, DEFEND, AND HOLD SUBLESSOR AND SUBLESSOR’S AGENTS HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY’S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN ANY PORTION OF THE SUBLEASED PREMISES. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF SUBLESSEE’S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS’ COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE SUBLEASE TERM, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF SUBLESSOR OR SUBLESSOR’S AGENTS, BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUBLESSOR OR SUBLESSOR’S AGENTS.**

*A.1.f.* Maintain liability insurance for the Subleased Premises and the conduct of Sublessee's business, with Sublessor named as an additional insured, in the amounts stated in the Base Lease.

*A.1.g.* Maintain insurance on Sublessee's personal property.

*A.1.h.* Deliver certificates of insurance to Sublessor before the Sublease Commencement Date and thereafter when requested.

*A.2.* **Sublessee agrees not to—**

*A.2.a.* Use the Subleased Premises for any purpose other than the Permitted Sublease Use.

*A.2.b.* Create a nuisance.

*A.2.c.* Interfere with any other tenant's normal business operations or Landlord's management of the building.

*A.2.d.* Permit any waste.

*A.2.e.* Use the Subleased Premises in any way that is extrahazardous, would increase insurance premiums, or would void insurance on the building.

*A.2.f.* Change Landlord's lock system.

*A.2.g.* Alter the Subleased Premises.

*A.2.h.* Allow a lien to be placed on the Subleased Premises.

*A.2.i.* Assign this sublease or sublease any portion of the Subleased Premises without Sublessor's written consent.

**B. Sublessor's Obligations****Sublessor agrees to—**

- B.1.* Sublease the Subleased Premises to Sublessee for the Sublease Term.
- B.2.* Comply with Tenant's obligations under the Base Lease.
- B.3.* Enforce Landlord's obligations under the Base Lease.
- B.4.* Make available to the Subleased Premises all services and rights provided under the Base Lease.
- B.5.* Obey all laws relating to Sublessor's operation of the Subleased Premises.

**C. General Provisions****Sublessor and Sublessee agree to the following:**

- C.1.* Defaults by Sublessee are (a) failing to pay timely Sublease Rent, (b) abandoning or vacating a substantial portion of the Subleased Premises, and (c) failing to comply within ten days after written notice with any provision of the Base Lease or sublease other than the defaults set forth in (a) or (b).
- C.2.* Sublessor's remedies for Sublessee's default are to (a) enter and take possession of the Subleased Premises, after which Sublessor may relet the Subleased Premises on behalf of Sublessee and receive the Sublease Rent directly by reason of the reletting, and Sublessee agrees to reimburse Sublessor for any expenditures made in order to relet, (b) enter the Subleased Premises and perform Sublessee's obligations, and (c) terminate this sublease by written notice and sue for damages.
- C.3.* Default by Sublessor is failing to comply with any provision of this sublease within thirty days after written notice or for such lesser period provided in the Base Lease.

C.4. Sublessee's remedy for Sublessor's default is to sue for damages and, if the default is the failure to enforce Landlord's obligations under the Base Lease to provide services reasonably necessary for Sublessee to occupy the Subleased Premises, terminate the Sublease.

C.5. This sublease is subordinate to the Base Lease, a copy of which Sublessee acknowledges as received.

C.6. Sublessor may retain, destroy, or dispose of any property left in the Subleased Premises at the end of the Sublease Term.

C.7. Sublessor has all the rights of Landlord under the Base Lease as to Sublessee.

C.8. If either party retains an attorney to enforce this sublease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

If applicable, include additional clauses like those suggested in form 25-10 in this chapter and/or a list of exhibits and riders.

\_\_\_\_\_  
[Name of sublessor]

\_\_\_\_\_  
[Name of sublessee]

Include acknowledgement(s) as necessary.

**Consent of Landlord**

Landlord consents to this sublease by Sublessor to Sublessee.

\_\_\_\_\_  
[Name of landlord]



*[Reserved]*

Form 25-20

Landlord's Lien Waiver

Date:

Landlord:

Landlord's Mailing Address:

Tenant:

Tenant's Mailing Address:

Lender:

Lender's Mailing Address:

Lender's Security Agreement of [date]:

Premises:

Tenant occupies the Premises under a lease from Landlord and maintains on the Premises personal property that Lender has a security interest in, or lien on, or that Lender owns.

For valuable consideration, Landlord waives all rights to maintain or enforce a statutory or contractual landlord's lien, security interest, or any other claim against the personal property described in Lender's Security Agreement. This waiver binds Landlord's heirs and successors and inures to the benefit of Lender and its successors and assigns.

[Name of landlord]

Include acknowledgement as necessary.

*[Reserved]*

Form 25-21

Notice of Default

[Date]

[Name and address of tenant]

Re: Lease dated [date] (the "Lease"), between [name] ("Landlord") and [name] ("Tenant"), for [describe space or give suite number] at [address] ("the Premises")

[Salutation]

We represent Landlord in connection with the Lease. You are in default under the Lease for the following reason[s]: [describe default[s]]. If you do not cure [this/these] default[s] by [deadline for cure], Landlord will pursue [his/her/its] available remedies.

Nothing in this letter waives any rights Landlord may have regarding [this/these] or other defaults. Landlord demands strict and timely compliance with all terms of the Lease, including the timely payment of rent.

Sincerely,

---

[Name of attorney]

*[Reserved]*

## Form 25-22

**Termination of Right of Possession Letter**

[Date]

[Name and address of tenant]

Re: Lease dated [date] (the "Lease"), between [name] ("Landlord") and [name] ("Tenant"), for [describe space or give suite number] at [address] ("the Premises")

[Salutation]

By letter dated [date], you were notified that you were in default under the Lease. To date, you have not cured the default[s]. Therefore, Landlord has elected to terminate [your right to possess the Premises and to reenter and take possession of the Premises/the Lease].

Landlord demands that you immediately vacate the Premises. [Include if applicable: If you do not vacate the Premises before the eleventh day after the date this letter is received and Landlord files suit against you, Landlord may recover attorney's fees.]

[Include if applicable: This demand does not constitute a termination or forfeiture of the Lease. Your obligation to pay rent under the Lease continues.]

Nothing in this letter waives any rights Landlord may have regarding [this/these] or other defaults.

Sincerely,

---

[Name of attorney]

*[Reserved]*

**Form 25-23**

This notice is to be posted at the premises. It is for use with commercial leases only. *See* Tex. Prop. Code § 93.002. Do not use it with residential leases, which are governed by Tex. Prop. Code § 92.0081.

---

**Lockout Notice Posting**

**[Date]**

LANDLORD HAS TERMINATED TENANT'S RIGHT TO POSSESS THIS SPACE AND HAS CHANGED THE LOCKS. TENANT MAY ACQUIRE A NEW KEY, AFTER PAYING ALL PAST-DUE RENT, BY CONTACTING **[name]** AT **[address/telephone number]** DURING **[hours available, which must be during tenant's normal working hours]**.



*[Reserved]*

**Form 25-24**

This form is to be used for commercial leases only. *See* Tex. Prop. Code § 93.002. Do not use it for residential leases, which are governed by Tex. Prop. Code § 92.0081.

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**Notice of Change of Locks Letter**

[Date]

[Name and address of tenant]

Re: Lease dated [date] (the "Lease"), between [name] ("Landlord") and [name] ("Tenant"),  
for [describe space or give suite number] at [address] ("the Premises")

[Salutation]

You are in default under the Lease, and Landlord has changed the locks to the Premises. You may obtain a new key, after paying all past-due rent, during [[hours available, which must be during tenant's normal working hours]/your regular business hours] by contacting [name] at [address/telephone number].

Sincerely,

---

[Name of attorney]

*[Reserved]*

Form 25-25

**Tenant Improvements Rider to Lease or Work Letter**

**Terms and Definitions**

General Description of Work: [**describe work**]

[Architect/Engineer] Preparing Plans: [**name**]

[Architect/Engineer]'s Address: [**address**]

Contractor: [**name**]

Contractor's Address: [**address**]

Contractor's Insurance

Death/bodily injury:

Property/Builder's risk:

**Agreements**

**A. Preparation of Plans.** Within [**number**] days from the execution of this lease, [Landlord/Tenant] will retain the [architect/engineer] to prepare the Plans, specifications, and other material required for completing performance of the Work (the "Plans"). The Plans will be delivered immediately to [Tenant/Landlord], who has [**number**] days to approve the Plans or to indicate any objections to the Plans. If [Tenant/Landlord] has objections to the Plans, it will communicate them to [Landlord/Tenant] within that time. This process will be repeated until the Plans are approved by both Landlord and Tenant. The cost of preparation of the Plans will be borne as follows: [**describe cost arrangement, e.g., Landlord will pay for the initial \$[amount] of the cost and Tenant will pay all excess costs**].

**B. Performance of Work.** [Landlord/Tenant] will be responsible for retaining Contractor to perform the Work. [Landlord/Tenant/Contractor] will obtain all required permits for the Work. After approval of the Plans, Contractor will be instructed to perform the Work in accordance with the approved Plans and all applicable laws. The cost of performance of the Work will be borne as follows: [**describe cost arrangement, e.g.**, Landlord will pay for the initial \$[**amount**] of the cost and Tenant will pay all excess costs].

**C. Schedules**

1. The parties estimate that the Plans will be approved no later than [**date**]. If the Plans are not approved by that date, the Commencement Date will be extended by the number of days of delay. If the Plans are not approved by [**date**], either party may terminate this lease by notifying the other before approval of the Plans.

2. The parties estimate that it will take [**number**] days to complete the Work. If the Work takes longer to perform and the delay is Tenant's fault, the Commencement Date will be as stated in the lease and Tenant must begin paying Rent on the Commencement Date notwithstanding that the Work is not finished. If the delay is Landlord's fault, the Commencement Date will be extended by the number of days of delay. As provided in paragraph B., [Landlord/Tenant] is responsible for retaining Contractor; accordingly, any delay in performance of the Work that is Contractor's fault will be attributable to [Landlord/Tenant].

**D. Changes in Work.** Any changes in the Plans or the Work after initial approval of the Plans will require approval of Landlord and Tenant. As part of such approval, the parties must agree on any required changes to the construction schedule and who will bear any increase in cost.

**E. Contractor's Insurance.** Contractor must maintain insurance reasonably satisfactory to Landlord in the amounts specified in the terms and definitions.

---

[Name of landlord]

---

[Name of tenant]

*[Reserved]*

**Form 25-26**

This disclosure is used to warn a tenant about potential risks associated with lead-based paint. The form is based on the notice requirements of 40 C.F.R. § 745.113 and the disclosure form suggested by the Department of Housing and Urban Development; the language should not be altered without a review of the applicable regulations. The heading and text of the notice are required by the regulations to be in bold-faced type.

---

**Disclosure of Information on Lead-Based Paint  
and/or Lead-Based Paint Hazards**

[Lease]

Lessor's Name and Address:

Lessee's Name and Address:

Description of Property:

**Lead Warning Statement**

**Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.**



**Lessor's Disclosure**

- (a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):
- (i) Known lead-based paint and/or lead-based paint hazards are present in the housing [explain, providing the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces].
- (ii) Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- (b) Records and reports available to Lessor (check (i) or (ii) below):
- (i) Lessor has provided Lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).
- \_\_\_\_\_
- (ii) Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

**Lessee's Acknowledgment (initial)**

- \_\_\_\_ (c) Lessee has received copies of all information listed above.
- \_\_\_\_ (d) Lessee has received the lead hazard information pamphlet described in 15 U.S.C. section 2686.

**Agent's Acknowledgment** (initial)

\_\_\_\_ (e) Agent has informed Lessor of Lessor's obligations under 42 U.S.C. section 4852d and is aware of his/her responsibility to ensure compliance.

**Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

\_\_\_\_\_  
Lessor Date

\_\_\_\_\_  
Lessee Date

\_\_\_\_\_  
Agent Date

*[Reserved]*

Form 25-27

This form is used to confirm a landlord's knowledge of the presence or absence of asbestos in the property being leased, as required by 29 C.F.R. §§ 1910.1001 *et seq.*, 1926.1101 *et seq.*

**Asbestos Disclosure Notice**  
[Lease]

Date:

Landlord's Name and Address:

Tenant's Name and Address:

Description of Property:

THIS ASBESTOS DISCLOSURE NOTICE ("NOTICE") IS A DISCLOSURE OF KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THAT MAY BE DESIRED. THIS NOTICE IS NOT A WARRANTY OF ANY KIND.

**Landlord's Disclosure**

1. Presence of asbestos-containing or presumed asbestos-containing material (check one):

Known asbestos-containing material is present in the Property (explain).

\_\_\_\_\_

The Property was constructed before 1981, and presumed asbestos-containing material is present in the Property (explain).

\_\_\_\_\_

- The Property was constructed after 1980, and Landlord has no knowledge of asbestos-containing material in the Property.

2. Records and reports available to Tenant (check one):

- Landlord has provided Tenant with all available records and reports pertaining to asbestos-containing material in the Property (list documents below).
- 

- Landlord has no records or reports pertaining to asbestos-containing material in the Property.

**Tenant's Acknowledgment**

Tenant has received copies of all information listed above. Tenant is aware of Tenant's responsibility to ensure compliance with 15 U.S.C. sections 2641 through 2656 and 29 C.F.R. sections 1910.1001 *et seq.* and 1926.1101 *et seq.*

\_\_\_\_\_  
Landlord Date

\_\_\_\_\_  
Tenant Date

## Form 25-28

**Real Estate Commission Rider**

1. *Commission.* Landlord agrees to pay to the real estate broker named below (Broker) a commission in the amount of [percent] percent of the Base Rent.
2. *Payment.* The commission will be paid out of each Base Rent payment if and when actually received by Landlord. If Tenant defaults and any rent due Landlord is collected by means of litigation or with the aid of an attorney, Broker will receive a commission out of Landlord's net recovery in the percentage amount set forth above. Landlord's net recovery is defined as the amount Landlord eventually collects from Tenant less attorney's fees, court costs, out-of-pocket expenses, and costs expended to obtain a new tenant for the remainder of Tenant's term (e.g., broker's commissions and remodeling and refurbishing costs).
3. *Brokers.* Landlord represents that it has had no dealings with any real estate broker in connection with the negotiation of this lease except Broker and knows of no other real estate broker entitled to a commission in connection with this lease. Landlord agrees to pay all real estate commissions due in connection with this lease to Broker. Landlord agrees to indemnify and hold harmless Tenant from any liability or claim arising by, through, or on behalf of Landlord, whether meritorious or not, with respect to any real estate broker not named below. Tenant represents that it has had no dealings with any real estate broker in connection with the negotiations of this lease except Broker and knows of no other real estate broker entitled to a commission in connection with this lease. Tenant agrees to indemnify and hold harmless Landlord from any liability or claim arising by, through, or on behalf of Tenant, whether meritorious or not, with respect to any real estate broker not named below.
4. *Broker Not Party to Lease.* Broker acknowledges that Broker is a party to this lease only for purposes of this Commission Rider and that Landlord and Tenant may modify,

assign, or terminate this lease without notice to or the consent of Broker as long as Broker's commission rights are not affected.

Date: \_\_\_\_\_.

\_\_\_\_\_  
[Name of landlord]

\_\_\_\_\_  
[Name of tenant]

\_\_\_\_\_  
[Name of broker]

Form 25-29

**Manufactured-Home Community Lease**

**Notice to Tenant: Chapter 94 of the Texas Property Code governs certain rights granted to a manufactured-home community tenant and obligations imposed on a manufactured-home community landlord by law.**

**Basic Information**

Date:

Landlord:

Landlord's Address:

Landlord's Agent for Official Notices:

Address of Landlord's Agent for Official Notices:

Property Manager:

Property Manager's Address:

Emergency Contact Person:

Emergency Contact Person's Telephone Number:

Tenant:

Tenant's Primary Residential Address:

Tenant's Manufactured Home

Manufacturer:



Model:

Serial Number:

Label/Seal Number:

Certificate of Title Number:

Size:

Lienholder:

Lienholder's Address:

Premises

Manufactured Home Community Name:

Lot Number:

[Block Number:]

Plat Recording Information:

Lot Address:

Number and Location of Parking Spaces:

Monthly Rent:

Term (months):

Commencement Date:

Termination Date:

Security Deposit:

Permitted Use: Placement of Tenant's Manufactured Home for use as a private residence

Occupants (other than Tenant):

Utilities to Be Provided by Landlord:

Identification of Addenda Relating to Submetering of Utility Services:

[Expiration Date of Temporary Zoning Permit:]

**A. Definition**

"Rent" means Monthly Rent plus any other amounts of money payable by Tenant to Landlord.

**B. Tenant's Obligations**

*B.1. Tenant agrees to—*

*B.1.a.* Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*B.1.b.* Accept the Premises in their present condition "AS IS," the Premises being currently suitable for Tenant's intended Use.

*B.1.c.* Obey all laws and rules of the Manufactured Home Community relating to Tenant's use and occupancy of the Premises and any common areas.

*B.1.d.* Pay monthly, in advance, on the first day of the month, the Monthly Rent to Landlord at Landlord's Address.

*B.1.e.* Pay, as additional Rent, all other amounts due under this lease.

*B.1.f.* Pay a late charge of 5 percent of any Rent not received by Landlord by the tenth day of the month in which it is due.

*B.1.g.* Pay for all utility services used by Tenant and not provided by Landlord.

*B.1.h.* Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

*B.1.i.* Repair any damage to the Premises caused by Tenant or Occupants.

*B.1.j.* Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

*B.1.k.* Maintain insurance on Tenant's manufactured home and personal property.

*B.1.l.* Move out of the Premises at the end of the Term.

*B.1.m.* Pay Rent by check, money order, or other traceable or negotiable instrument.

*B.1.n.* Give written notice to Landlord of any change in Tenant's Primary Residential Address.

**B.2. Tenant agrees not to—**

*B.2.a.* Use the Premises other than for the placement of Tenant's Manufactured Home as a residence to be occupied by the named Tenant and Occupants.

*B.2.b.* Create or permit a nuisance or interfere with any other tenant's use of its Premises.

*B.2.c.* Alter the Premises.

*B.2.d.* Allow a lien to be placed on the Premises.

*B.2.e.* Assign this lease or sublease any portion of the Premises without Landlord's written consent.

**C. Landlord's Obligations**

**Landlord agrees to—**

*C.1.* Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

*C.2.* Obey all laws relating to Landlord's operation of the Manufactured Home Community.

*C.3.* Provide the utilities specified in the lease.

*C.4.* Use reasonable efforts to maintain and make repairs to the common areas, utility lines in the Manufactured Home Community except those maintained by a public utility or political subdivision, the roads within the Manufactured Home Community, and conditions on the Premises that would materially affect the physical health or safety of an ordinary tenant of the Manufactured Home Community and to maintain an individual mailbox for Tenant and services for garbage and solid waste removal. Landlord will not be required to repair a condition unless Tenant notifies Landlord of the condition and Tenant has paid all Rent then due. Landlord will not be required to repair conditions caused by Tenant or Occupants, unless caused by normal wear and tear, and Landlord will not be required to maintain or make any repairs to Tenant's Manufactured Home placed on the Premises.

*C.5.* Return the Security Deposit to Tenant on or before the thirtieth day after the date Tenant surrenders the Premises, after subtracting from the Security Deposit all amounts applied to cure any breach of the lease by Tenant as provided below, provided that Tenant has given Landlord written notice of Tenant's new address.

C.6. At least sixty days before the date the Term expires, give Tenant written notice to vacate the Premises or an offer of lease renewal specifying the proposed monthly rent and any change of lease terms together with a statement notifying Tenant that the failure of Tenant to reject the offer of lease renewal not later than the thirtieth day before the date the Term expires will result in the automatic renewal of this lease as modified by the changes specified in the offer of lease renewal.

C.7. At least 180 days before a change of the Manufactured Home Community's land use, (a) give written notice of nonrenewal to Tenant and, if the addresses are provided to Landlord in writing, to the owner of the Manufactured Home, if different from Tenant, and any Lienholder; and (b) post a notice in a conspicuous place in the Manufactured Home Community, specifying the date that the land use will change.

#### **D. General Provisions**

##### **Landlord and Tenant agree to the following:**

D.1. *Casualty/Condemnation.* If the Premises or the Tenant's Manufactured Home is damaged by fire or other casualty or the Premises are condemned, either Landlord or Tenant may terminate this lease by notifying the other. Any Rent prepaid by Tenant will be returned to Tenant on termination.

D.2. *Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this lease within thirty days after written notice and failing to remedy a condition that materially affects the physical health or safety of an ordinary tenant within ten days after written notice, unless such condition results from Tenant's actions.

D.3. *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not remedy a condition (not resulting

from Tenant's actions) that materially affects the physical health or safety of an ordinary tenant for thirty days after notice, terminate this lease.

*D.4. Grounds for Eviction of Tenant.* Landlord may begin eviction proceedings against Tenant if Tenant fails to remove Tenant's Manufactured Home from the Premises and otherwise vacate the Premises, after Landlord terminates this lease for one of the following grounds:

*D.4.a. Violation of Lease Provisions or Community Rules.* Tenant's failure to comply within ten days after written notice with any provision of this lease or any rule of the Manufactured Home Community established by Landlord.

*D.4.b. Abandonment.* Tenant's vacating or abandoning of Tenant's Manufactured Home or the Premises.

*D.4.c. Nonpayment of Rent.* Tenant's failure to timely pay Rent in the aggregate amount equal to at least one Monthly Rent within ten days after written notice of the delinquent Rent.

*D.5. Landlord's Remedy for Early Termination.* The maximum amount Landlord is entitled to recover as damages for Tenant's early termination of this lease is the amount of Rent outstanding for the remainder of the Term. If the Premises is reoccupied before the twenty-first day after the date Tenant surrenders possession of the Premises, the maximum amount Landlord is entitled to recover as damages for Tenant's early termination of this lease is the Monthly Rent for one month.

*D.6. Mitigation.* Landlord and Tenant have a duty to mitigate damages.

*D.7. Security Deposit.* If Tenant defaults, Landlord may use the Security Deposit to pay arrears of Rent, to repair any damage or injury, or to pay any expense or liability incurred by Landlord as a result of the default.

*D.8. Renewal of Lease.* If Tenant fails to reject Landlord's offer to renew this lease at least thirty days before the expiration of the Term, this lease will automatically renew under the modified terms offered by Landlord beginning on the first day after expiration of the Term.

*D.9. Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must relocate Tenant's Manufactured Home and otherwise vacate the Premises on receipt of notice from Landlord. Unless this lease is renewed, no holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

*D.10. Alternative Dispute Resolution.* Landlord and Tenant agree to mediate in good faith before filing a suit for damages.

*D.11. Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and any other costs.

*D.12. Venue.* Venue is in the county in which the Premises are located.

*D.13. Entire Agreement.* This lease, its exhibits, riders, [and] any addenda relating to submetering of utility services [**include if applicable:** , and the Manufactured Home Community rules] are the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or representations of any agent of Landlord, that are not in those documents.

*D.14. Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

*D.15. Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

*D.16. Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

*D.17. Texas Property Code.* Landlord and Tenant each acknowledge that chapter 94 of the Texas Property Code, which deals with manufactured-home community tenancies, affords certain rights and imposes certain duties on them.

*D.18. Abandoned Property.* Landlord may retain, destroy, or dispose of any property abandoned on the Premises at the end of the Term.

If applicable, include additional clauses like those suggested in form 25-10 in this chapter and/or a list of exhibits and riders, including community rules, if any.

---

[Name of landlord]

---

[Name of tenant]



*[Reserved]*

**Form 25-30**

This disclosure is required by Tex. Prop. Code § 94.051. The notice to prospective tenant must be prominently printed in at least ten-point type. Tex. Prop. Code § 94.051.

---

**Manufactured-Home Community Disclosure**

Application Date:

Landlord:

Landlord's Address:

Prospective Tenant:

Prospective Tenant's Address:

Premises

Manufactured Home Community Name:

Lot Number:

[Block Number:]

Prospective Tenant is applying to lease the Premises. Prospective Tenant acknowledges that on the Application Date Landlord has given to Prospective Tenant a copy of the proposed lease [include if applicable: and a copy of the rules of the Manufactured Home Community].

**Notice to Prospective Tenant**

You have the legal right to an initial lease term of six months. If you prefer a different lease period, you and your landlord may negotiate a shorter or longer lease period. After the initial lease period expires, you and your landlord may negotiate a new lease term by mutual

agreement. Regardless of the term of the lease, the landlord must give you at least 60 days' notice of a nonrenewal of the lease, except that if the manufactured home community's land use will change, the landlord must give you at least 180 days' notice. During the applicable period, you must continue to pay all rent and other amounts due under the lease agreement, including late charges, if any, after receiving notice of the nonrenewal.

---

[Name of landlord]

---

[Name of tenant]

Form 25-31

Modification of Lease

Date:

Lease

Date:

Landlord:

Tenant:

Premises

Approximate square feet:

Name of building:

Street address/suite:

City, county, state, zip:

Lease Commencement Date:

Lease Termination Date:

Security Deposit:

Landlord and Tenant agree to the following modifications: **[list modifications.]**

The Lease is ratified as modified.

---

**[Name of landlord]**

\_\_\_\_\_  
[Name of tenant]

Form 25-32

Termination of Lease

Date:

Lease

Date:

Landlord:

Tenant:

Premises

Approximate square feet:

Name of building:

Street address/suite:

City, county, state, zip:

Lease Commencement Date:

Lease Termination Date:

Effective Termination Date:

Security Deposit:

Consideration:

1. Landlord and Tenant ratify the Lease.

2. Landlord acknowledges receiving from Tenant the following consideration:  
\$[amount].

3. The Lease is terminated as of the Effective Termination Date and Tenant agrees to surrender the Premises by that date in accordance with the terms of the Lease.

4. [Tenant's Security Deposit is forfeited to Landlord/Landlord will refund the Security Deposit subject to any charge permitted by the Lease].

\_\_\_\_\_  
[Name of landlord]

\_\_\_\_\_  
[Name of tenant]

Form 25-33

**Memorandum of Lease**

Date:

Landlord:

Landlord's Mailing Address:

Tenant:

Tenant's Mailing Address:

Tenant's Trade Name:

Date of Lease:

Premises: **[Describe or attach legal description as described in lease.]**

Term:

Additional Provisions: The Lease is incorporated by reference and is binding on Landlord and Tenant. If a conflict exists between any term of this Memorandum of Lease and the Lease, the Lease controls.

\_\_\_\_\_  
**[Name of landlord]**

\_\_\_\_\_  
**[Name of tenant]**

Include acknowledgments.



*[Reserved]*

Form 25-34

Insurance Addendum to Lease  
[Long Form]

Lease

Date:

Landlord:

Tenant:

This insurance addendum is part of the lease.

**A. Tenant agrees to—**

1. Maintain the property and/or liability insurance policies required below (mark applicable boxes) and such other insurance coverages and/or higher policy limits as may be required by Lienholder during the Term and any period before or after the Term when Tenant is present on the Premises:

<b>Type of Insurance or Endorsement</b>	<b>Minimum Policy or Endorsement Limit</b>
---	--

*General Liability Insurance Policies Required of Tenant:*

<input type="checkbox"/> Commercial general liability	Each occurrence: \$ _____
	General aggregate: \$ _____

*Or*

<input type="checkbox"/> Business owner's policy	Each occurrence: \$ _____
	General aggregate: \$ _____

*Required Endorsements to Tenant's General Liability or Business Owner's Policy:*

- Designated location(s) general aggregate limit \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_

Include any other desired endorsements. See chapter 17 of this manual.

*Additional Liability Insurance Policies Required of Tenant:*

- Workers' compensation Statutory limit
- Employer's liability \$ \_\_\_\_\_ each accident for bodily injury by accident/each employee for bodily injury by disease/bodily injury by disease for entire policy
- Business auto liability \$ \_\_\_\_\_
- Excess liability \$ \_\_\_\_\_

*Or*

- Umbrella liability (occurrence basis) \$ \_\_\_\_\_

*Property Insurance Policy Required of Tenant:*

- Commercial property insurance written on a causes of loss—special form (formerly known as “all risks” form) 100 percent of replacement cost of (a) all items included in the definition of Tenant's Rebuilding Obligations and (b) all of Tenant's furniture, fixtures, equipment, and other business personal property located in the Premises

*Or*

- Business owner's policy 100 percent of replacement cost of (a) all items included in the definition of Tenant's Rebuilding Obligations and (b) all of Tenant's furniture, fixtures, equipment, and other business personal property located in the Premises

*Required Endorsements to Tenant's Causes of Loss—[Special Form/Business Owner's] Policy:*

- Business income and additional expense Sufficient limits to address reasonably anticipated business interruption losses for a period of \_\_\_\_ months
- Equipment breakdown (formerly boiler and machinery) \$ \_\_\_\_\_
- Flood \$ \_\_\_\_\_
- Earth movement \$ \_\_\_\_\_
- Increased limits of ordinance or law coverage to cover increased cost of construction \$ \_\_\_\_\_
- Increased limits of debris removal \$ \_\_\_\_\_
- Plate Glass Sufficient limits to cover plate glass
- Increased limits for signs Sufficient limits to cover exterior signage

Include any other desired endorsements. See chapter 17

2. Comply with the following additional insurance requirements:

- a. The commercial general liability (or business owner's property policy) must be (i) written on an occurrence basis, (ii) endorsed to name of Landlord, Landlord's property manager, if any, and Landlord's Lienholder, if any, as "additional insureds," (iii) include contractual liability under Coverage A sufficient to respond to a broad-form indemnity, (iv) if Tenant operates multiple locations, be endorsed with a Designated Location(s) General Aggregate Limit endorsement, and (v) be primary and noncontributory with Landlord's liability insurance coverage.

- b. The commercial property insurance policies must contain (i) optional coverage for agreed value to eliminate the coinsurance clause, (ii) optional coverage for replacement cost, (iii) a waiver of subrogation clause in favor of the party not carrying the commercial property insurance, and (iv) waivers of subrogation of claims against Landlord and Lienholder.
- c. Certificates of insurance and copies of any additional insured and waiver of subrogation endorsements must be delivered by Tenant to Landlord before entering the Premises and thereafter at least ten days before the expiration of the policies.

3. Obtain the approval of Landlord and Lienholder with respect to the following: the forms of Tenant’s insurance policies, endorsements and certificates, and other evidence of Tenant’s Insurance; the amounts of any deductibles or self-insured retentions amounts under Tenant’s Insurance; and the creditworthiness and ratings of the insurance companies issuing Tenant’s Insurance.

**B. Landlord agrees to maintain the property and/or liability insurance policies required below (mark applicable boxes) during the Term:**

<b>Type of Insurance</b>	<b>Minimum Policy Limit</b>
<input type="checkbox"/> Commercial general liability (occurrence basis)	Each occurrence: \$ _____ General aggregate: \$ _____
<input type="checkbox"/> Commercial property insurance written on a causes of loss—special form (formerly known as “all risks” form)	100 percent of replacement cost of the [Shopping Center/Building] exclusive of foun- dation, footings, infrastructure, sitework, and the rebuilding requirements of all lessees

Form 25-35

**Insurance Addendum to Lease**  
[Short Form]

Lease

Date:

Landlord:

Tenant:

This insurance addendum is part of the lease.

**A. Tenant agrees to—**

1. Maintain the following coverages:
  - a. Commercial property insurance written on a causes of loss—special form (formerly known as “all risks” form) covering Tenant’s personal property, fixtures, and leasehold improvements in the Premises, and naming Landlord as “Building Owner Loss Payable.”
  - b. Business income and extra expense property insurance naming Landlord as an “additional insured” and covering income and ongoing expenses, including rent, for a period of at least twelve months.
  - c. Commercial general liability insurance written on an occurrence basis, including contractual liability, covering Tenant’s operations within the Premises, naming Landlord, Landlord’s property manager, if any, and Landlord’s Lienholder, if any, as “additional insured,” and having limits of not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate.

- d. Business auto liability insurance written on an occurrence basis and having a combined single limit of not less than \$1,000,000.
- e. Workers' compensation insurance in the statutory amount and employer's liability insurance having limits of not less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 bodily injury by disease for entire policy. Both policies must have a waiver of subrogation in favor of Landlord.

2. Deliver certificates of insurance and copies of any additional insured and waiver of subrogation endorsements to Landlord before entering the Premises and thereafter at least ten days before the expiration of the policies.

**B. Landlord agrees to maintain—**

1. Commercial property insurance written on a causes of loss—special form covering the building in which the Premises is located.
2. Commercial general liability insurance written on an occurrence basis, including contractual liability, covering Landlord's operations within the building in which the Premises is located and having limits not less than \$2,000,000 each occurrence and \$4,000,000 general aggregate.

**C. Landlord and Tenant agree that—**

1. The commercial property insurance policies maintained by them will contain (a) optional coverage for agreed value to eliminate the coinsurance clause, (b) optional coverage for replacement cost, (c) increased limits of ordinance or law coverage to cover increased cost of construction, (d) increased limits for debris removal coverage, and (e) a waiver of subrogation clause in favor of the party not carrying the commercial property insurance.

2. The commercial general liability insurance will be primary to the maintaining party and not contributory to any similar insurance carried by the other party and will contain a severability-of-interest clause.



*[Reserved]*



## Chapter 26

### Miscellaneous Documents

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## Form 26-1

This affidavit establishes in the real property records the death of an owner of real property and the status of the heirs of the decedent and is used if there is no will or administration in the probate court. This form is based on the one suggested by the statute. *See* Tex. Est. Code § 203.002.

---

**Affidavit of Facts Concerning Identity of Heirs**

Date:

Decedent:

Property:

[First] Spouse:

[Second Spouse:]

Affiant:

Affiant on oath swears that the following statements are true and are within the personal knowledge of Affiant:

1. My name is [**name of affiant**], and I live at [**address**]. I am personally familiar with the family and marital history of [**name of decedent**], Decedent, and I have personal knowledge of the facts stated in this affidavit.

2. I knew Decedent from [**date**] until [**date**]. Decedent died on [**date**]. Decedent's place of death was [**place of death**]. At the time of Decedent's death, Decedent's residence was [**address**].

3. Decedent's marital history was as follows: [**describe marital history and, if the decedent's spouse is deceased, specify the date and place of the spouse's death**].

4. Decedent had the following children: **[specify name, birth date, name of other parent, and current address of child or date of death of child and descendants of deceased child, as applicable, for each child]**.

5. Decedent did not have or adopt any other children and did not take any other children into Decedent's home or raise any other children, except: **[specify name[s] of child[ren] or state "none"]**.

Include the following if the decedent was not survived by descendants.

6. Decedent's mother was: **[specify name, birth date, and current address or date of death of mother, as applicable]**.

7. Decedent's father was: **[specify name, birth date, and current address or date of death of father, as applicable]**.

Include the following if the decedent was not survived by descendants or by both mother and father.

8. Decedent had the following siblings: **[specify name, birth date, and current address or date of death of each sibling and parents of each sibling and descendants of each deceased sibling, as applicable, or state "none"]**.

Include the following if applicable.

9. The following persons have knowledge regarding Decedent, the identities of Decedent's children, if any, and parents or siblings, if any: **[specify names of persons with knowledge or state "none"]**.

Continue with the following.

10. Decedent died without leaving a written will. **[Modify statement if the decedent left a written will.]**

11. There has been no administration of Decedent's estate. **[Modify statement if there has been administration of the decedent's estate.]**

12. Decedent left no debts that are unpaid, except: **[specify debts or state "none"]**.

13. There are no unpaid estate or inheritance taxes, except: **[specify unpaid taxes or state "none"]**.

14. To the best of my knowledge, Decedent owned an interest in the following real property: **[specify real property in which the decedent owned an interest or state "none"]**.

Include the following if applicable.

15. The following were the heirs of Decedent: **[specify names of heirs]**.

Continue with the following.

16. **[Include additional information as appropriate, such as size of the decedent's estate.]**

\_\_\_\_\_  
**[Name of affiant]**

SUBSCRIBED AND SWORN TO before me on \_\_\_\_\_ by **[name of affiant]**.

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

*[Reserved]*



Form 26-2

This affidavit resolves ambiguities or discrepancies, such as spelling variations, abbreviations, nicknames, initials, or the use of two or more different names to identify the same person, in the name and identity of the person referred to in the affidavit.

Affidavit of Identity

Date:

Affiant:

[Affiant's Other Name(s):]

Affiant on oath swears that the following statement[s] [is/are] true and [is/are] within the personal knowledge of Affiant:

Select one of the following.

Affiant is sometimes known by Affiant's Other Name[s]. Affiant and the person[s] indicated by Affiant's Other Name[s] are the same person.

Or

Affiant is not the same person as the [name] named in [specify document].

Continue with the following.

[Name of affiant]

SUBSCRIBED AND SWORN TO before me on \_\_\_\_\_ by [name of affiant].

Notary Public, State of Texas

*[Reserved]*

Form 26-3

This affidavit recites marital history and identifies former or present spouses. The affidavit is used to indicate whether property should be classified as separate or community and also may be used to identify potential homestead problems or outstanding life estates in real property.

Affidavit of Marital Status

Date:

Affiant:

Property:

Date of Acquisition:

[Affiant's Spouse:]

[Date of Marriage:]

[Affiant's Former Spouse:]

[Date of Marriage:]

[Date of [Divorce/Death]:]

Affiant on oath swears that the following statements are true and are within the personal knowledge of Affiant:

Select the applicable paragraph and adapt if necessary.

Affiant acquired title to the Property on the Date of Acquisition. Affiant was then unmarried and has remained unmarried continuously through the date of this affidavit.

Or

Affiant acquired title to the Property on the Date of Acquisition, and Affiant was then unmarried. Affiant subsequently married Affiant's Spouse on the Date of Marriage, and they have remained married to each other continuously from then through the date of this affidavit.

Or

Affiant acquired title to the Property on the Date of Acquisition. Affiant was then married to Affiant's Spouse, and they have remained married to each other continuously from then through the date of this affidavit.

Or

Affiant acquired title to the Property on the Date of Acquisition, and Affiant was then married to Affiant's Former Spouse. They remained married to each other until they were divorced on the Date of Divorce, and Affiant acquired full title to the Property in the divorce. Affiant has not married again since the divorce.

Or

Affiant acquired title to the Property on the Date of Acquisition, and Affiant was then married to Affiant's Former Spouse. They remained married to each other until they were divorced on the Date of Divorce, and Affiant acquired full title to the Property in the divorce. Affiant remained unmarried until marrying Affiant's Spouse on the Date of Marriage, and they have remained married to each other continuously from then through the date of this affidavit.

Or

Affiant acquired title to the Property on the Date of Acquisition, and Affiant was then married to Affiant's Former Spouse. They remained married to each other until Affiant's Former Spouse died on the Date of Death, at which time Affiant acquired full title to the Property. Affiant has not married again since that time.

Or

Affiant acquired title to the Property on the Date of Acquisition, and Affiant was then married to Affiant's Former Spouse. They remained married to each other until Affiant's Former Spouse died on the Date of Death, at which time Affiant acquired full title to the Property. Affiant remained unmarried until marrying Affiant's Spouse on the Date of Marriage, and they have remained married to each other continuously from then through the date of this affidavit.

Continue with the following.

\_\_\_\_\_  
[Name of affiant]

SUBSCRIBED AND SWORN TO before me on \_\_\_\_\_ by [name of affiant].

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

*[Reserved]*

## Form 26-4

An oil, gas, and mineral lease affects record title until the lease is properly released of record or it terminates according to its terms. One method of showing that a lease has terminated is to have a release executed by the lessee or the assignee of the lessee and filed in the real property records. If the lessee or assignee cannot be located, an affidavit of nonproduction is another means of demonstrating that a lease has expired. Provisions in oil, gas, and mineral leases typically specify events that terminate the lease. This affidavit evidences expiration of a lease because of nonproduction. It may be required by a purchaser before buying the property, by a lienholder making a loan with the property as collateral, or by a lessee. This affidavit can be modified if the termination is caused by other events specified in the lease.

---

**Affidavit of Nonproduction**

Date:

Oil and Gas Lease

Date:

Lessor:

Lessee:

Property:

Primary Term of the lease: [number] years

Owner:

[Buyer:]

[Lienholder:]

[Lessee:]

[Title Company:]

Owner on oath swears that the following statements are true and are within the personal knowledge of Owner:

Owner owns the Property. The Property was described in the Oil and Gas Lease.

Select one of the following.

No drilling operations were begun during the Primary Term. No oil, gas, or other mineral was produced from the Property during the Primary Term. No oil, gas, or other mineral is now being produced from the Property.

Or

Drilling operations were conducted during the Primary Term, but no oil, gas, or other mineral was produced from the Property during the Primary Term. No oil, gas, or other mineral is now being produced from the Property.

Or

Drilling operations were conducted during the Primary Term. Oil, gas, or another mineral was produced from the Property during the Primary Term, but no oil, gas, or other mineral is now being produced from the Property.

Continue with the following.

This affidavit is to establish of record that the Oil and Gas Lease has expired by its terms.

Include the following if applicable.

This affidavit is made for [Buyer to rely on in buying the Property/Lienholder to rely on in making a loan that is secured by a lien on the Property/Lessee to rely on in leasing the Property/Title Company to rely on in issuing title insurance with respect to the Property].

Continue with the following.



\_\_\_\_\_  
[Name of owner]

SUBSCRIBED AND SWORN TO before me on \_\_\_\_\_ by [name of affiant].

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

*[Reserved]*

## Form 26-5

This certificate is to be used by a corporation, limited partnership, limited liability partnership, limited liability company, or foreign filing entity to register an assumed name in the county records and secretary of state's records. See the Assumed Business or Professional Name Act, Tex. Bus. & Com. Code ch. 71, particularly Tex. Bus. & Com. Code §§ 71.101–.104, for requirements of execution and filing.

---

**Assumed [Business/Professional] Name Certificate for  
Incorporated Business or Profession**

Date:

Registrant:

Assumed Name:

[County/Countries]:

The time period during which the assumed name will be used may not exceed ten years. See Tex. Bus. & Com. Code § 71.052(3).

Period of Use:

Select one of the following.

1. Registrant [is conducting/will conduct] business under the Assumed Name.

Or

1. Registrant [is rendering/will render] professional service under the Assumed Name.

Continue with the following.

2. The name of Registrant as stated in its [certificate of formation/application for registration/[specify comparable document]] is [name of registrant].

3. The state, country, or other jurisdiction under the laws of which Registrant was [incorporated/organized/associated] is [jurisdiction]. The address of Registrant’s registered or similar office in that state, country, or jurisdiction is [address].

4. The period during which the Assumed Name will be used is the Period of Use.

5. Registrant is a [for-profit corporation/nonprofit corporation/professional corporation/professional association/limited partnership/limited liability partnership/limited liability company/foreign filing entity/[specify type of organization]].

6. The address of Registrant’s principal office is [address].

Select one of the following.

7. Business [is being/will be] conducted under the Assumed Name in the [county/counties].

Or

7. Professional services [are being/will be] rendered under the Assumed Name in the [county/counties].

Include the following if applicable.

8. The attorney-in-fact executing this certificate for Registrant has been duly authorized in writing by [his/her] principal to execute and acknowledge this certificate.

Continue with the following.

\_\_\_\_\_  
[Name]

Include acknowledgment.

## Form 26-6

This certificate is used by an unincorporated business, professional service, partnership, joint venture, estate, real estate investment trust, or other company that is not a corporation, limited partnership, registered limited liability partnership, or limited liability company to register an assumed name in the county records. See the Assumed Business or Professional Name Act, Tex. Bus. & Com. Code ch. 71, particularly Tex. Bus. & Com. Code §§ 71.101–.104, for authorized signers and for requirements of execution and filing.

---

**Assumed [Business/Professional] Name Certificate for  
Unincorporated Business or Profession**

Date:

Registrant:

Assumed Name:

[County/Countries]:

The time period during which the assumed name will be used may not exceed ten years. See Tex. Bus. & Com. Code § 71.052(3).

Period of Use:

Select one of the following.

1. Registrant [is conducting/will conduct] business under the Assumed Name.

Or

1. Registrant [is rendering/will render] professional service under the Assumed Name.

Select one of the following.

2. Registrant is an individual whose full name and residence address are [**name and address**].

Or

2. Registrant is a partnership named [**name of partnership**]. The partnership office address is [**address**]. The full names and addresses of each general partner are [**names and addresses (residence for individuals, office for other entities)**].

Or

2. Registrant is a joint venture named [**name of joint venture**]. The joint venture office address is [**address**]. The full names and addresses of each joint venturer are [**names and addresses (residence for individuals, office for other entities)**].

Or

2. Registrant is an estate named [**name of estate**]. The estate's address is [**address**]. The full names and addresses of each representative of the estate are [**names and addresses (residence for individuals, office for other entities)**].

Or

2. Registrant is a real estate investment trust named [**name of trust**]. The address of the trust is [**address**]. The full names and addresses of each trustee manager are [**names and addresses (residence for individuals, office for other entities)**].

Or

2. Registrant is a company other than a real estate investment trust or a corporation. The name of the company is [**name of company**]. The state, country, or other jurisdiction under the laws of which it was organized or associated is [**jurisdiction**]. Its office address is [**address**].

Continue with the following.

3. The period during which the Assumed Name will be used is the Period of Use.

4. The [business/professional service] that [is/will be] [conducted/rendered] in the [county/counties] under the Assumed Name [is being/will be] [conducted/rendered] as a [proprietorship/sole practitioner/joint venture/partnership/real estate investment trust/joint-stock company/[**other form of unincorporated business or professional association or legal entity other than a limited partnership, registered limited liability partnership, or limited liability company**]].

Include the following if applicable.

5. The attorney[s]-in-fact executing this certificate for Registrant [has/have] been duly authorized in writing by [his/her/their] principal[s] to execute and acknowledge this certificate.

Include signature and acknowledgment for each registrant who is an individual. For all other registrants, include signatures and acknowledgments under oath.

*[Reserved]*



Form 26-7

This form is used to establish the common boundary between two parcels by agreement if the location of the boundary has become obscured over time because of fence locations or discrepancies in survey calls.

---

**Boundary Line Agreement and Special Warranty Deed**

**Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.**

Date:

Owner:

Owner's Address:

Owner's Property: That certain tract containing [number] acres, more or less, which is located in [county] County, Texas and is more fully described in Exhibit [exhibit number/letter] attached hereto and incorporated herein by reference for all purposes.

Adjoining Owner:

Adjoining Owner's Address:

Adjoining Owner's Property: That certain tract containing [number] acres, more or less, which is located in [county] County, Texas and is more fully described in Exhibit [exhibit number/letter] attached hereto and incorporated herein by reference for all purposes.

Based on [an examination of title/surveys] of Owner's Property and Adjoining Owner's Property, there appears to be a question as to the location of the common boundary line

between Owner's Property and Adjoining Owner's Property. Owner and Adjoining Owner desire to settle the question by executing this agreement.

In consideration of settling the existing boundary line dispute and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Adjoining Owner hereby agree as follows:

1. Set forth in Exhibit [exhibit number/letter] attached hereto and incorporated herein by reference for all purposes is a metes-and-bounds description of the line that Owner and Adjoining Owner have agreed will henceforth constitute the common boundary line between Owner's Property and Adjoining Owner's Property.

2. Owner and Adjoining Owner hereby grant, sell, and convey to each other their respective interests, if any, in the real property lying on the opposite side of the agreed common boundary line from the remaining property that each of them owns, together with, all and singular, the rights and appurtenances thereto in any way belonging, to have and to hold such interests to the grantee and grantee's heirs, successors, and assigns forever, and hereby agree to warrant and forever defend the title to these interests in the grantee and the grantee's respective heirs, successors, and assigns against all claims arising by, through, or under the grantor but not otherwise.

3. This agreement binds and inures to the benefit of Owner and Adjoining Owner and their respective heirs, personal representatives, successors, and assigns.

\_\_\_\_\_  
[Name of owner]

\_\_\_\_\_  
[Name of adjoining owner]

Include acknowledgments and exhibits.

## Form 26-8

All property acquired during marriage is presumed to be community property, except property acquired by gift, devise, or descent. During marriage, real property is presumed to be subject to the sole management, control, and disposition of the spouse in whose name the property is held. *See* Tex. Fam. Code §§ 3.102, 3.104. A spouse may evidence that certain property is subject to the sole management, control, and disposition of the other spouse by executing this form.

---

**Certificate of Management, Control, and Disposition**

Date:

Spouse A:

Spouse B:

[Purchaser:]

[Lienholder:]

Property:

[Spouse B/Spouse A] represents and warrants to [Purchaser/Lienholder/Purchaser and Lienholder] that [Spouse A/Spouse B] has the sole management, control, and disposition of the Property and that no divorce action is pending between the Spouses.

This instrument is executed for valuable consideration. [Purchaser/Lienholder/Purchaser and Lienholder], all subsequent transferees of the Property, all title insurance companies and agencies insuring title of the Property, and the world at large may rely on this instrument in dealing with [Spouse A/Spouse B] without [Spouse B/Spouse A]'s joinder.

---

[Name of [spouse B/spouse A]]

Include acknowledgment.

Form 26-9

This form certifies that a corporation has authorized an action. Most often this is done to confirm an individual officer's authority to act on behalf of the corporation in connection with buying, selling, or mortgaging real property.

---

**Certificate of Resolutions**  
[Corporation]

Date:

Corporation:

Date of Adoption: [date of meeting of board of directors or of written consent of directors]

The undersigned [secretary/assistant secretary] of the Corporation certifies the following facts:

1. The Corporation is organized and operating under the laws of [Texas/[other state], is registered to do business in Texas,] and is in good standing.
2. No proceeding for [termination of the certificate of formation/revocation of the registration] of the Corporation or for voluntary or involuntary termination of the Corporation is pending.
3. Neither the certificate of formation nor the bylaws of the Corporation limit the power of the board of directors to pass the resolutions [below/attached].
4. The undersigned is authorized to make and sign this certificate.
5. The undersigned keeps the records and minutes of the proceedings of the board of directors of the Corporation, and the resolutions [below/attached] are an accurate reproduction

of the ones made in those proceedings. They have not been amended, modified, or rescinded and are now in full force and effect.

Select one of the following. See Tex. Bus. Orgs. Code §§ 6.201, 6.202.

6. The resolutions [below/attached] were duly adopted on the Date of Adoption. The meeting of the board of directors was called and held in accordance with law and the bylaws of the Corporation, and a quorum was present.

Or

6. The resolutions [below/attached] were duly adopted on the Date of Adoption. A quorum was present at the meeting of the board of directors, and all directors had signed a waiver of notice of the meeting in accordance with law and the bylaws of the Corporation.

Or

6. The resolutions [below/attached] were duly adopted by unanimous written consent of all directors as of the Date of Adoption, and the unanimous consent conforms with law and the bylaws of the Corporation.

Continue with the following.

Include or attach full text of resolution(s). See, e.g. form 10-6 in this manual.

7. [Set forth below/Attached] is a list of the names, titles, and signatures of the individuals who are currently serving as officers of the Corporation.

[Name of [secretary/assistant secretary]]

Include corporate seal (if necessary) and corporate acknowledgment.

Include the following if applicable.

The undersigned hereby certifies that [he/she] is the duly elected and qualified president of [name of corporation]; that [name] is the duly elected and qualified [secretary/assistant secretary] of [name of corporation]; that the signature above is [name]'s genuine signature; and that the foregoing certificate of resolutions is true and correct.

\_\_\_\_\_  
[Name of president]

Include acknowledgment.

*[Reserved]*



## Form 26-10

This form certifies that a general partnership has authorized an action. Most often this is done to confirm an individual partner's authority to act on behalf of the partnership in connection with buying, selling, or mortgaging real property.

---

**Certificate of Resolutions**  
[General Partnership]

Date:

Partnership:

Date of Adoption: [date of meeting of partners or of written consent of partners]

We, the partners of the Partnership, a general partnership, certify that we have custody of the records of the Partnership and that we are authorized to execute and deliver this certificate of resolutions on behalf of the Partnership. We further certify as follows:

Select one of the following.

1. The resolutions [below/attached] were duly adopted on the Date of Adoption. A meeting of the partners of the Partnership was called and held in accordance with law and the partnership agreement of the Partnership, and a quorum was present. The resolutions have not been amended, modified, or rescinded and are now in full force and effect.

Or

1. The resolutions [below/attached] were duly adopted on the Date of Adoption. A quorum was present at the meeting of the partners of the Partnership, and all partners had signed a waiver of notice of the meeting in accordance with law and the partnership agreement of the Partnership. The resolutions have not been amended, modified, or rescinded and are now in full force and effect.

Or

1. The resolutions [below/attached] were duly adopted by written consent of partners of the Partnership owning [all/the requisite percentage] of the ownership in the Partnership as of the Date of Adoption, and the written consent conforms with law and the partnership agreement of the Partnership. The resolutions have not been amended, modified, or rescinded and are now in full force and effect.

Continue with the following.

Include or attach full text of resolution(s). See, e.g. form 10-6 in this manual.

2. We further certify that the Partnership is duly formed and validly existing under the laws of the state of Texas; that no proceeding is pending for the winding up or termination of the Partnership; that there is no provision in the partnership agreement of the Partnership limiting the powers of the partners of the Partnership to adopt the resolutions referred to above and that the resolutions are in conformity with the requirements of the partnership agreement of the Partnership; that the undersigned are the keepers of the records and minutes of the proceedings of the Partnership; and that the following persons constitute all of the partners of the Partnership:

\_\_\_\_\_  
[Name of partner]

\_\_\_\_\_  
[Name of partner]

Include acknowledgments.

## Form 26-11

This form certifies that a limited liability company has authorized an action. Most often this is done to confirm an individual member's or manager's authority to act on behalf of the limited liability company in connection with buying, selling, or mortgaging real property.

---

**Certificate of Resolutions**  
[Limited Liability Company]

Date:

Company: [name of limited liability company]

Date of Adoption: [date of meeting or of written consent]

[I/We], the [members/managers/secretary/[other authorized officer]] of the Company, a Texas limited liability company, certify that [I/we] have custody of the records of the Company and that [I am/we are] authorized to execute and deliver this certificate of resolutions on behalf of the Company. [I/We] further certify as follows:

Select one of the following.

1. The resolutions [below/attached] were duly adopted on the Date of Adoption. A meeting of the [members/managers] of the Company was called and held in accordance with law and the company agreement of the Company, and a quorum was present. The resolutions have not been amended, modified, or rescinded and are now in full force and effect.

Or

1. The resolutions [below/attached] were duly adopted on the Date of Adoption. A quorum was present at the meeting of the [members/managers] of the Company, and all [members/managers] had signed a waiver of notice of the meeting in accordance with law and the company agreement of the Company. The resolutions have not been amended, modified, or rescinded and are now in full force and effect.

Or

1. The resolutions [below/attached] were duly adopted as of the Date of Adoption by written consent of the [members/managers] of the Company as required by law and the operating agreement of the Company. The resolutions have not been amended, modified, or rescinded and are now in full force and effect.

Continue with the following.

Include or attach full text of resolution(s). See, e.g. form 10-6 in this manual.

2. [I/We] further certify that the Company is duly organized and existing under the laws of the state of [Texas/[name of state], is registered to do business in Texas,] and is in good standing; that no proceeding is pending for the termination of the [certificate of formation/registration] of the Company or for the winding up or termination, voluntary or involuntary, of the Company; that there is no provision of the company agreement or certificate of formation of the Company limiting the powers of the members or managers of the Company to adopt the resolutions referred to above and that the resolutions are in conformity with the provisions of the company agreement and the certificate of formation of the Company; that the undersigned is the keeper of the records and minutes of the proceedings of the Company; and that the following persons constitute all of the [members/managers] of the Company:

\_\_\_\_\_  
[Name of member/manager]

\_\_\_\_\_  
[Name of member/manager]

Include signatures of members, managers, or secretary and acknowledgments.

## Form 26-12

This form certifies that a limited partnership has authorized an action. Most often this is done to confirm the general partner's authority to act on behalf of the limited partnership in connection with buying, selling, or mortgaging real property.

---

**Certificate of Resolutions**  
[Limited Partnership]

Date:

Partnership: [name], a Texas limited partnership

Date of Adoption: [date of meeting of partners or of written consent]

I, the duly elected [secretary/[other authorized officer]] of [name of company] (the "Company"), a Texas [type of company], in its capacity as general partner of the Partnership, certify that I have custody of the [corporate/partnership] records of the Company and the partnership records of the Partnership and that I am authorized to execute and deliver this certificate of resolutions on behalf of the Company in its capacity as general partner of the Partnership. I further certify as follows:

Select one of the following.

1. Partners holding [all/the required percentage] of the partnership interests in the Partnership consented to the activities by the Partnership reflected in the resolutions [below/attached]. The resolutions were duly adopted on the Date of Adoption. A meeting of the partners of the Partnership was called and held in accordance with law and the partnership agreement of the Partnership, and a quorum was present. The consent has not been amended, modified, or rescinded and is now in full force and effect.

Or

1. Partners holding [all/the required percentage] of the partnership interests in the Partnership consented to the activities by the Partnership reflected in the resolutions [below/attached]. The resolutions were duly adopted on the Date of Adoption. A quorum was present at the meeting of the partners of the Partnership, and all partners had signed a waiver of notice of the meeting in accordance with law and the partnership agreement of the Partnership. The consent has not been amended, modified, or rescinded and is now in full force and effect.

Or

1. Partners holding [all/the required percentage] of the partnership interests in the Partnership have given written consent to the activities by the Partnership reflected in the resolutions [below/attached]. The resolutions were duly adopted by written consent of the partners of the Partnership as of the Date of Adoption in accordance with law and the partnership agreement of the Partnership. The consent has not been amended, modified, or rescinded and is now in full force and effect.

Continue with the following.

Include or attach full text of resolution(s). See, e.g. form 10-6 in this manual.

2. I further certify that the Company is duly organized and existing under the laws of the state of [Texas/[name of state], is registered to do business in Texas,] and is in good standing; that no proceeding is pending for the winding up or termination, voluntary or involuntary, of the Company or the Partnership; that there is no provision of the partnership agreement or certificate of formation of the Partnership limiting the powers of the partners of the Partnership to adopt the consent referred to above and that the consent is in conformity with the provisions of the agreement of limited partnership and certificate of formation; that the undersigned is the keeper of the records and minutes of the proceedings of the partners of the Partnership; and that the following persons constitute all of the partners of the Partnership:

\_\_\_\_\_  
[Name of partner]

\_\_\_\_\_  
[Name of partner]

\_\_\_\_\_  
[Name of secretary or other officer]

Include acknowledgment.

Include the following if applicable.

The undersigned hereby certifies that [he/she] is the duly elected and qualified president of [name of company]; that [name] is the duly elected and qualified [secretary/[other officer]] of [name of company]; that the signature above is [name]'s genuine signature; and that the foregoing certificate of resolutions is true and correct.

\_\_\_\_\_  
[Name of president]

Include acknowledgment.

*[Reserved]*



## Form 26-13

This form certifies that a nonprofit corporation has authorized an action. Most often this is done to confirm an individual officer's authority to act on behalf of the nonprofit corporation in connection with buying, selling, or mortgaging real property.

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**Certificate of Resolutions**  
[Nonprofit Corporation]

Date:

Corporation:

Date of Adoption: [date of meeting or of written consent]

[I/We], the [members/directors/secretary/[other authorized officer]] of [name of corporation] (the "Corporation"), a Texas nonprofit corporation, certify that [I/we] have custody of the records of the Corporation and that [I am/we are] authorized to execute and deliver this certificate of resolutions on behalf of the Corporation. [I/We] further certify as follows:

Select one of the following.

1. The resolutions [below/attached] were duly adopted on the Date of Adoption. A meeting of the [members/directors] of the Corporation was called and held in accordance with law and the bylaws of the Corporation, and a quorum was present. The resolutions have not been amended, modified, or rescinded and are now in full force and effect.

Or

1. The resolutions [below/attached] were duly adopted on the Date of Adoption. A quorum was present at the meeting of the [members/directors] of the Corporation, and all [members/directors] had signed a waiver of notice of the meeting in accordance with law and the bylaws of the Corporation. The resolutions have not been amended, modified, or rescinded and are now in full force and effect.

Or

1. The resolutions [below/attached] were duly adopted as of the Date of Adoption by written consent of the [members/directors] of the Corporation as required by law and the bylaws of the Corporation. The resolutions have not been amended, modified, or rescinded and are now in full force and effect.

Continue with the following.

Include or attach full text of resolution(s). See, e.g. form 10-6 in this manual.

2. [I/We] further certify that the Corporation is duly organized and existing under the laws of the state of [Texas/[name of state], is qualified to do business in Texas,] and is in good standing; that no proceeding is pending for the termination of the Corporation's [certificate of formation/registration] or for the winding up or termination, voluntary or involuntary, of the Corporation; that there is no provision of the bylaws or certificate of formation of the Corporation limiting the powers of the [members/directors] of the Corporation to adopt the resolutions referred to above and that the resolutions are in conformity with the provisions of the bylaws and the certificate of formation of the Corporation; that the undersigned is the keeper of the records and minutes of the proceedings of the Corporation; and that the following persons constitute all of the [members/directors] of the Corporation:

\_\_\_\_\_  
[Name of member or director]

\_\_\_\_\_  
[Name of member or director]

Include signatures of members, directors, or secretary and acknowledgments.

Include the following if applicable.

The undersigned hereby certifies that [he/she] is the duly elected and qualified president of [name of corporation]; that [name] is the duly elected and qualified [secretary/[other officer]] of [name of corporation]; that the signature above is [name]'s genuine signature; and that the foregoing certificate of resolutions is true and correct.

\_\_\_\_\_  
[Name of president]

Include acknowledgment.

*[Reserved]*

## Form 26-14

This form certifies that an unincorporated association has authorized an action. Most often this is done to clarify an individual's authority to act on behalf of the unincorporated association in connection with buying, selling, or mortgaging real property.

---

**Certificate of Resolutions**  
[Unincorporated Association]

Date:

Unincorporated Association:

Date of Adoption: [date of meeting of members or of written consent]

I, the [title] of [name of association] (the "Association"), an unincorporated association, certify that I have custody of the records of the Association and that I am authorized to execute and deliver this certificate of resolutions on behalf of the Association. I further certify as follows:

Select one of the following.

1. The resolutions [below/attached] were duly adopted on the Date of Adoption. A meeting of the members of the Association was called and held in accordance with law and the governing documents of the Association, and a quorum was present. The resolutions have not been amended, modified, or rescinded and are now in full force and effect.

Or

1. The resolutions [below/attached] were duly adopted on the Date of Adoption. A quorum was present at the meeting of the members of the Association, and all members had signed a waiver of notice of the meeting in accordance with law and the governing documents of the Association. The resolutions have not been amended, modified, or rescinded and are now in full force and effect.

Or

1. The resolutions [below/attached] were duly adopted as of the Date of Adoption by written consent of the required percentage of the members of the Association, and the written consent conforms with law and the governing documents of the Association. The resolutions have not been amended, modified, or rescinded and are now in full force and effect.

Continue with the following.

Include or attach full text of resolution(s). See, e.g. form 10-6 in this manual.

2. I further certify that the Association is qualified to do business in Texas; that no proceeding is pending for the winding up or termination of the Association; that there is no provision in the governing documents of the Association limiting the powers of the members of the Association to adopt the resolutions referred to above and that the resolutions are in conformity with the requirements of the governing documents; that the undersigned is the keeper of the records and minutes of the proceedings of the Association; and that the following persons constitute all of the officers of the Association:

\_\_\_\_\_  
[Name of officer]  
[Title]

\_\_\_\_\_  
[Name of officer]  
[Title]

Include acknowledgment(s).

Include the following if applicable.

The undersigned hereby certifies that [he/she] is the duly elected and qualified president of [name of association]; that [name] is the duly elected and qualified [secretary/[other

**officer]]** of **[name of association]**; that the signature above is **[name]**'s genuine signature; and that the foregoing certificate of resolutions is true and correct.

---

**[Name of president]**

Include acknowledgment.

*[Reserved]*



## Form 26-15

This form is used by a borrower or borrower's counsel to instruct an escrow agent regarding the closing of a real estate transaction and disbursement of the documents evidencing and securing a loan secured by real estate.

---

**Closing Instructions**

[from Borrower]

[Date]

[Name of escrow officer]

[Name and address of escrow agent]

Re: \$[amount] Loan ("Loan") from  
[name of lender] ("Lender") to  
[name of borrower] ("Borrower")  
Your GF Number:

[Salutation]

Set forth below are Borrower's instructions for closing the above-referenced Loan from Lender to Borrower.

1. Enclosed with this letter or otherwise delivered to you are the following documents for your use in closing this Loan (collectively, the "Documents"):

Select as applicable from the following examples.

- a. Promissory Note in the original principal amount of the Loan (the "Note").
- b. Deed of Trust [**include as applicable:** , Security Agreement, Assignment of Rents and Leases, [and] Financing Statement] (the "Deed of Trust").
- c. Financing Statement to be filed with the Texas secretary of state's office (the "Financing Statement").

- d. Borrower's Closing Certificate and Affidavit (the "Closing Certificate").
- e. Certificate of Resolutions (the "Resolution Certificate").
- f. Form of Opinion of Borrower's Legal Counsel (the "Borrower's Opinion").

Include title(s) of other document(s) as applicable.

2. It is understood that you will prepare a settlement statement setting forth the proceeds of the Loan being disbursed and the purposes for which the proceeds are being applied (the "Settlement Statement").

3. It is also understood that the Documents either have been executed and acknowledged, if required, in the manner contemplated in the Documents before their delivery to you or will be executed and acknowledged, if required, by the appropriate party before the closing of the Loan as contemplated in these instructions. Please confirm that all blanks in the Documents are completed before their execution.

Adapt paragraphs 4. and 5. to reflect only those documents used in the transaction.

4. When you have received from Lender the proceeds of the Loan to be disbursed as shown on the Settlement Statement, you are authorized to deliver to Lender the signed originals of each of the following: the Note, the Closing Certificate, the Resolution Certificate, [and] the Borrower's Opinion [**include if applicable:** , and [**title[s] of other document[s]**]]. At that same time, please deliver to Lender two copies, certified by you to be true and correct, of each of the following signed documents: the Deed of Trust, the Financing Statement, [and] the Settlement Statement executed by Borrower [**include if applicable:** , and [**title[s] of other document[s]**]]; record the original Deed of Trust [**include if applicable:** and [**title[s] of other document[s]**]] in the real property records of [**county**] County, Texas; and file the Financing Statement with the Texas secretary of state's office. At that same time, please deliver to

Lender such other documents and information by then delivered to you by or on behalf of Borrower as will be required by Lender's instructions in conjunction with closing the Loan.

5. Before releasing, recording, or filing any of the Documents, you must be prepared to disburse the proceeds of the Loan to or on behalf of Borrower in the manner shown on the Settlement Statement immediately on the recording of the Deed of Trust [**include if applicable:** and [**title[s] of other document[s]**]] in the real property records of [**county**] County, Texas, and the filing of the Financing Statement with the Texas secretary of state's office, and you must have determined that all requirements of Lender for disbursement of the funds have been satisfied or waived by Lender. The disbursement of the proceeds of the Loan as shown on the Settlement Statement must be accomplished promptly on the satisfaction of such conditions, with any balance of the proceeds of the Loan that are to be disbursed to Borrower to be disbursed by wire transfer or check in accordance with Borrower's separate instructions.

6. We have enclosed our statement for services on behalf of Borrower, which you are instructed to collect and remit to us as part of the closing.

7. By disbursing the funds, you will certify to Borrower that you have complied with the requirements and conditions of this letter and that all matters disclosed in Schedule C of the Commitment for Title Insurance (the "Commitment") have been or will be paid, satisfied, or otherwise resolved to the complete satisfaction of the title insurer before the issuance date of the loan policy of title insurance (the "Loan Policy") and that no exceptions for any item on Schedule C of the Commitment will be contained in the Loan Policy.

8. If for any reason you cannot or will not comply with all of the requirements and conditions of this letter, please inform the undersigned immediately. The Title Company is not authorized to close the transaction on behalf of Borrower unless the Title Company complies with the requirements and conditions of this letter.

If you have any questions regarding any aspect of this transaction, please call us at your earliest opportunity.

Very truly yours,

\_\_\_\_\_  
Legal Counsel for Borrower

By \_\_\_\_\_  
(Authorized signature)

Enc.  
c: [name of borrower]

## Form 26-16

This form is used by a lender or lender's counsel to instruct an escrow agent regarding the closing of a real estate transaction and disbursement of a loan secured by real estate.

---

**Closing Instructions**

[from Lender]

[Date]

[Name of escrow officer]

[Name and address of escrow agent]

Re: \$[amount] Loan ("Loan") from  
[name of lender] ("Lender") to  
[name of borrower] ("Borrower")  
Your GF Number:

[Salutation]

Set forth below are Lender's instructions for closing the above-referenced Loan to Borrower.

1. Enclosed with this letter or otherwise delivered to you are the following documents for your use in closing this Loan (collectively, the "Documents"):

Select as applicable from the following examples.

- a. Promissory Note in the original principal amount of the Loan (the "Note").
- b. Deed of Trust [include as applicable: , Security Agreement, Assignment of Rents and Leases, [and] Financing Statement] (the "Deed of Trust").
- c. Financing Statement to be filed with the Texas secretary of state's office (the "Financing Statement").

- d. Borrower's Closing Certificate and Affidavit (the "Closing Certificate").
- e. Certificate of Resolutions (the "Resolution Certificate").
- f. Form of Opinion of Borrower's Legal Counsel (the "Borrower's Opinion").

Include title(s) of other document(s) as applicable.

2. It is understood that you will prepare a settlement statement setting forth the proceeds of the Loan being disbursed and the purposes for which the proceeds are being applied (the "Settlement Statement").

3. Also enclosed is a copy of Lender's closing instructions (the "Closing Instructions"), which are being supplemented by the information set forth in this letter.

Adapt paragraphs 4. and 5. to reflect only those documents used in the transaction.

4. Before you request any funds from Lender or otherwise advise that this transaction has closed, please deliver to Lender the signed originals of each of the following: the Note, the Closing Certificate, the Resolution Certificate, [and] the Borrower's Opinion [**include if applicable:** , and [title[s] of other document[s]]]. At that same time, please deliver to Lender two copies, certified by you to be true and correct, of each of the following signed documents: the Deed of Trust, the Financing Statement, [and] the Settlement Statement executed by Borrower [**include if applicable:** and [title[s] of other document[s]]]. Also deliver to Lender with the foregoing documents a currently dated and effective title commitment or the Loan Policy described below, and the original hazard insurance policy described in the closing instructions.

5. Confirm that all blanks in the enclosed Documents are completed before their execution. Please be certain that the Deed of Trust [**include if applicable:** and [title[s] of other document[s]]] [is/are] immediately recorded in the real property records of [county] County,

Texas, the Financing Statement is immediately filed in the Texas secretary of state's office, and [other instructions].

6. Before you disburse any funds received by you from Lender or otherwise advise Lender that this transaction has closed, please be certain that the title insurer is in a position to issue, and will issue, to Lender a loan policy of title insurance (the "Loan Policy") in the form prescribed by the Texas State Board of Insurance, written by the same underwriter that issued the Commitment for Title Insurance (the "Commitment") with an issuance date of [date] and an effective date of [date] under the above-referenced GF number. The Loan Policy must be issued in accordance with the Commitment, except as follows:

- a. The Insured under the Loan Policy must read exactly as the Lender's name is set forth in the Note, with the following additional phrase: "and its successors and/or assigns who are the lawful owner or owners of the evidence of debt identified herein and any subsequent owner or owners thereof";
- b. The effective date of the Loan Policy must be the date on which the Deed of Trust is filed of record;
- c. The lien insured by the Loan Policy must be the first-priority lien arising under the Deed of Trust;
- d. The real property described in the Loan Policy must be the same property described in the Deed of Trust and in the survey dated [date], prepared by [name];
- e. Fee simple title to the real property described in the Deed of Trust must be shown by the Loan Policy to be vested in Borrower, and any easements benefiting the real property must be included in the description of the property insured by the Loan Policy;

- f. Item 2 of Schedule B of the Loan Policy must be modified to read “shortages in area” only, provided, however, that if the final survey delivered to you reflects one or more encroachments or other matters, the Loan Policy may except to the encroachments and other matters reflected in the survey if the Loan Policy contains a T-19 endorsement as to those encroachments or other matters;
- g. Item 3 of Schedule B of the Loan Policy must be modified to delete the words “and subsequent assessments, for prior years due to change in land usage or ownership,” and must except only to taxes, assessments, and stand-by fees for the year [year] and subsequent years, not yet due and payable;
- h. The exceptions to title shown on Schedule B of the Loan Policy must include only the Permitted Exceptions set forth in the Deed of Trust (so that the following-listed items from Schedule B of the Commitment must be deleted: [list items]);
- i. All matters described on Schedule C of the Commitment must be satisfied and resolved to your complete satisfaction so that none of these matters will appear as exceptions in the Loan Policy;
- j. There should be no exception in the Loan Policy for any lack of right of access to and from the Property;
- k. The Arbitration Clause in the Conditions and Stipulations section of the Loan Policy should be deleted pursuant to Procedural Rule P-36;
- l. There should be no exception in the Loan Policy for parties in possession (except for tenants as lessees only under unrecorded leases with no right of purchase or right of first refusal);



- m. There should be no exception in the Loan Policy for visible or apparent easements on the Property; and
- n. The following endorsements to the Loan Policy should be provided: **[list any applicable endorsements]**.

7. By disbursing Loan funds, you will certify to Lender that all matters disclosed in Schedule C of the Commitment have been or will be paid, satisfied, or otherwise resolved to the complete satisfaction of the title insurer before the issuance date of the Loan Policy, that no exceptions for any item on Schedule C of the Commitment will be contained in the Loan Policy, and that you have complied with the requirements and conditions of the letter.

8. We have also enclosed our statement for services on behalf of Lender, which you are instructed to collect and remit to us as part of the closing.

9. If for any reason you cannot or will not comply with all of the requirements and conditions of this letter, please inform the undersigned immediately. The Title Company is not authorized to close the transaction on behalf of Lender unless the Title Company complies with the requirements and conditions of this letter.

If you have any questions regarding any aspect of this transaction or the instructions set forth herein, please call us at your earliest opportunity.

Very truly yours,

\_\_\_\_\_  
Legal Counsel for Lender

By \_\_\_\_\_  
(Authorized signature)

Enc.  
c: **[name of lender]**

*[Reserved]*

**Form 26-17**

This form is used by a purchaser's counsel to instruct an escrow agent regarding the closing of a real estate transaction.

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**Closing Instructions**  
[from Purchaser]

[Date]

[Name of escrow officer]

[Name and address of escrow agent]

Re: Purchase of real property ("Property") from  
[name of seller] ("Seller") by  
[name of purchaser] ("Purchaser")  
Your GF Number:

[Salutation]

We represent the Purchaser in connection with the purchase of the above-referenced Property. Set forth below are Purchaser's instructions for closing this transaction.

1. Enclosed with this letter [is/are] the Settlement Statement (the "Settlement Statement") [include if applicable: and [title[s] of other document[s]]] for your use in closing the purchase.

2. Also being delivered to you in conjunction with this letter are funds in the amount of \$[amount] (the "Funds"), representing the net amount that is payable at closing by Purchaser with respect to the purchase price for the Property.

3. Also enclosed are copies of the form of [general/special] warranty deed (the "Deed") and [title[s] of other document[s]], to be executed by Seller. The original of each of these documents is to be executed by Seller and delivered to your offices.

4. Determine that all of the foregoing documents are fully and properly executed and acknowledged when appropriate. Confirm that all blanks in the enclosed documents are completed before their execution.

5. Before you disburse any of the Funds or otherwise advise that this transaction has closed, deliver to Purchaser one copy, certified by you to be true and correct, of the signed originals of the Deed and [title[s] of other document[s]]. These documents are to be in the forms enclosed. Also deliver to Purchaser with the foregoing documents a currently dated and effective title commitment or the Owner Policy described below.

6. Be certain that the Deed and [title[s] of other document[s]] are immediately recorded in the real property records of [county] County, Texas, in the order set forth in this paragraph.

7. Before you disburse any of the Funds or otherwise advise Purchaser that this transaction has closed, be certain that the title insurer is in a position to issue, and will issue, to Purchaser an owner policy of title insurance (the "Owner Policy") in the form prescribed by the Texas State Board of Insurance, written by the same underwriter that issued the Commitment for Title Insurance (the "Commitment") with an issuance date of [date] and an effective date of [date] under the above-referenced GF number. The Owner Policy must be issued in accordance with the Commitment, except as follows:

- a. The Insured under the Owner Policy must read exactly as the Purchaser's name is set forth in the Deed;
- b. The effective date of the Owner Policy must be the date on which the Deed is filed of record;

- c. The real property described in the Owner Policy must be the same property described in the Deed and in the survey of the Property dated [date], prepared by [name];
- d. Fee simple title to the real property described in the Deed must be shown by the Owner Policy to be vested in Purchaser, and any easements benefiting the real property must be included in the description of the property insured by the Owner Policy;
- e. Item 2 of Schedule B of the Owner Policy must be modified to read “short-ages in area” only, provided, however, that if the final survey delivered to you reflects one or more encroachments or other matters, the Owner Policy may except to the encroachments and other matters reflected in the survey if the Owner Policy contains a T-19.1 endorsement as to those encroachments or other matters;
- f. Item 3 of Schedule B of the Owner Policy must be modified to except only to taxes, assessments, and stand-by fees for the year [year] and subsequent years, not yet due and payable, and subsequent assessments for prior years due to change in land usage or ownership;
- g. The exceptions to title shown on Schedule B of the Owner Policy must include only the Permitted Exceptions set forth in the Deed (so that the following-listed items from Schedule B of the Commitment must be deleted: [list items]);
- h. All matters described on Schedule C of the Commitment must be satisfied and resolved to your complete satisfaction so that none of these matters will appear as exceptions in the Owner Policy;

- i. There should be no exception in the Owner Policy for any lack of right of access to and from the Property;
- j. The Arbitration Clause in the Conditions and Stipulations section of the Owner Policy should be deleted pursuant to Procedural Rule P-36;
- k. There should be no exception in the Owner Policy for parties in possession (except for tenants as lessees only under unrecorded leases with no right of purchase or right of first refusal);
- l. The Owner Policy will not contain any exceptions for visible or apparent easements on the Property; and
- m. The following endorsements to the Owner Policy should be provided: **[list any applicable endorsements]**.

8. By disbursing the Funds, you certify to Purchaser that you have complied with the requirements and conditions of this letter and all matters disclosed in Schedule C of the Commitment have been or will be paid, satisfied, or otherwise resolved to the complete satisfaction of the title insurer before the issuance date of the Owner Policy and that no exceptions for any item on Schedule C of the Commitment will be contained in the Owner Policy.

9. If for any reason you cannot or will not comply with all of the requirements and conditions of this letter, inform the undersigned immediately. The Title Company is not authorized to close the transaction on behalf of Purchaser unless the Title Company complies with the requirements and conditions of this letter.

If you have any questions regarding any aspect of this transaction or the instructions set forth herein, please call us at your earliest opportunity.

Very truly yours,

\_\_\_\_\_  
Legal Counsel for Purchaser

By \_\_\_\_\_  
(Authorized signature)

Enc.

c: [name of purchaser]

*[Reserved]*



**Form 26-18**

This form is used by a seller's counsel to instruct an escrow agent regarding closing the sale of a parcel of real estate.

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**Closing Instructions**  
[from Seller]

[Date]

[Name of escrow officer]  
[Name and address of escrow agent]

Re: Sale of real property ("Property") by  
[name of seller] ("Seller") to  
[name of purchaser] ("Purchaser")  
Your GF Number:

[Salutation]

We represent the Seller in connection with the sale (the "Sale") of the above-referenced Property. Set forth below are Seller's instructions for closing this transaction.

1. Enclosed with this letter are the following documents, which have been executed by Seller, for your use in closing the Sale:

- a. [General/Special] Warranty Deed (the "Deed").
- b. Settlement Statement (the "Settlement Statement"), executed on behalf of Seller.

Include title(s) of other document(s) as applicable.

2. Do not deliver the Deed to Purchaser, or otherwise advise Seller that this transaction has closed, until Purchaser has executed the enclosed Settlement Statement and you are in

a position to disburse to Seller the amount reflected on the Settlement Statement as "Cash to Seller."

3. Following the closing, return to Seller a fully executed copy of the Settlement Statement and copies of the other closing documents. When available, provide Seller a copy of the Deed that reflects the applicable recording information.

4. By delivering the Deed to Purchaser and disbursing the funds to Seller, you certify to Seller that you have complied with these instructions and the conditions set forth in this letter. If for any reason you cannot comply strictly with these instructions, then immediately return to Seller the Deed and the other items deposited by Seller in connection with this transaction. Comply before [date].

If you have any questions regarding any aspect of this transaction, please call us at your earliest opportunity.

Very truly yours,

\_\_\_\_\_  
Legal Counsel for Seller

By \_\_\_\_\_  
(Authorized signature)

Enc.  
c: [name of seller]

**Form 26-19**

A purchaser of realty from a foreign individual or entity in the United States must withhold 10 percent of the sales price and forward it to the Internal Revenue Service within twenty days of the date of transfer. A purchaser should assume a seller is foreign unless the purchaser obtains an affidavit to the contrary. *See* 26 U.S.C. § 1445; 26 C.F.R. § 1.1445-2(b)(2)(iv). This form is used if the seller is not an individual. If the seller is an individual, see form 26-20 in this chapter. No particular form is required; the following language is taken from 26 C.F.R. § 1.1445-2(b)(2)(iv).

---

**Declaration of Nonforeign Status—Entity**

Date:

Transferor:

Transferor's Office Address:

Transferor's U.S. Taxpayer Identification Number:

Transferee:

Property:

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes, including purposes of section 1445, the owner of a disregarded entity that has legal title to a U.S. real property interest under local law will be the transferor of the property and not the disregarded entity. To inform Transferee that withholding of tax is not required on the disposition of a U.S. real property interest by Transferor, I certify on behalf of Transferor that the contents of this declaration are true.

Transferor is the owner of the Property described above.

Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).

Transferor is not a disregarded entity as defined in Treasury Regulation § 1.1445-2(b)(2)(iii).

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained in this declaration could be punished by fine, imprisonment, or both.

UNDER PENALTIES OF PERJURY I DECLARE THAT I HAVE EXAMINED THIS DECLARATION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS TRUE, CORRECT, AND COMPLETE, AND I FURTHER DECLARE THAT I HAVE AUTHORITY TO SIGN THIS DOCUMENT ON BEHALF OF TRANSFEROR.

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

Title:

Name of Entity:

Include acknowledgment if the declaration is to be recorded.

**Form 26-20**

A purchaser of realty from a foreign individual or entity in the United States must withhold 10 percent of the sales price and forward it to the Internal Revenue Service within twenty days of the date of transfer. A purchaser should assume a seller is foreign unless the purchaser obtains an affidavit to the contrary. See 26 U.S.C. § 1445; 26 C.F.R. § 1.1445-2(b)(2)(iv). This form is used if the seller is an individual. If the seller is not an individual, see form 26-19 in this chapter. No particular form is required; the following language is taken from 26 C.F.R. § 1.1445-2(b)(2)(iv).

---

**Declaration of Nonforeign Status—Individual**

Date:

Transferor:

Transferor's Home Address:

Transferor's Social Security Number:

Transferee:

Property:

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform Transferee that withholding of tax is not required on my disposition of a U.S. real property interest, I affirm that the contents of this declaration are true.

I am not a nonresident alien for purposes of U.S. income taxation.

I understand that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement I have made here could be punished by fine, imprisonment, or both.

UNDER PENALTIES OF PERJURY I DECLARE THAT I HAVE EXAMINED THIS DECLARATION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS TRUE, CORRECT, AND COMPLETE.

\_\_\_\_\_  
[Name of transferor]

Include acknowledgment if the declaration is to be recorded.

**Form 26-21**

If a person may claim a homestead and has not done so, Tex. Prop. Code § 41.005 provides that the property on which the person receives a homestead exemption under Tex. Tax Code § 11.43 is generally considered to have been designated as the person's homestead. Tex. Prop. Code § 41.005(e). Section 41.005 also allows a person to voluntarily designate a homestead. A person may find it necessary to designate a homestead in aid of enforcement of a judgment debt. *See* Tex. Prop. Code § 41.022. This form may be used for either of these purposes. If a homestead claimant's homestead has changed, the voluntary filing of a designation of homestead may facilitate changing the tax exemption to the new homestead.

A rural homestead may not exceed two hundred acres if it is the homestead of a family or one hundred acres if it is the homestead of a single adult. Tex. Prop. Code § 41.002(b). An urban homestead may not exceed ten acres. Tex. Prop. Code § 41.002(a). Tex. Prop. Code § 41.002 sets forth criteria by which a homestead is categorized as rural or urban. See also the discussion on rural and urban homesteads at section 11.9:8 in this manual.

If a rural homestead includes property in more than one survey, state the number of acres in each survey. *See* Tex. Prop. Code § 41.005(c). See also section 3.7 concerning property description. If the rural homestead exceeds ten acres, the optional clause stating that the homestead is not considered urban will assist the taxing authorities in determining that the acreage in excess of ten is entitled to the exemption.

---

**Designation of Homestead**

Date:

Claimant:

Current Record Title Holder of Property:

Property:

Pursuant to section [41.005/41.022] of the Texas Property Code, Claimant designates the Property as Claimant's homestead.

Include the following if applicable.
--------------------------------------

The Property contains [number] acres, more or less, with [number] acres in the [name] Survey and [number] acres in the [name] Survey.

And/Or

The Property [is/is not] considered to be urban under the provisions of section 41.002(c) of the Texas Property Code.

Continue with the following.

\_\_\_\_\_

[Name]

\_\_\_\_\_

[Name]

Include acknowledgments.



Form 26-22

This form is used to grant an easement across one tract of land for ingress to and egress from another tract of land.

Easement Agreement for Access

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Date:

Grantor:

Grantor's Mailing Address:

Grantee:

Grantee's Mailing Address:

[Grantor's Lienholder:]

[Grantor's Lienholder's Mailing Address:]

Dominant Estate Property: [describe by metes and bounds or plat reference the real property benefited by the easement], and portions thereof.

Easement Property: [Describe by metes and bounds the location of the easement and include a drawing of the easement as an exhibit, if available.]

Easement Purpose: For providing free and uninterrupted pedestrian and vehicular ingress to and egress from the Dominant Estate Property, to and from [describe public thoroughfare].

Consideration: Good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor.

Reservations from Conveyance: **[Describe here or in an attached exhibit any reservations from the conveyance in this instrument.]**

Exceptions to Warranty: **[Describe here or in an attached exhibit any exceptions to the warranties in this instrument.]**

Grant of Easement: Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee and Grantee's heirs, successors, and assigns an easement over, on, and across the Easement Property for the Easement Purpose and for the benefit of the Dominant Estate Property, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part thereof, except as to the Reservations from Conveyance and Exceptions to Warranty **[include if applicable: , to the extent that such claim arises by, through, or under Grantor but not otherwise]**.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement is appurtenant to and runs with all or any portion of the Dominant Estate Property, whether or not the Easement is referenced or described in any conveyance of all or such portion of the Dominant Estate Property. The Easement is nonexclusive and irrevocable. The Easement is for the benefit of Grantee and

Grantee's heirs, successors, and assigns who at any time own the Dominant Estate Property or any interest in the Dominant Estate Property (as applicable, the "Holder").

2. *Duration of Easement.* [The duration of the Easement is perpetual./The duration of the Easement is for [number] years beginning [date].]

3. *Reservation of Rights.* Grantor reserves for Grantor and Grantor's heirs, successors, and assigns the right to continue to use and enjoy the surface of the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the Easement by Holder for the Easement Purposes. Grantor reserves for Grantor and Grantor's heirs, successors, and assigns the right to use all or part of the Easement in conjunction with Holder and the right to convey to others the right to use all or part of the Easement in conjunction with Holder, as long as such further conveyance is subject to the terms of this agreement and the other users agree to bear a proportionate part of the costs of improving and maintaining the Easement.

4. *Secondary Easement.* Holder has the right (the "Secondary Easement") to use as much of the surface of the property that is adjacent to the Easement Property ("Adjacent Property") as may be reasonably necessary to install and maintain a road reasonably suited for the Easement Purpose within the Easement Property. However, Holder must promptly restore the Adjacent Property to its previous physical condition if changed by use of the rights granted by this Secondary Easement.

5. *Improvement and Maintenance of Easement Property.* Improvement and maintenance of the Easement Property will be at the sole expense of Holder. Holder has the right to eliminate any encroachments into the Easement Property. Holder must maintain the Easement Property in a neat and clean condition. Holder has the right to construct, install, maintain, replace, and remove a road with all culverts, bridges, drainage ditches, sewer facilities, and similar or related utilities and facilities under or across any portion of the Easement Property

(collectively, the "Road Improvements"). All matters concerning the configuration, construction, installation, maintenance, replacement, and removal of the Road Improvements are at Holder's sole discretion, subject to performance of Holder's obligations under this agreement. Holder has the right to remove or relocate any fences within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Road Improvements or for the road to continue onto other lands or easements owned by Holder and adjacent to the Easement Property, subject to replacement of the fences to their original condition on the completion of the work. On written request by Holder, the owners of the Easement Property will execute or join in the execution of easements for sewer, drainage, or utility facilities under or across the Easement Property.

6. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

7. *Attorney's Fees.* If [either/any] party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

8. *Binding Effect.* This agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

9. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

10. *Counterparts.* This agreement may be executed in multiple counterparts. All counterparts taken together constitute this agreement.

11. *Waiver of Default.* A default is not waived if the nondefaulting party fails to declare default immediately or delays in taking any action with respect to the default. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

12. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

13. *Indemnity.* Each party agrees to indemnify, defend, and hold harmless the other party from any loss, attorney's fees, expenses, or claims attributable to breach or default of any provision of this agreement by the indemnifying party. The obligations of the parties under this provision will survive termination of this agreement.

14. *Survival.* The obligations of the parties in this agreement that cannot be or were not performed before termination of this agreement survive termination of this agreement.

15. *Entire Agreement.* This agreement and any exhibits are the entire agreement of the parties concerning the Easement Property and the grant of the Easement by Grantor to Grantee. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of the other party or any agent of the other party, that are not in this agreement and any exhibits.

16. *Legal Construction.* If any provision in this agreement is unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

17. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

---

[Name of grantor]

---

[Name of grantee]

Include acknowledgments.

Include the following if applicable.

**Consent and Subordination by Lienholder**

Lienholder, as the holder of [a] lien[s] on the Easement Property, consents to the above grant of an Easement, including the terms and conditions of the grant, and Lienholder subordi-

nates its lien[s] to the rights and interests of Holder, so that a foreclosure of the lien[s] will not extinguish the rights and interests of Holder.

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[Name of lienholder]

Include acknowledgment.

*[Reserved]*



**Form 26-23**

This form is used if the parties are granting reciprocal rights of access across their respective properties.

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**Easement Agreement for Reciprocal Access**

**Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.**

Date:

First Party:

First Party's Mailing Address:

Second Party:

Second Party's Mailing Address:

[First Party's Lienholder:]

[First Party's Lienholder's Mailing Address:]

[Second Party's Lienholder:]

[Second Party's Lienholder's Mailing Address:]

First Party's Property: **[Describe by metes and bounds or plat reference the real property owned by the first party.]**

Second Party's Property: **[Describe by metes and bounds or plat reference the real property owned by the second party.]**

Easement Purpose: For providing free and uninterrupted pedestrian and vehicular ingress to, egress from, and access across and between First Party's Property and Second Party's Property and portions thereof.

Consideration: Good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties.

Reservations from Conveyance of First Party's Property: **[Describe here or in an attached exhibit any reservations from the conveyance of the first party's property in this instrument.]**

Exceptions to Warranty of First Party's Property: **[Describe here or in an attached exhibit any exceptions to the warranties of the first party's property in this instrument.]**

Reservations from Conveyance of Second Party's Property: **[Describe here or in an attached exhibit any reservations from the conveyance of the second party's property in this instrument.]**

Exceptions to Warranty of Second Party's Property: **[Describe here or in an attached exhibit any exceptions to the warranties of the second party's property in this instrument.]**

Grants of Easements:

First Party, for the Consideration and subject to the Reservations from Conveyance of First Party's Property and Exceptions to Warranty of First Party's Property, grants, sells, and conveys to Second Party and Second Party's heirs, successors, and assigns an easement to, over, and across First Party's Property for the Easement Purpose and for the benefit of all or any portion of Second Party's Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the easement, rights, and appurtenances to Second Party and Second Party's heirs, successors, and assigns forever. First Party binds First Party and First Party's heirs, successors, and assigns to warrant and forever defend

the title to the easement, rights, and appurtenances in Second Party and Second Party's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the easement, rights, or appurtenances, or any part thereof, except as to the Reservations from Conveyance of First Party's Property and Exceptions to Warranty of First Party's Property [include if applicable: , to the extent that such claim arises by, through, or under First Party but not otherwise].

Second Party, for the Consideration and subject to the Reservations from Conveyance of Second Party's Property and Exceptions to Warranty of Second Party's Property, grants, sells, and conveys to First Party and First Party's heirs, successors, and assigns an easement to, over, and across Second Party's Property for the Easement Purpose and for the benefit of all or any portion of First Party's Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the easement, rights, and appurtenances to First Party and First Party's heirs, successors, and assigns forever. Second Party binds Second Party and Second Party's heirs, successors, and assigns to warrant and forever defend the title to the easement, rights, and appurtenances in First Party and First Party's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the easement, rights, or appurtenances, or any part thereof, except as to the Reservations from Conveyance of Second Party's Property and Exceptions to Warranty of Second Party's Property [include if applicable: , to the extent that such claim arises by, through, or under Second Party but not otherwise].

The easements, rights, and appurtenances hereby granted by and between First Party and Second Party are referred to herein as the "Easements." First Party's Property and Second Party's Property are sometimes referred to herein collectively as the "Properties." First Party and Second Party are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

Terms and Conditions: The following terms and conditions apply to the Easements granted by this agreement:

1. *Character of Easements.* The Easements are appurtenant to and run with the Properties, and portions thereof, whether or not the Easements are referenced or described in any conveyance of the Properties, or any portion thereof. The Easements are for the benefit of the Parties and the heirs, successors, and assigns of the Parties who at any time own the Properties or any interest therein (as applicable, the "Holders").

2. *Duration of Easements.* [The duration of the Easements is perpetual./The duration of the Easements is for [number] years beginning [date].]

3. *Nonexclusiveness of Easements.* The Easements are nonexclusive, and each of the Parties reserves for itself and its heirs, successors, and assigns the right to use all or part of the Easements in conjunction with any other Holder and the right to convey to others the right to use all or part of the Easements in conjunction with the Holders, as long as such further conveyance is subject to the terms of this agreement.

4. *Use and Location of Easements.* The Parties and other Holders will be entitled to exercise direct access to and between the Properties without interference except as set forth in this agreement and to use all access areas, driveways, and parking lots located on any portion of the Properties in exercising the Easements. A Holder may erect curbs or other barriers to traffic between the Properties owned by that Holder and adjacent portions of the Properties, including but not limited to differences in grade levels, only to the extent that such curbs or other barriers will not unreasonably interfere with or restrict direct access to and between the Properties by the Holders of other portions of the Properties and their employees, customers, and other invitees. A Holder may erect buildings and other improvements on the portion of the Properties owned by that Holder only to the extent that the buildings and other improvements will not unreasonably interfere with the use of and access to the access areas, driveways, and

parking lots on such portion of the Properties by the other Holders and their employees, customers, and other invitees. A Holder's employees, customers, and other invitees will not be entitled to park on the other Holder's Properties but will be permitted to walk or drive across and otherwise traverse the Properties to obtain ingress to or egress from the other Properties.

5. *Maintenance of Easement Property.* All access ways, driveways, and parking lots located on the Properties must be maintained at a level of appearance and utility consistent with the highest industry standards then prevailing for similarly used properties in the market in which the Properties are located. Each Holder will be solely responsible for the costs of maintaining the access ways, driveways, and parking lots located on that Holder's Properties. If a Holder does not perform the required maintenance then any other Holder, after giving the nonperforming Holder thirty days' written notice, will have the right to perform the maintenance and receive reimbursement from the nonperforming Holder. Reimbursement will be payable on demand and include the costs of the maintenance, plus interest at the highest rate permitted by law (or if no maximum rate is prescribed by law, at the rate of 18 percent per year).

6. *Rights Reserved.* Each Party reserves for that Party and that Party's heirs, successors, and assigns the right to continue to use and enjoy the surface of the Properties for all purposes that do not unreasonably interfere with or interrupt the use or enjoyment of the Easements.

7. *Equitable Rights of Enforcement.* These Easements may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the Parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction

or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

8. *Attorney's Fees.* If [either/any] Party retains an attorney to enforce this agreement, the Party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

9. *Binding Effect.* This agreement binds, benefits, and may be enforced by the Parties and their respective heirs, successors, and permitted assigns.

10. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any other jurisdiction. Venue is in the county or counties in which the Properties are located.

11. *Counterparts.* This agreement may be executed in multiple counterparts. All counterparts taken together constitute this agreement.

12. *Waiver of Default.* A default is not waived if the nondefaulting Party fails to declare default immediately or delays in taking any action with respect to the default. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

13. *Further Assurances.* Each signatory Party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

14. *Indemnity.* Each Party agrees to indemnify, defend, and hold harmless the other Party from any loss, attorney's fees, expenses, or claims attributable to breach or default of any provision of this agreement by the indemnifying Party. The obligations of the Parties under this provision will survive termination of this agreement.

15. *Survival.* The obligations of the Parties in this agreement that cannot be or were not performed before termination of this agreement survive termination of this agreement.

16. *Entire Agreement.* This agreement and any exhibits are the entire agreement of the Parties concerning their respective Properties and the reciprocal Easements granted by the Parties. There are no representations, agreements, warranties, or promises, and neither Party is relying on any statements or representations of the other Party or any agent of the other Party, that are not in this agreement and its exhibits.

17. *Legal Construction.* If any provision in this agreement is unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the Parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. This agreement will not be construed more or less favorably between the Parties by reason of authorship or origin of language.

18. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

---

[Name of first party]

---

[Name of second party]

Include acknowledgments.

Include the following if applicable, adapting as necessary if there is only one lienholder.

**Consent and Subordination by Lienholders**

Lienholders, as the holders of liens on the Properties, consent to the above grants of Easements, including the terms and conditions of the grants, and Lienholders subordinate their liens to the rights and interests of Holders, so that a foreclosure of the liens will not extinguish the rights and interests of Holders.

\_\_\_\_\_  
[Name of lienholder]

\_\_\_\_\_  
[Name of lienholder]

Include acknowledgments.



Form 26-24

This form is used to grant an easement for the installation and maintenance of utility facilities.

---

**Easement Agreement for Utilities**

**Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.**

Date:

Grantor:

Grantor's Mailing Address:

Grantee:

Grantee's Mailing Address:

[Grantor's Lienholder:]

[Grantor's Lienholder's Mailing Address:]

Dominant Estate Property: **[Describe by metes and bounds or plat reference the real property being benefited by the easement.]**

Easement Property: **[Describe by metes and bounds the location of the easement and include a drawing of the easement as an exhibit, if available.]**

Easement Purpose: For the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of **[specify]** and related facilities (collectively, the "Facilities").

Consideration: Good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor.

Reservations from Conveyance: **[Describe here or in an attached exhibit any reservations from the conveyance in this instrument.]**

Exceptions to Warranty: **[Describe here or in an attached exhibit any exceptions to the warranties in this instrument.]**

Grant of Easement: Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee and Grantee's heirs, successors, and assigns an easement over, on, and across the Easement Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part of the Easement, except as to the Reservations from Conveyance and Exceptions to Warranty **[include if applicable: , to the extent that such claim arises by, through, or under Grantor but not otherwise]**.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement is appurtenant to, runs with, and inures to the benefit of all or any portion of the Dominant Estate Property, whether or not the Easement is referenced or described in any conveyance of all or such portion of the Dominant Estate Property. The Easement is nonexclusive and irrevocable. The Easement is for the benefit of

Grantee and Grantee's heirs, successors, and assigns who at any time own any interest in the Dominant Estate Property (as applicable, the "Holder").

2. *Duration of Easement.* [The duration of the Easement is perpetual./The duration of the Easement is for [number] years beginning [date].]

3. *Reservation of Rights.* Holder's right to use the Easement Property is nonexclusive, and Grantor reserves for Grantor and Grantor's heirs, successors, and assigns the right to use all or part of the Easement Property in conjunction with Holder as long as such use by Grantor and Grantor's heirs, successors, and assigns does not interfere with the use of the Easement Property by Holder for the Easement Purpose, and the right to convey to others the right to use all or part of the Easement Property in conjunction with Holder, as long as such further conveyance is subject to the terms of this agreement.

4. *Secondary Easement.* Holder has the right (the "Secondary Easement") to use as much of the surface of the property that is adjacent to the Easement Property ("Adjacent Property") as may be reasonably necessary to install and maintain the Facilities within the Easement Property that are reasonably suited for the Easement Purpose. However, Holder must promptly restore the Adjacent Property to its previous physical condition if changed by use of the rights granted by this Secondary Easement.

5. *Improvement and Maintenance of Easement Property.* Improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Holder. Holder has the right to eliminate any encroachments into the Easement Property. Holder must maintain the Easement Property in a neat and clean condition. Holder has the right to construct, install, maintain, replace, and remove the Facilities under or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Holder's sole discretion, subject to performance of Holder's obligations under this agreement. Holder has the right to remove or

relocate any fences within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities, subject to replacement of the fences to their original condition on the completion of the work.

6. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

7. *Attorney's Fees.* If [either/any] party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

8. *Binding Effect.* This agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

9. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

10. *Counterparts.* This agreement may be executed in multiple counterparts. All counterparts taken together constitute this agreement.

11. *Waiver of Default.* A default is not waived if the nondefaulting party fails to declare default immediately or delays in taking any action with respect to the default. Pursuit

of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

12. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

13. *Indemnity.* Each party agrees to indemnify, defend, and hold harmless the other party from any loss, attorney's fees, expenses, or claims attributable to breach or default of any provision of this agreement by the indemnifying party. The obligations of the parties under this provision will survive termination of this agreement.

14. *Survival.* The obligations of the parties in this agreement that cannot be or were not performed before termination of this agreement survive termination of this agreement.

15. *Entire Agreement.* This agreement and any exhibits are the entire agreement of the parties concerning the Easement Property and the grant of the Easement by Grantor to Grantee. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of the other party or any agent of the other party, that are not expressly set forth in this agreement and any exhibits.

16. *Legal Construction.* If any provision in this agreement is unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

17. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

\_\_\_\_\_  
[Name of grantor]

\_\_\_\_\_  
[Name of grantee]

Include acknowledgments.

Include the following if applicable.

**Consent and Subordination by Lienholder**

Lienholder, as the holder of [a] lien[s] on the Easement Property, consents to the above grant of an Easement, including the terms and conditions of the grant, and Lienholder subordinates its lien[s] to the rights and interests of Holder, so that a foreclosure of the lien[s] will not extinguish the rights and interests of Holder.

\_\_\_\_\_  
[Name of lienholder]

Include acknowledgment.

**Form 26-25**

This form is used to convey the sole privilege of making the uses of the grantor's land that are authorized in the form. Neither the grantor nor any other person except the grantee is entitled to make such uses. Examples are for uses of the land covered by the easement for a sign, billboard, cell tower, or wind turbine.

---

**Easement in Gross Agreement**

**Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.**

Date:

Grantor:

Grantor's Mailing Address:

Grantee:

Grantee's Mailing Address:

[Grantor's Lienholder:]

[Grantor's Lienholder's Mailing Address:]

Grantor's Property: All of the property described in Exhibit A, attached hereto and incorporated herein.

Easement Property: All of the property within Grantor's Property as described in Exhibit B, attached hereto and incorporated herein, and as much of the remainder of Grantor's Property as may be reasonably necessary for ingress and egress by Grantee, its employees, agents, and contractors to and from the Easement Property, to construct, install, operate,

maintain, inspect, repair, and replace the Facilities, ONLY to the extent that the Easement Property is not accessible by using existing rights-of-way, streets, roads, drive-ways, and parking areas to the maximum extent reasonably possible.

**Easement Purpose:** For the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of [**specify, e.g.**, a tower, billboard, sign, wind turbine] and related equipment (collectively, the “Facilities”).

**Consideration:** Good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor.

**Reservations from Conveyance:** [**Describe here or in an attached exhibit any reservations from the conveyance in this instrument.**]

**Exceptions to Warranty:** [**Describe here or in an attached exhibit any exceptions to the warranties in this instrument.**]

**Grant of Easement:** Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee and Grantee’s heirs, successors, and assigns an easement over, on, and across the Easement Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the “Easement”), to have and to hold the Easement to Grantee and Grantee’s heirs, successors, and assigns forever. Grantor binds Grantor and Grantor’s heirs, successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee’s heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part thereof, except as to the Reservations from Conveyance and Exceptions to Warranty [**include if applicable:** , to the extent that such claim arises by, through, or under Grantor but not otherwise/, without express or implied warranty. All warranties that might arise



by common law and the warranties in Section 5.023 of the Texas Property Code (or its successor) are excluded].

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement and related rights granted by Grantor in this agreement to Grantee are an [exclusive/nonexclusive] and irrevocable easement in gross for the benefit of Grantee and its successors and assigns, as owner of the rights created by the Easement in gross, and is exclusive and irrevocable (as applicable, the "Holder"). The Easement and related rights granted by Grantor in this agreement are binding on Grantor, [his/its] heirs, legal representatives, successors, and assigns, on all future owners of the Easement Property. This Easement and other rights granted by Grantor in this agreement are independent of any lands or estates of interest in lands; there is no other real property benefitting from the Easement granted in this agreement.

2. *Assignment.* Grantee may assign, sublease, license, transfer, or convey its interest in this agreement or any part of its interest in the Easement without Grantor's consent, provided that the assignee or transferee shall be subject to all of the obligations, covenants, and conditions applicable to Grantee.

3. *Duration of Easement.* [The duration of the Easement is perpetual./The duration of the Easement is for [number] years beginning [date].]

4. *Improvement and Maintenance of Easement Property.* Improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Holder. Holder has the right to eliminate any encroachments into the Easement Property that interfere with the Easement Purpose. Holder must maintain the Easement Property in a neat and clean condition. Holder has the right to construct, install, maintain, replace, and remove the Facilities on, under, or across any portion of the Easement Property. All matters concern-

ing the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Holder's sole discretion, subject to performance of Holder's obligations under this agreement. Holder has the right to remove or relocate any fences within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities, subject to replacement of the fences to their original condition on the completion of the work.

5. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. *Attorney's Fees.* If [either/any] party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

7. *Binding Effect.* This agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

8. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

9. *Counterparts.* This agreement may be executed in multiple counterparts. All counterparts taken together constitute this agreement.

10. *Waiver of Default.* A default is not waived if the nondefaulting party fails to declare default immediately or delays in taking any action with respect to the default. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

11. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

12. *Indemnity.* Each party agrees to indemnify, defend, and hold harmless the other party from any loss, attorney's fees, expenses, or claims attributable to breach or default of any provision of this agreement by the indemnifying party. The obligations of the parties under this provision will survive termination of this agreement.

13. *Survival.* The obligations of the parties in this agreement that cannot be or were not performed before termination of this agreement survive termination of this agreement.

14. *Entire Agreement.* This agreement and any exhibits are the entire agreement of the parties concerning the Easement Property and the grant of the Easement by Grantor to Grantee. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of the other party or any agent of the other party, that are not expressly set forth in this agreement and any exhibits.

15. *Legal Construction.* If any provision in this agreement is unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or femi-

nine gender, and vice versa. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

16. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

\_\_\_\_\_  
[Name of grantor]

\_\_\_\_\_  
[Name of grantee]

Include acknowledgments.

Include the following if applicable.

**Consent and Subordination by Lienholder**

Lienholder, as the holder of [a] lien[s] on the Easement Property, consents to the above grant of an Easement, including the terms and conditions of the grant, and Lienholder subordinates its lien[s] to the rights and interests of Holder, so that a foreclosure of the lien[s] will not extinguish the rights and interests of Holder.

\_\_\_\_\_  
[Name of lienholder]

Include acknowledgment.

**Exhibit A**

**Description of Grantor's Property**

Describe by metes and bounds or plat reference the real property within which the easement is located.

**Exhibit B**

**Description of Easement Property**

Describe by metes and bounds the location of the easement and include a drawing of the easement as an exhibit, if available.

**Form 26-26**

This form is used if two parties wish to deposit funds or documents in escrow with a neutral party to hold and distribute when the agreed conditions have been satisfied.

---

**Escrow Agreement**

Date:

Escrow Agent:

Depositing Party:

Performing Party:

1. Escrow Agent, Depositing Party, and Performing Party are entering into this agreement.
2. Depositing Party is depositing in escrow with Escrow Agent the following:  
[describe deposits].
3. The purpose of this agreement is [describe purpose].
4. Escrow Agent is to hold the [funds/documents/funds and documents] in escrow in anticipation of performance by the Performing Party of the following acts: [describe contingencies].
5. If Performing Party completes the contingencies referred to in paragraph 4. of this agreement during the time specified in this agreement, Escrow Agent is instructed to dispose of the [funds/documents/funds and documents] in the following manner: [describe disposition, e.g., record them with the [county] county clerk].

6. The contingencies required of Performing Party must be fully performed within [number] days from the date of this agreement. If all contingencies are not fully performed within that time, Escrow Agent will dispose of the [funds/documents/funds and documents] in the following manner: [describe disposition, e.g., return them to Depositing Party].

7. Escrow Agent agrees to hold the [funds/documents/funds and documents] in accordance with the provisions of this agreement.

8. Escrow Agent will receive a fee of \$[amount] for performance of the services called for under this agreement. Payment of the fee will be made equally by Depositing Party and Performing Party.

9. Depositing Party and Performing Party agree that Escrow Agent will have no responsibility under this agreement except for the safekeeping and handling of the [funds/documents/funds and documents] deposited with Escrow Agent by Depositing Party. Escrow Agent will not be liable for any act or thing done by it relating to this agreement, except for the negligence or willful misconduct of Escrow Agent. If conflicting demands are made on Escrow Agent by Depositing Party and Performing Party, Escrow Agent may withhold its performance under the terms of this agreement until the conflicting demands are withdrawn or the rights of the parties making the demands are settled by a court of competent jurisdiction.

10. Escrow Agent may resign as Escrow Agent by giving [number] days' written notice to Depositing Party and Performing Party of its resignation. Escrow Agent will then deliver the [funds/documents/funds and documents] it is holding under the terms of this agreement in accordance with the joint written instructions given it by Depositing Party and Performing Party. If no instructions are given to Escrow Agent within the stated time period, Escrow Agent is authorized to deposit all the [funds/documents/funds and documents] into the registry of a court of competent jurisdiction.



11. Depositing Party and Performing Party may remove Escrow Agent, with or without cause, and appoint a substitute escrow agent by giving joint written notice to Escrow Agent. Escrow Agent will deliver the [funds/documents/funds and documents] as directed in the notice within ten days after the date of notice.

---

[Name of depositing party]

---

[Name of performing party]

---

[Name of escrow agent]

*[Reserved]*

Form 26-27

This form is used to release a judgment lien by affidavit pursuant to Tex. Prop. Code § 52.0012.

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**Homestead Affidavit as Release of Judgment Lien**

Date:

Affiant:

Affiant's Address:

Judgment Debtor:

Judgment Creditor:

Judgment

    Date:

    Cause number:

    Style of case:

    Court:

Abstract of Judgment/Judgment Lien Recording Information:

Property: **[description of homestead property]**

    Before me, the undersigned authority, on this day personally appeared Affiant, who being first duly sworn, on oath stated:

1. I own the Property.

2. This Affidavit is made for the purpose of effecting a release of the Judgment Lien on the Property.

3. The Property includes as its purpose use for a home for Affiant and is the homestead of Affiant, as defined in Texas Property Code section 41.002. The Property does not exceed—

- a. ten acres of land, if used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business, or
- b. two hundred acres for a family or 100 acres for a single, adult person not otherwise entitled to a homestead, if used for the purposes of a rural home.

4. Attached to this Affidavit is evidence that—

- a. Affiant sent a letter and a copy of this Affidavit, without attachments and before execution of the Affidavit, notifying Judgment Creditor in the Judgment Lien of this Affidavit and Affiant's intent to file for record this Affidavit, and
- b. the letter and this Affidavit were sent by registered or certified mail, return receipt requested, thirty or more days before this Affidavit was filed to (i) Judgment Creditor's last known address, (ii) the address appearing in Judgment Creditor's pleadings in the action in which the Judgment was rendered or another court record, if that address is different from Judgment Creditor's last known address, (iii) the address of Judgment Creditor's last known attorney as shown in those pleadings or another court record, and (iv) the address of Judgment Creditor's last known attorney as shown in the records of the State Bar of Texas, if that address is different from the address of the attorney as shown in those pleadings or another court record.

5. This Affidavit serves as a release of the Judgment Lien as to the Property in accordance with Texas Property Code section 52.0012.

\_\_\_\_\_  
[Name of affiant]

SUBSCRIBED AND SWORN TO before me on \_\_\_\_\_ by [name of affiant].

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

*[Reserved]*

**Form 26-28**

Tex. Prop. Code § 12.007 authorizes the filing of a lis pendens with the county clerk in each county in which the property is located to give notice that a proceeding is pending.

---

**Lis Pendens**

Date:

Party Filing Lis Pendens:

[Party's Address/Party's Attorney's Address]:

Other Party to Proceeding:

[Other Party's Address/Other Party's Attorney's Address:]

Proceeding

Court:

Cause number:

Style of case:

Type of proceeding:

Property:

Notice is given that the Proceeding is pending and that the Party Filing Lis Pendens is affirmatively seeking title to, the establishment of an interest in, or enforcement of an encumbrance against the Property.

Repeat as needed.

Tex. Prop. Code § 12.007(b) requires the lis pendens be signed by the party or the party's attorney.

\_\_\_\_\_  
[Name of party or party's attorney]

Include acknowledgment.



**Form 26-29**

This form is used to create an agency relationship between a seller and a broker if the seller appoints the broker as the seller's sole and exclusive agent to sell the property for the price and on the terms specified in the agreement but retains the right to sell the property directly without using the agent.

---

**Listing Agreement**  
[Exclusive Agency]

Date:

Seller:

Seller's Mailing Address, Telephone Number, and E-mail Address:

Broker:

Broker's Mailing Address, Telephone Number, and E-mail Address:

Property:

Commencement Date:

Termination Date:

Listing Price:

Broker's Fee:

**Agreement**

In consideration of services to be performed by Broker, Seller appoints Broker as Seller's sole and exclusive agent to sell the Property for the price and on the terms described in this agreement, it being understood and agreed that Seller reserves the right to sell,

exchange, or otherwise dispose of the Property to a buyer procured by Seller without the assistance of Broker.

**A. Agreement and Term.** This agreement will commence on the Commencement Date and will continue for a term that will expire at 11:59 P.M. local time on the Termination Date. However, if there is a pending contract in effect on the Termination Date between Seller and a buyer procured by Broker and that transaction has not been closed and funded, this agreement will continue in effect beyond the Termination Date solely with respect to that contract until the earlier of the closing and funding of the transaction described in the contract or the termination of the contract in a manner permitted in the contract. The term of this agreement is also subject to extension and early termination as provided in this agreement.

**B. Listing Price and Terms.** Seller agrees to sell the Property for the Listing Price or any other price that Seller may accept. Unless otherwise agreed by Seller, the Property will be sold for cash, and Seller will not provide any financing with respect to the sale. Seller will pay the typical transaction and closing costs borne by or charged to sellers of real property in Texas.

**C. Exclusive Agency Relationship.** Unless otherwise specified by written agreement between Seller and Broker, it is understood and agreed that Broker will act solely as Seller's agent in connection with the sale of the Property and that Broker is not authorized to act as an intermediary between Seller and any buyer of the Property.

**D. Broker's Fee.** Seller will pay Broker the Broker's Fee in cash if the Broker's Fee is earned and payable in accordance with the following provisions:

Select one of the following.

*D.1.* The Broker's Fee will be earned and payable when the sale or exchange of the Property to a buyer procured by Broker, individually or in cooperation with another broker,

under a contract executed by Seller is finally closed and funded, whether this occurs during the term of this agreement or after the termination of this agreement.

Or

*D.1.* The Broker's Fee will be earned if Broker, during the term of this agreement, individually or in cooperation with another broker, procures a buyer who enters into a contract with Seller to buy the Property. The Broker's Fee, once earned with respect to a particular sale or exchange of the Property, will be payable, either during the term of this agreement or after the termination of this agreement, on either of the following events: (a) the closing and funding of the sale or exchange of the Property or (b) Seller's wrongful refusal to close the sale or exchange of the Property.

Continue with the following.

*D.2.* Unless otherwise provided in this agreement, the Broker's Fee will be determined on the basis of the sale price (the "Sale Price") specified in the contract between Seller and the buyer. If the disposition of the Property is consummated as an exchange of the Property for other property, the Sale Price of the Property will be deemed to be the Listing Price unless otherwise specified by Broker and Seller in writing.

*D.3.* If a buyer procured by Broker with whom Seller has entered into a contract for the sale of the Property during the term of this agreement breaches that contract and Seller receives the buyer's earnest money or a portion thereof as liquidated damages, Seller will pay Broker the lesser of one-half of the amount of the liquidated damages or the Broker's Fee.

*D.4.* If litigation, mediation, or arbitration is instituted with respect to a contract between Seller and a buyer procured by Broker for the sale of the Property that is executed during the term of this agreement, and Seller collects all or a portion of the Sale Price or damages by judgment, compromise, settlement, or otherwise, Seller will pay Broker the lesser of (a) one-half of the amount collected after deduction of attorney's fees and other expenses of

collection or (b) the Broker's Fee (determined after reducing the Sale Price by the amount of attorney's fees or other expenses of collection).

*D.5.* Seller will not owe Broker the Broker's Fee if a sale of the Property does not close or fund as a result of (a) Seller's failure to deliver a title policy to a buyer, caused by Seller's inability to cure the buyer's title objections due to matters beyond Seller's reasonable control; (b) Seller's loss of ownership due to foreclosure, conveyance in lieu of foreclosure, or other legal proceeding; or (c) Seller's failure to restore the Property following any casualty or condemnation to its previous condition by the closing date set forth in a contract for the sale of the Property.

*D.6.* Seller authorizes any escrow or closing agent authorized to close a transaction for the sale or other disposition of the Property contemplated in this agreement to collect and disburse to Broker the Broker's Fee due under this agreement if the buyer was procured by Broker. Seller authorizes Broker to instruct any closing or escrow agent to collect and disburse the Broker's Fee due under this agreement if the buyer was procured by Broker.

*D.7.* Seller will not owe Broker the Broker's Fee in connection with any transaction in which the buyer or other party to the transaction was procured by Seller without the assistance or participation of Broker.

**E. Protection Period.** Subject to the conditions set forth in paragraph D. above, if, within ninety days after the termination of this agreement (the "Protection Period"), Seller enters into a contract to sell the Property to one of Broker's Registered Buyers (as hereinafter defined) or sells, exchanges, or otherwise transfers an interest in the Property to one of Broker's Registered Buyers, Seller will pay Broker the Broker's Fee. For purposes of this agreement, the Broker's Registered Buyers will consist only of those persons whose attention has been called to the Property by Broker during the term of this agreement, or with whom Broker has negotiated the sale, exchange, or other transfer of the Property during the term of this

agreement, and whose names and addresses have been provided in writing by Broker to Seller within five days after the termination of this agreement. It is specifically understood and agreed, however, that the foregoing provisions regarding the Protection Period will not be applicable with respect to any sale, exchange, or other transfer of the Property that occurs after the termination of this agreement while the Property is listed exclusively with another broker.

**F. Broker's Duties and Authorities.** During the term of this agreement, Broker will be authorized and required to take the following actions:

*F.1.* Broker will make reasonable efforts and act diligently to sell the Property in accordance with the terms of this agreement. Seller authorizes Broker and Broker's associates, at Broker's sole cost and expense, to (a) advertise the Property by the means and methods Broker reasonably determines to be appropriate for the Property based on then-current market practices for properties substantially similar to the Property; (b) place a "For Sale" sign on the Property in compliance with any state and local laws, rules, ordinances, restrictions, or covenants; (c) remove from the Property all other signs offering the Property for sale or lease; (d) furnish comparative marketing and sale information about other properties to prospective buyers; (e) disseminate information about the Property to other brokers and their associates through a multiple-listing service or such other means as Broker reasonably determines to be appropriate; (f) enter the Property, and accompany other brokers and their associates who wish to enter the Property, at reasonable times and, if the Property is then occupied, on reasonable advance notice, to show the Property to prospective buyers; (g) authorize property inspectors, appraisers, and repair personnel to enter the Property at reasonable times and, if the Property is then occupied, on reasonable notice, for pertinent purposes; (h) obtain information from any holder of any note secured by a lien on the Property concerning the note or lien; and (i) on a final and closed sale of the Property, disclose the Sale Price and terms to the local tax appraisal district and, if applicable, multiple-listing service.

*F.2.* Broker is not authorized to (a) execute any document in the name of or on behalf of Seller with respect to the Property, (b) authorize any repairs to the Property without Seller's prior written consent, (c) authorize the expenditure of any funds on behalf of Seller without Seller's prior written consent, (d) negotiate any earnest money deposit or other instrument in connection with the Property, or (e) use a "lock-box" for keys to the Property.

*F.3.* Broker will not be obligated to market the Property after Seller has entered into a binding contract unless the contract provides otherwise. If Broker is obligated to submit subsequent or backup offers, Seller will specifically provide in the contract for the sale of the Property with a buyer that Seller may continue to market the Property so that Broker may receive subsequent or backup offers, which will be submitted to Seller as received for consideration by Seller when the prior contract is terminated or renegotiated. If Seller enters into a contract to sell the Property that does not provide for the submission of backup offers, and Broker subsequently receives a subsequent or backup offer to purchase the Property, Broker will inform Seller and submit the subsequent or backup offer to Seller when the prior contract is terminated or renegotiated.

*F.4.* Broker will not be responsible in any manner for personal injury to Seller resulting from acts of third parties or loss of or damage to personal or real property due to vandalism, theft, freezing water pipes, or other causes, except the negligence or misconduct of Broker. If the Property becomes vacant during the term of this agreement, Seller will notify Seller's casualty insurance company and request that the insurance coverage regarding the Property be modified to include a "vacancy clause" to cover the Property. Broker will not be responsible for the security of the Property or for inspecting the Property on any periodic basis unless otherwise agreed in writing by Seller and Broker.

**G. Broker's Representations and Covenants.** Broker represents and warrants to, and covenants with, Seller as follows:

*G.1.* Broker is duly licensed as a real estate broker authorized to provide real estate brokerage services in accordance with this agreement by the Texas Real Estate Commission (the "Commission") under the Texas Real Estate License Act (the "Act"), as amended, and will maintain that license in full force and effect at all times during the term of this agreement. All associates employed by Broker to assist with marketing and selling the Property, and all other brokers with whom Broker cooperates in connection with marketing and selling the Property, will be duly licensed by the Commission as real estate brokers or agents in accordance with the Act when any such services are rendered.

*G.2.* All activities by Broker and Broker's associates hereunder will be conducted in strict compliance with the Act, the rules and regulations of the Commission, and all other provisions of applicable law, including, without limitation, all fair housing laws.

**H. Seller's Representations and Covenants.** Seller represents and warrants to, and covenants with, Broker as follows:

*H.1.* Seller represents that (a) Seller has fee simple title to the Property, peaceable possession of the Property and all improvements and fixtures on the Property unless rented, and the legal capacity to convey the Property; (b) Seller is not now a party to a listing agreement with another broker for the sale, exchange, or lease of the Property; (c) no person or entity has any right to purchase, lease, or acquire the Property by virtue of a contract, option, right of first refusal, or other agreement; (d) there are no delinquencies or defaults under any deed of trust, mortgage, or other encumbrance on the Property; (e) the Property is not subject to the jurisdiction of any court whose permission or consent is required for the execution of this agreement or the sale, exchange, or other disposition of the Property; and (f) all information regarding the Property that has been provided by Seller to Broker, or that may be provided by Seller to Broker after the execution of this agreement, has been or will be, to the best of Seller's knowledge, true, correct, and complete in all material respects.

*H.2.* Seller will cooperate fully and in good faith with Broker to facilitate the showing and marketing of the Property at Broker's sole cost and expense; not enter into any listing agreement with another broker for the sale, exchange, or lease of the Property to become effective during the term of this agreement; and provide Broker with copies of all leases or rental agreements pertaining to the Property, if any, and advise Broker of any tenants moving into or out of the Property.

*H.3.* Seller will provide Broker and all prospective buyers of the Property with disclosure notices regarding the condition of the Property, if and to the extent required by law. Seller authorizes Broker to deliver such disclosure notices to prospective buyers of the Property at or before the time a contract is executed for the sale, exchange, or other disposition of the Property. Seller agrees to complete all such disclosure notices based on Seller's best knowledge and belief and in a manner that discloses all material defects or facts concerning the Property that are actually known to Seller. Seller agrees to indemnify, defend, and hold Broker and Broker's associates harmless from any damages, costs, attorney's fees, or expenses arising from Seller's knowingly giving to Broker or Broker's associates or any buyer of the Property information regarding the Property that is actually known to Seller to be incorrect in any material respect or from Seller's failure to disclose to Broker or Broker's associates or any buyer of the Property any material information regarding the Property that is actually known to Seller.

*H.4.* Seller will furnish to a buyer of the Property (a) an owner policy of title insurance at Seller's expense for the basic premium cost of such policy (without regard to any modifications or endorsements) in the amount of the Sale Price and dated at or after the closing of the sale of the Property; (b) a [general/special] warranty deed conveying title to the Property subject only to liens securing payment of a debt created or assumed as part of the Sale Price, taxes for the current year, restrictive covenants and utility easements common to any platted subdivision in which the Property is located, and other reservations or exceptions



that will not materially impair or interfere with the buyer's anticipated use of the Property or that are otherwise acceptable to the buyer; (c) property tax statements showing no delinquent taxes; and (d) copies of restrictive covenants and documents evidencing exceptions to any title commitment other than the standard printed title exceptions.

*H.5.* Seller will indemnify, defend, and hold Broker harmless from any damages, costs, attorney's fees, or expenses arising from acts of third parties or loss of or damage to personal or real property due to vandalism, theft, freezing of water pipes, or any other causes, except the negligence or misconduct of Broker.

*H.6.* Seller will furnish to the escrow or closing agent closing any sale or other disposition of the Property contemplated by this agreement such information regarding Seller and the transaction as the agent will require to report the transaction to the Internal Revenue Service in accordance with applicable law.

*H.7.* Unless otherwise specified by written notice from Seller to Broker, Seller represents that Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person, requiring a buyer of the Property to withhold a portion of the Sale Price under section 1445 of the Internal Revenue Code of 1986, as amended. At or before the sale or other disposition of the Property, Seller will provide Broker and any buyer of the Property any affidavits and other information reasonably required to confirm the representations concerning the nonforeign status of Seller.

**I. Termination for Cause.** Either party is entitled to terminate this agreement before the Termination Date if the other party fails to perform its obligations under the agreement and the failure to perform is not cured to the reasonable satisfaction of the party giving written notice of such failure within thirty days after receipt of the notice. Except for a termination due to Broker's failure to be licensed under the Act, any such termination will not be effective

with respect to any contract for the sale, exchange, or other disposition of the Property previously executed by Seller and a buyer that is then pending closing.

**J. Attorney's Fees.** If [either/any] party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

**K. Binding Effect.** This agreement binds, benefits, and may be enforced by the successors in interest to the parties.

**L. Choice of Law.** This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Property is located.

**M. Counterparts.** This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

**N. Waiver of Default.** It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

**O. Further Assurances.** Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

**P. Indemnity.** Each party agrees to indemnify, defend, and hold harmless the other party from any loss, attorney's fees, expenses, or claims attributable to breach or default of any provision of this agreement by the indemnifying party.

**Q. Entire Agreement.** This agreement is the entire agreement of the parties. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of any agent of the other party, that are not in this agreement.

**R. Legal Construction.** If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. The agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

**S. Notices.** Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

**T. Recitals.** Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

**U. Time.** Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

Include the following if applicable.

**V Broker's Lien.** BROKER HAS THE RIGHT TO CLAIM A LIEN UNDER THE PROVISIONS OF TEXAS PROPERTY CODE CHAPTER 62.

Continue with the following.

\_\_\_\_\_  
[Name of seller]

\_\_\_\_\_  
[Name of broker]

**Form 26-30**

This form is used to create an agency relationship between a seller and a broker if the seller appoints the broker as the seller's sole and exclusive agent and grants the broker an irrevocable and exclusive right to sell the property for the price and on the terms specified in the agreement.

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**Listing Agreement**  
[Exclusive Right to Sell]

Date:

Seller:

Seller's Mailing Address, Telephone Number, and E-mail Address:

Broker:

Broker's Mailing Address, Telephone Number, and E-mail Address:

Property:

Commencement Date:

Termination Date:

Listing Price:

Broker's Fee:

**Agreement**

In consideration of services to be performed by Broker, Seller appoints Broker as Seller's sole and exclusive agent and grants to Broker the irrevocable and exclusive right to sell the Property for the price and on the terms described in this agreement.

**A. Agreement and Term.** This agreement will commence on the Commencement Date and will continue for a term that will expire at 11:59 P.M. local time on the Termination Date. However, if there is a pending contract in effect on the Termination Date between Seller and a buyer and that transaction has not been closed and funded, this agreement will continue in effect beyond the Termination Date solely with respect to that contract until the earlier of the closing and funding of the transaction described in the contract or the termination of the contract in a manner permitted in the contract. The term of this agreement is also subject to extension and early termination as provided in this agreement.

**B. Listing Price and Terms.** Seller agrees to sell the Property for the Listing Price or any other price that Seller may accept. Unless otherwise agreed by Seller, the Property will be sold for cash, and Seller will not provide any financing with respect to the sale. Seller will pay the typical transaction and closing costs borne by or charged to sellers of real property in Texas.

**C. Exclusive Agency Relationship.** Unless otherwise specified by written agreement between Seller and Broker, it is understood and agreed that Broker will act solely as Seller's agent in connection with the sale of the Property and that Broker is not authorized to act as an intermediary between Seller and any buyer of the Property.

**D. Broker's Fee.** Seller will pay Broker the Broker's Fee in cash if the Broker's Fee is earned and payable in accordance with the following provisions:

Select one of the following.

*D.1.* The Broker's Fee will be earned and payable when the sale or exchange of the Property under a contract executed by Seller is finally closed and funded, whether this occurs during the term of this agreement or after the termination of this agreement.

Or

*D.1.* The Broker's Fee will be earned if Broker, during the term of this agreement, individually or in cooperation with another broker, procures a buyer who enters into a contract with Seller to buy the Property. The Broker's Fee, once earned with respect to a particular sale or exchange of the Property, will be payable, either during the term of this agreement or after the termination of this agreement, on either of the following events: (a) the closing and funding of the sale or exchange of the Property or (b) Seller's wrongful refusal to close the sale or exchange of the Property.

Continue with the following.

*D.2.* Unless otherwise provided in this agreement, the Broker's Fee will be determined on the basis of the sale price (the "Sale Price") specified in the contract between Seller and the buyer. If the disposition of the Property is consummated as an exchange of the Property for other property, the Sale Price of the Property will be deemed to be the Listing Price unless otherwise specified by Broker and Seller in writing.

*D.3.* If Seller breaches this agreement, or leases, rents, or otherwise transfers the Property without Broker's prior written consent, the Broker's Fee will be earned and payable at the time of the transaction and the Sale Price will be deemed to be the Listing Price for purposes of calculating the Broker's Fee.

*D.4.* If a buyer with whom Seller has entered into a contract for the sale of the Property during the term of this agreement breaches that contract and Seller receives the buyer's earnest money or a portion thereof as liquidated damages, Seller will pay Broker the lesser of one-half of the amount of the liquidated damages or the Broker's Fee.

*D.5.* If litigation, mediation, or arbitration is instituted with respect to a contract between Seller and a buyer for the sale of the Property that is executed during the term of this agreement, and Seller collects all or a portion of the Sale Price or damages by judgment, compromise, settlement, or otherwise, Seller will pay Broker the lesser of (a) one-half of the

amount collected after deduction of attorney's fees and other expenses of collection or (b) the Broker's Fee (determined after reducing the Sale Price by the amount of attorney's fees or other expenses of collection).

*D.6.* Seller will not owe Broker the Broker's Fee if a sale of the Property does not close or fund as a result of (a) Seller's failure to deliver a title policy to a buyer, caused by Seller's inability to cure the buyer's title objections due to matters beyond Seller's reasonable control; (b) Seller's loss of ownership due to foreclosure, conveyance in lieu of foreclosure, or other legal proceeding; or (c) Seller's failure to restore the Property following any casualty or condemnation to its previous condition by the closing date set forth in a contract for the sale of the Property.

*D.7.* Seller authorizes any escrow or closing agent authorized to close a transaction for the sale or other disposition of the Property contemplated in this agreement to collect and disburse to Broker the Broker's Fee due under this agreement. Seller authorizes Broker to instruct any closing or escrow agent to collect and disburse the Broker's Fee due under this agreement.

**E. Protection Period.** Subject to the conditions set forth in paragraph D. above, if, within ninety days after the termination of this agreement (the "Protection Period"), Seller enters into a contract to sell the Property to one of Broker's Registered Buyers (as hereinafter defined) or sells, exchanges, or otherwise transfers an interest in the Property to one of Broker's Registered Buyers, Seller will pay Broker the Broker's Fee. For purposes of this agreement, the Broker's Registered Buyers will consist only of those persons whose attention has been called to the Property by Broker, any other broker, or Seller during the term of this agreement, or with whom Broker, any other broker, or Seller has negotiated the sale, exchange, or other transfer of the Property during the term of this agreement, and whose names and addresses have been provided in writing by Broker to Seller within five days after the termination of this agreement. It is specifically understood and agreed, however, that the



foregoing provisions regarding the Protection Period will not be applicable with respect to any sale, exchange, or other transfer of the Property that occurs after the termination of this agreement while the Property is listed exclusively with another broker.

**F. Broker's Duties and Authorities.** During the term of this agreement, Broker will be authorized and required to take the following actions:

*F.1.* Broker will make reasonable efforts and act diligently to sell the Property in accordance with the terms of this agreement. Seller authorizes Broker and Broker's associates, at Broker's sole cost and expense, to (a) advertise the Property by the means and methods Broker reasonably determines to be appropriate for the Property based on then-current market practices for properties substantially similar to the Property; (b) place a "For Sale" sign on the Property in compliance with any state and local laws, rules, ordinances, restrictions, or covenants; (c) remove from the Property all other signs offering the Property for sale or lease; (d) furnish comparative marketing and sale information about other properties to prospective buyers; (e) disseminate information about the Property to other brokers and their associates through a multiple-listing service or such other means as Broker reasonably determines to be appropriate; (f) enter the Property, and accompany other brokers and their associates who wish to enter the Property, at reasonable times and, if the Property is then occupied, on reasonable advance notice, to show the Property to prospective buyers; (g) authorize property inspectors, appraisers, and repair personnel to enter the Property at reasonable times and, if the Property is then occupied, on reasonable notice, for pertinent purposes; (h) obtain information from any holder of any note secured by a lien on the Property concerning the note or lien; and (i) on a final and closed sale of the Property, disclose the Sale Price and terms to the local tax appraisal district and, if applicable, multiple-listing service.

*F.2.* Broker is not authorized to (a) execute any document in the name of or on behalf of Seller with respect to the Property, (b) authorize any repairs to the Property without Seller's prior written consent, (c) authorize the expenditure of any funds on behalf of Seller

without Seller's prior written consent, (d) negotiate any earnest money deposit or other instrument in connection with the Property, or (e) use a "lock-box" for keys to the Property.

*F.3.* Broker will not be obligated to market the Property after Seller has entered into a binding contract unless the contract provides otherwise. If Broker is obligated to submit subsequent or backup offers, Seller will specifically provide in the contract for the sale of the Property with a buyer that Seller may continue to market the Property so that Broker may receive subsequent or backup offers, which will be submitted to Seller as received for consideration by Seller when the prior contract is terminated or renegotiated. If Seller enters into a contract to sell the Property that does not provide for the submission of backup offers, and Broker subsequently receives a subsequent or backup offer to purchase the Property, Broker will inform Seller and submit the subsequent or backup offer to Seller when the prior contract is terminated or renegotiated.

*F.4.* Broker will not be responsible in any manner for personal injury to Seller resulting from acts of third parties or loss of or damage to personal or real property due to vandalism, theft, freezing water pipes, or other causes, except the negligence or misconduct of Broker. If the Property becomes vacant during the term of this agreement, Seller will notify Seller's casualty insurance company and request that the insurance coverage regarding the Property be modified to include a "vacancy clause" to cover the Property. Broker will not be responsible for the security of the Property or for inspecting the Property on any periodic basis unless otherwise agreed in writing by Seller and Broker.

**G. Broker's Representations and Covenants.** Broker represents and warrants to, and covenants with, Seller as follows:

*G.1.* Broker is duly licensed as a real estate broker authorized to provide real estate brokerage services in accordance with this agreement by the Texas Real Estate Commission (the "Commission") under the Texas Real Estate License Act (the "Act"), as amended, and

will maintain that license in full force and effect at all times during the term of this agreement. All associates employed by Broker to assist with marketing and selling the Property, and all other brokers with whom Broker cooperates in connection with marketing and selling the Property, will be duly licensed by the Commission as real estate brokers or agents in accordance with the Act when any such services are rendered.

*G.2.* All activities by Broker and Broker's associates hereunder will be conducted in strict compliance with the Act, the rules and regulations of the Commission, and all other provisions of applicable law, including, without limitation, all fair housing laws.

**H. Seller's Representations and Covenants.** Seller represents and warrants to, and covenants with, Broker as follows:

*H.1.* Seller represents that (a) Seller has fee simple title to the Property, peaceable possession of the Property and all improvements and fixtures on the Property unless rented, and the legal capacity to convey the Property; (b) Seller is not now a party to a listing agreement with another broker for the sale, exchange, or lease of the Property; (c) no person or entity has any right to purchase, lease, or acquire the Property by virtue of a contract, option, right of first refusal, or other agreement; (d) there are no delinquencies or defaults under any deed of trust, mortgage, or other encumbrance on the Property; (e) the Property is not subject to the jurisdiction of any court whose permission or consent is required for the execution of this agreement or the sale, exchange, or other disposition of the Property; and (f) all information regarding the Property that has been provided by Seller to Broker, or that may be provided by Seller to Broker after the execution of this agreement, has been or will be, to the best of Seller's knowledge, true, correct, and complete in all material respects.

*H.2.* Seller will (a) cooperate fully and in good faith with Broker to facilitate the showing and marketing of the Property at Broker's sole cost and expense; (b) not negotiate with any prospective buyer who may contact Seller directly, but refer all prospective buyers to

Broker; (c) not enter into any listing agreement with another broker for the sale, exchange, or lease of the Property to become effective during the term of this agreement; and (d) provide Broker with copies of all leases or rental agreements pertaining to the Property, if any, and advise Broker of any tenants moving into or out of the Property.

*H.3.* Seller will provide Broker and all prospective buyers of the Property with disclosure notices regarding the condition of the Property, if and to the extent required by law. Seller authorizes Broker to deliver such disclosure notices to prospective buyers of the Property at or before the time a contract is executed for the sale, exchange, or other disposition of the Property. Seller agrees to complete all such disclosure notices based on Seller's best knowledge and belief and in a manner that discloses all material defects or facts concerning the Property that are actually known to Seller. Seller agrees to indemnify, defend, and hold Broker and Broker's associates harmless from any damages, costs, attorney's fees, or expenses arising from Seller's knowingly giving to Broker or Broker's associates or any buyer of the Property information regarding the Property that is actually known to Seller to be incorrect in any material respect or from Seller's failure to disclose to Broker or Broker's associates or any buyer of the Property any material information regarding the Property that is actually known to Seller.

*H.4.* Seller will furnish to a buyer of the Property (a) an owner policy of title insurance at Seller's expense for the basic premium cost of such policy (without regard to any modifications or endorsements) in the amount of the Sale Price and dated at or after the closing of the sale of the Property; (b) a [general/special] warranty deed conveying title to the Property subject only to liens securing payment of a debt created or assumed as part of the Sale Price, taxes for the current year, restrictive covenants and utility easements common to any platted subdivision in which the Property is located, and other reservations or exceptions that will not materially impair or interfere with the buyer's anticipated use of the Property or that are otherwise acceptable to the buyer; (c) property tax statements showing no delinquent

taxes; and (d) copies of restrictive covenants and documents evidencing exceptions to any title commitment other than the standard printed title exceptions.

*H.5.* Seller will indemnify, defend, and hold Broker harmless from any damages, costs, attorney's fees, or expenses arising from acts of third parties or loss of or damage to personal or real property due to vandalism, theft, freezing of water pipes, or any other causes, except the negligence or misconduct of Broker.

*H.6.* Seller will furnish to the escrow or closing agent closing any sale or other disposition of the Property contemplated by this agreement such information regarding Seller and the transaction as such agent will require to report the transaction to the Internal Revenue Service in accordance with applicable law.

*H.7.* Unless otherwise specified by written notice from Seller to Broker, Seller represents that Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person, requiring a buyer of the Property to withhold a portion of the Sale Price under section 1445 of the Internal Revenue Code of 1986, as amended. At or before the sale or other disposition of the Property, Seller will provide Broker and any buyer of the Property any affidavits and other information reasonably required to confirm the representations concerning the nonforeign status of Seller.

**I. Termination for Cause.** Either party is entitled to terminate this agreement before the Termination Date if the other party fails to perform its obligations under the agreement and the failure to perform is not cured to the reasonable satisfaction of the party giving written notice of such failure within thirty days after receipt of the notice. Except for a termination due to Broker's failure to be licensed under the Act, any such termination will not be effective with respect to any contract for the sale, exchange, or other disposition of the Property previously executed by Seller and a buyer that is then pending closing.

**J. Attorney's Fees.** If [either/any] party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

**K. Binding Effect.** This agreement binds, benefits, and may be enforced by the successors in interest to the parties.

**L. Choice of Law.** This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Property is located.

**M. Counterparts.** This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

**N. Waiver of Default.** It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

**O. Further Assurances.** Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

**P. Indemnity.** Each party agrees to indemnify, defend, and hold harmless the other party from any loss, attorney's fees, expenses, or claims attributable to breach or default of any provision of this agreement by the indemnifying party.

**Q. Entire Agreement.** This agreement is the entire agreement of the parties. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of any agent of the other party, that are not in this agreement.

**R. Legal Construction.** If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. The agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

**S. Notices.** Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

**T. Recitals.** Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

**U. Time.** Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

Include the following if applicable.

**V Broker's Lien.** BROKER HAS THE RIGHT TO CLAIM A LIEN UNDER THE PROVISIONS OF TEXAS PROPERTY CODE CHAPTER 62.

Continue with the following.

\_\_\_\_\_  
[Name of seller]

\_\_\_\_\_  
[Name of broker]



**Form 26-31**

This form is used to create an agency relationship between a seller and a broker if the seller appoints the broker as the seller's nonexclusive agent to sell the property for the price and on the terms specified in the agreement but retains the right to sell the property without using the agent, by selling it either directly or through another agent.

---

**Listing Agreement**  
[Open Listing]

Date:

Seller:

Seller's Mailing Address, Telephone Number, and E-mail Address:

Broker:

Broker's Mailing Address, Telephone Number, and E-mail Address:

Property:

Commencement Date:

Termination Date:

Listing Price:

Broker's Fee:

**Agreement**

In consideration of services to be performed by Broker, Seller appoints Broker as Seller's nonexclusive agent to sell the Property for the price and on the terms described in this agreement, it being understood and agreed that Seller reserves the right to sell, exchange, or

otherwise dispose of the Property to a buyer procured by Seller directly or through another broker without the assistance of Broker.

**A. Agreement and Term.** This agreement will commence on the Commencement Date and will continue for a term that will expire at 11:59 P.M. local time on the Termination Date. However, if there is a pending contract in effect on the Termination Date between Seller and a buyer procured by Broker and that transaction has not been closed and funded, this agreement will continue in effect beyond the Termination Date solely with respect to that contract until the earlier of the closing and funding of the transaction described in the contract or the termination of the contract in a manner permitted in the contract. The term of this agreement is also subject to extension and early termination as provided in this agreement.

**B. Listing Price and Terms.** Seller agrees to sell the Property for the Listing Price or any other price that Seller may accept. Unless otherwise agreed by Seller, the Property will be sold for cash, and Seller will not provide any financing with respect to the sale. Seller will pay the typical transaction and closing costs borne by or charged to sellers of real property in Texas.

**C. Exclusive Agency Relationship.** Unless otherwise specified by written agreement between Seller and Broker, it is understood and agreed that Broker will act solely as Seller's agent in connection with the sale of the Property and that Broker is not authorized to act as an intermediary between Seller and any buyer of the Property.

**D. Broker's Fee.** Seller will pay Broker the Broker's Fee in cash if the Broker's Fee is earned and payable in accordance with the following provisions:

Select one of the following.

*D.1.* The Broker's Fee will be earned and payable when the sale or exchange of the Property to a buyer procured by Broker, individually or in cooperation with another broker,

under a contract executed by Seller is finally closed and funded, whether this occurs during the term of this agreement or after the termination of this agreement.

Or

*D.1.* The Broker's Fee will be earned if Broker, during the term of this agreement, individually or in cooperation with another broker, procures a buyer who enters into a contract with Seller to buy the Property. The Broker's Fee, once earned with respect to a particular sale or exchange of the Property, will be payable, either during the term of this agreement or after the termination of this agreement, on either of the following events: (a) the closing and funding of the sale or exchange of the Property or (b) Seller's wrongful refusal to close the sale or to close the exchange of the Property.

Continue with the following.

*D.2.* Unless otherwise provided in this agreement, the Broker's Fee will be determined on the basis of the sale price (the "Sale Price") specified in the contract between Seller and the buyer. If the disposition of the Property is consummated as an exchange of the Property for other property, the Sale Price of the Property will be deemed to be the Listing Price unless otherwise specified by Broker and Seller in writing.

*D.3.* If a buyer procured by Broker with whom Seller has entered into a contract for the sale of the Property during the term of this agreement breaches that contract and Seller receives the buyer's earnest money or a portion thereof as liquidated damages, Seller will pay Broker the lesser of one-half of the amount of the liquidated damages or the Broker's Fee.

*D.4.* If litigation, mediation, or arbitration is instituted with respect to a contract between Seller and a buyer procured by Broker for the sale of the Property that is executed during the term of this agreement, and Seller collects all or a portion of the Sale Price or damages by judgment, compromise, settlement, or otherwise, Seller will pay Broker the lesser of (a) one-half of the amount collected after deduction of attorney's fees and other expenses of

collection or (b) the Broker's Fee (determined after reducing the Sale Price by the amount of attorney's fees or other expenses of collection).

*D.5.* Seller will not owe Broker the Broker's Fee if a sale of the Property does not close or fund [**include if applicable:** as a result of (a) Seller's failure to deliver a title policy to a buyer, caused by Seller's inability to cure the buyer's title objections due to matters beyond Seller's reasonable control; (b) Seller's loss of ownership due to foreclosure, conveyance in lieu of foreclosure, or other legal proceeding; or (c) Seller's failure to restore the Property following any casualty or condemnation to its previous condition by the closing date set forth in a contract for the sale of the Property].

*D.6.* Seller authorizes any escrow or closing agent authorized to close a transaction for the sale or other disposition of the Property contemplated in this agreement to collect and disburse to Broker the Broker's Fee due under this agreement if the buyer was procured by Broker. Seller authorizes Broker to instruct any closing or escrow agent to collect and disburse the Broker's Fee due under this agreement if the buyer was procured by Broker.

*D.7.* Seller will not owe Broker the Broker's Fee in connection with any transaction in which the buyer or other party to the transaction was procured by Seller directly or through the services of another broker without the assistance or participation of Broker.

**E. Protection Period.** Subject to the conditions set forth in paragraph D. above, if, within ninety days after the termination of this agreement (the "Protection Period"), Seller enters into a contract to sell the Property to one of Broker's Registered Buyers (as hereinafter defined) or sells, exchanges, or otherwise transfers an interest in the Property to one of Broker's Registered Buyers, Seller will pay Broker the Broker's Fee. For purposes of this agreement, the Broker's Registered Buyers will consist only of those persons whose attention has been called to the Property by Broker during the term of this agreement, or with whom Broker has negotiated the sale, exchange, or other transfer of the Property during the term of this

agreement, and whose names and addresses have been provided in writing by Broker to Seller within five days after the termination of this agreement. It is specifically understood and agreed, however, that the foregoing provisions regarding the Protection Period will not be applicable with respect to any sale, exchange, or other transfer of the Property that occurs after the termination of this agreement while the Property is listed exclusively with another broker.

**F. Broker's Duties and Authorities.** During the term of this agreement, Broker will be authorized and required to take the following actions:

*F.1.* Broker will make reasonable efforts and act diligently to sell the Property in accordance with the terms of this agreement. Seller authorizes Broker and Broker's associates, at Broker's sole cost and expense, to (a) advertise the Property by the means and methods Broker reasonably determines to be appropriate for the Property based on then-current market practices for properties substantially similar to the Property; (b) furnish comparative marketing and sale information about other properties to prospective buyers; (c) disseminate information about the Property to other brokers and their associates through a multiple-listing service or such other means as Broker reasonably determines to be appropriate; (d) enter the Property, and accompany other brokers and their associates who wish to enter the Property, at reasonable times and, if the Property is then occupied, on reasonable advance notice, to show the Property to prospective buyers; (e) authorize property inspectors, appraisers, and repair personnel to enter the Property at reasonable times and, if the Property is then occupied, on reasonable notice, for pertinent purposes; (f) obtain information from any holder of any note secured by a lien on the Property concerning the note or lien; and (g) on a final and closed sale of the Property to a buyer procured by Broker, disclose the Sale Price and terms to the local tax appraisal district and, if applicable, multiple-listing service.

*F.2.* Broker is not authorized to (a) execute any document in the name of or on behalf of Seller with respect to the Property, (b) authorize any repairs to the Property without

Seller's prior written consent, (c) authorize the expenditure of any funds on behalf of Seller without Seller's prior written consent, (d) negotiate any earnest money deposit or other instrument in connection with the Property, (e) use a "lock-box" for keys to the Property, or (f) place any "For Sale" signs on the Property or remove other signs offering the Property for sale or lease without Seller's prior written consent.

*F.3.* Broker will not be obligated to market the Property after Seller has entered into a binding contract unless the contract provides otherwise. If Broker is obligated to submit subsequent or backup offers, Seller will specifically provide in the contract for the sale of the Property with a buyer that Seller may continue to market the Property so that Broker may receive subsequent or backup offers, which will be submitted to Seller as received for consideration by Seller when the prior contract is terminated or renegotiated. If Seller enters into a contract to sell the Property that does not provide for the submission of backup offers, and Broker subsequently receives a subsequent or backup offer to purchase the Property, Broker will inform Seller and submit the subsequent or backup offer to Seller when the prior contract is terminated or renegotiated.

*F.4.* Broker will not be responsible in any manner for personal injury to Seller resulting from acts of third parties or loss of or damage to personal or real property due to vandalism, theft, freezing water pipes, or other causes, except the negligence or misconduct of Broker. If the Property becomes vacant during the term of this agreement, Seller will notify Seller's casualty insurance company and request that the insurance coverage regarding the Property be modified to include a "vacancy clause" to cover the Property. Broker will not be responsible for the security of the Property or for inspecting the Property on any periodic basis unless otherwise agreed in writing by Seller and Broker.

**G. Broker's Representations and Covenants.** Broker represents and warrants to, and covenants with, Seller as follows:

*G.1.* Broker is duly licensed as a real estate broker authorized to provide real estate brokerage services in accordance with this agreement by the Texas Real Estate Commission (the "Commission") under the Texas Real Estate License Act (the "Act"), as amended, and will maintain that license in full force and effect at all times during the term of this agreement. All associates employed by Broker to assist with marketing and selling the Property, and all other brokers with whom Broker cooperates in connection with marketing and selling the Property, will be duly licensed by the Commission as real estate brokers or agents in accordance with the Act when any such services are rendered.

*G.2.* All activities by Broker and Broker's associates hereunder will be conducted in strict compliance with the Act, the rules and regulations of the Commission, and all other provisions of applicable law, including, without limitation, all fair housing laws.

**H. Seller's Representations and Covenants.** Seller represents and warrants to, and covenants with, Broker as follows:

*H.1.* Seller represents that (a) Seller has fee simple title to the Property, peaceable possession of the Property and all improvements and fixtures on the Property unless rented, and the legal capacity to convey the Property; (b) no person or entity has any right to purchase, lease, or acquire the Property by virtue of a contract, option, right of first refusal, or other agreement; (c) there are no delinquencies or defaults under any deed of trust, mortgage, or other encumbrance on the Property; (d) the Property is not subject to the jurisdiction of any court whose permission or consent is required for the execution of this agreement or the sale, exchange, or other disposition of the Property; and (e) all information regarding the Property that has been provided by Seller to Broker, or that may be provided by Seller to Broker after the execution of this agreement, has been or will be, to the best of Seller's knowledge, true, correct, and complete in all material respects.

*H.2.* Seller will cooperate fully and in good faith with Broker to facilitate the showing and marketing of the Property at Broker's sole cost and expense and will provide Broker with copies of all leases or rental agreements pertaining to the Property, if any, and advise Broker of any tenants moving into or out of the Property.

*H.3.* Seller will provide Broker and all prospective buyers of the Property with disclosure notices regarding the condition of the Property, if and to the extent required by law. Seller authorizes Broker to deliver such disclosure notices to prospective buyers of the Property at or before the time a contract is executed for the sale, exchange, or other disposition of the Property. Seller agrees to complete all such disclosure notices based on Seller's best knowledge and belief and in a manner that discloses all material defects or facts concerning the Property that are actually known to Seller. Seller agrees to indemnify, defend, and hold Broker and Broker's associates harmless from any damages, costs, attorney's fees, or expenses arising from Seller's knowingly giving to Broker or Broker's associates or any buyer of the Property information regarding the Property that is actually known to Seller to be incorrect in any material respect or from Seller's failure to disclose to Broker or Broker's associates or any buyer of the Property any material information regarding the Property that is actually known to Seller.

*H.4.* Seller will furnish to a buyer of the Property (a) an owner policy of title insurance at Seller's expense for the basic premium cost of such policy (without regard to any modifications or endorsements) in the amount of the Sale Price and dated at or after the closing of the sale of the Property; (b) a [general/special] warranty deed conveying title to the Property subject only to liens securing payment of a debt created or assumed as part of the Sale Price, taxes for the current year, restrictive covenants and utility easements common to any platted subdivision in which the Property is located, and other reservations or exceptions that will not materially impair or interfere with the buyer's anticipated use of the Property or that are otherwise acceptable to the buyer; (c) property tax statements showing no delinquent



taxes; and (d) copies of restrictive covenants and documents evidencing exceptions to any title commitment other than the standard printed title exceptions.

*H.5.* Seller will indemnify, defend, and hold Broker harmless from any damages, costs, attorney's fees, or expenses arising from acts of third parties or loss of or damage to personal or real property due to vandalism, theft, freezing of water pipes, or any other causes, except the negligence or misconduct of Broker.

*H.6.* Seller will furnish to the escrow or closing agent closing any sale or other disposition of the Property contemplated by this agreement such information regarding Seller and the transaction as the agent will require to report the transaction to the Internal Revenue Service in accordance with applicable law.

*H.7.* Unless otherwise specified by written notice from Seller to Broker, Seller represents that Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person, requiring a buyer of the Property to withhold a portion of the Sale Price under section 1445 of the Internal Revenue Code of 1986, as amended. At or before the sale or other disposition of the Property, Seller will provide Broker and any buyer of the Property any affidavits and other information reasonably required to confirm the representations concerning the nonforeign status of Seller.

**I. Termination for Cause.** Either party is entitled to terminate this agreement before the Termination Date if the other party fails to perform its obligations under the agreement and the failure to perform is not cured to the reasonable satisfaction of the party giving written notice of such failure within thirty days after receipt of the notice. Except for a termination due to Broker's failure to be licensed under the Act, any such termination will not be effective with respect to any contract for the sale, exchange, or other disposition of the Property previously executed by Seller and a buyer that is then pending closing.

**J. Attorney's Fees.** If [either/any] party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

**K. Binding Effect.** This agreement binds, benefits, and may be enforced by the successors in interest to the parties.

**L. Choice of Law.** This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Property is located.

**M. Counterparts.** This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

**N. Waiver of Default.** It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

**O. Further Assurances.** Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

**P. Indemnity.** Each party agrees to indemnify, defend, and hold harmless the other party from any loss, attorney's fees, expenses, or claims attributable to breach or default of any provision of this agreement by the indemnifying party.

**Q. Entire Agreement.** This agreement is the entire agreement of the parties. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of any agent of the other party, that are not in this agreement.

**R. Legal Construction.** If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. The agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

**S. Notices.** Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

**T. Recitals.** Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

**U. Time.** Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

Include the following if applicable.

**V Broker's Lien.** BROKER HAS THE RIGHT TO CLAIM A LIEN UNDER THE PROVISIONS OF TEXAS PROPERTY CODE CHAPTER 62.

Continue with the following.

\_\_\_\_\_  
[Name of seller]

\_\_\_\_\_  
[Name of broker]

Form 26-32

This form is used to effect a partial release of specified property from a judgment lien.

---

**Partial Release of Judgment Lien**

Date:

Judgment Debtor:

Judgment Creditor:

Judgment

Date:

Cause number:

Style of case:

Court:

Abstract of Judgment Recording Information:

Judgment Creditor acknowledges satisfaction of the Judgment in part and releases to Judgment Debtor any and all liens existing by reason of the Judgment and the filing of the abstract of judgment only against the following described property: **[describe property]**.

The liens existing by reason of the Judgment and the filing of the abstract of judgment continue in full force and effect as to all properties not expressly released by this instrument.

---

**[Name of judgment creditor]**

Include acknowledgment.

**Form 26-33**

This form is used to evidence a buyer's acceptance of property subject to a disclaimer of warranties by the seller.

---

**Property Condition Disclaimer**

Date:

Seller:

Seller's Address:

Buyer:

Buyer's Address:

Transaction: The purchase of the Property by Buyer from Seller.

Buyer's Reliance Items: **[List items of information regarding the property that the seller has provided to the buyer.]**

Property:

[Contract:]

[Closing Documents:]

Consideration: The same consideration exchanged in the Transaction; in addition, Buyer's stipulation that Seller has sold the Property at the purchase price in this Transaction on the basis that this disclaimer is a material part of the Transaction, and Seller would have required additional consideration had this disclaimer not been a part of the Transaction.

For the Consideration stated, Buyer agrees and represents to Seller as follows:

1. *Inspections.* Buyer has been entitled to inspect every aspect of the Property to Buyer's satisfaction, and Buyer has actually inspected to Buyer's satisfaction each aspect of the Property considered to be a substantial or material factor by Buyer in making the decision to complete the Transaction.

2. *Importance of Disclaimer.* BUYER IS TAKING THE PROPERTY IN AN ARM'S-LENGTH AGREEMENT BETWEEN THE PARTIES. THE CONSIDERATION WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION AND REFLECTS THE AGREEMENT OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS OR EXPRESS OR IMPLIED WARRANTIES [include if applicable: , EXCEPT FOR THE WARRANTY OF TITLE STATED IN THE [DEED/CLOSING DOCUMENTS] [AND SELLER'S REPRESENTATIONS AND WARRANTIES TO BUYER SET FORTH IN THE SALES CONTRACT]]. This disclaimer is not an incidental or boilerplate provision. Buyer and Seller have relatively equal bargaining positions.

3. *Level of Buyer's Knowledge.* Buyer understands that Buyer has the right to employ professionals to advise Buyer on every aspect of the Property, and Buyer has agreed not to rely on Seller for such information.

4. *Absence of Seller Representations.* Other than for the Buyer's Reliance Items, which Seller has furnished to Buyer and on which Buyer is relying, Buyer is not relying on any of Seller's representations, statements, or assertions concerning the Property. Buyer is not relying on Seller to provide any information about the Property that Buyer has not independently verified. Other than the Buyer's Reliance Items, Buyer is relying solely on Buyer's independent verifications, rather than Seller's information, assertions, statements, or representations. Other than the Buyer's Reliance Items, any information, assertions, statements, or representations made by Seller or Seller's representatives have been recognized as puffing or opinion. Further, if such information, assertions, statements, or representations were or are incorrect, their insignificance to Buyer would not be affected, and they would not constitute misrepresentations of material fact.



5. *Waiver of Warranties.* BUYER IS NOT RELYING ON ANY REPRESENTATIONS, DISCLOSURES, OR EXPRESS OR IMPLIED WARRANTIES OTHER THAN THOSE EXPRESSLY CONTAINED IN THIS DISCLOSURE [**include as applicable:** , THE CONTRACT, THE CLOSING DOCUMENTS, AND [**describe other documents**]]. BUYER IS NOT RELYING ON ANY INFORMATION REGARDING THE PROPERTY PROVIDED BY ANY PERSON, OTHER THAN BUYER'S OWN INSPECTION AND THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS DISCLOSURE, THE CONTRACT, AND THE CLOSING DOCUMENTS.

6. *Dangerous Conditions.* Buyer has thoroughly inspected the Property to determine the existence of any conditions posing unreasonable risk of harm. To the extent such conditions have been discovered, Buyer will prevent persons from being subject to the risks of such conditions and Buyer will exercise reasonable care to reduce or eliminate the risks.

7. *Consequences of Disclaimer.* Buyer understands that, by executing this disclaimer, Buyer has agreed to make Buyer's own appraisal of the bargain and to accept the risk that Buyer may be wrong. Furthermore, Buyer agrees not to hold Seller liable if the Property turns out to be worth less than the price paid or if the Property turns out to have patent or latent defects that Buyer has not discovered before closing. Instead, Buyer would be the sole cause of any loss occasioned by the foregoing, because Buyer is relying on surveys, elevation analyses, appraisals, inspections, and other analyses conducted only by Buyer's representatives, in determining the condition, suitability, and value of the Property, or because Buyer has been free to conduct such analyses but has chosen not to do so.

8. *Permits.* Buyer is solely responsible for determining what, if any, permits, licenses, certificates, and the like (collectively, the "Permits") are necessary for Buyer's intended uses of the Property. Buyer is solely responsible for taking all necessary steps to obtain any such Permits that Buyer deems necessary for Buyer's intended uses of the Property.

9. *No Reliance of Buyer on Seller's Disclosure Notice.* Buyer has not relied on any of the information contained in the [**select one of the following:** Seller's Disclosure Notice (TAR)/Seller's Disclosure of Property Condition (TREC Residential)/Commercial Property Condition Statement (TAR Commercial)], if one has been provided in connection with the transaction.

10. *Survival.* Buyer's agreements with and representations to Seller made in this disclaimer will survive closing.

11. *Construction.* When the context requires, singular nouns and pronouns include the plural.

---

[Name of buyer]

Include acknowledgment.

Form 26-34

This form is used to effect a complete release of a recorded judgment lien.

---

**Release of Judgment Lien**

Date:

Judgment Debtor:

Judgment Creditor:

Judgment

Date:

Cause number:

Style of case:

Court:

Abstract of Judgment Recording Information:

Judgment Creditor acknowledges satisfaction of the Judgment and releases to Judgment Debtor any and all liens existing by reason of the Judgment and the filing of the abstract of judgment.

---

[Name of judgment creditor]

Include acknowledgment.

*[Reserved]*

Form 26-35

**Revocation of Power of Attorney**

Date:

Principal:

Principal's Mailing Address:

Agent (Attorney-in-fact):

Agent's Mailing Address:

Power of Attorney

Date:

[Recording Information:]

[Expiration Date:]

Property:

Principal revokes the Power of Attorney and all power and authority given to the Agent (Attorney-in-fact) in the Power of Attorney.

\_\_\_\_\_  
[Name of principal]

STATE OF TEXAS )

COUNTY OF )

This instrument was acknowledged before me on [date] by [name].

[SEAL]

\_\_\_\_\_  
[Title of officer]

My commission expires: [date]

Form 26-36

This form permits a principal to designate an agent. The specific powers granted may be selected from the suggested powers shown in the form. Additional provisions that further limit the grant of power should be considered. This form of power of attorney is durable; that is, it survives the disability of the principal. Although the power of attorney may be made a springing power, effective on the disability of the principal, this form does not contain such a provision. The form must be filed for record in the county in which the real estate is located not later than thirty days after the recordation of each instrument signed by the agent. Tex. Est. Code § 751.151. See the section titled "Durable Powers of Attorney" in chapter 2 of this manual for the various special requirements relating to a durable power of attorney. See also the Durable Power of Attorney Act, Tex. Est. Code ch. 751.

There is a 'statutory durable power of attorney' form provided for in chapter 752 of the Texas Estates Code. See Tex. Est. Code § 752.051. It has broad, sweeping, detailed powers and can be used for real estate transactions as well as a wide variety of other transactions.

---

**Special Durable Power of Attorney for Real Estate Transactions**

Date:

Principal:

Principal's Mailing Address:

Agent:

Agent's Mailing Address:

Effective Date:

[Expiration Date:]

Property:

Powers Given with Respect to the Property:

The following are suggested powers for the sale of real estate.

1. Enter into real estate listing agreements offering the Property for sale at any price on any terms and with any commission agreement.
2. Contract to sell the Property for any price on any terms.
3. Convey the Property.
4. Execute and deliver any legal instruments relating to the sale and conveyance of the Property, including but not limited to general and special warranty deeds binding Principal with vendor's liens retained or disclaimed as applicable or transferred to a third-party lender, affidavits (for example, federal tax statements), notices, disclosures, waivers, and designations.
5. Accept notes, deeds of trust, and other legal instruments.
6. Approve closing statements authorizing deductions from the sale price.
7. Receive Principal's net sales proceeds by check payable to Principal.
8. Indemnify and hold harmless any third party who accepts and acts under this Power of Attorney.
9. Do everything and sign everything necessary or appropriate to sell the Property and accomplish the powers set out.

The following are suggested powers for the purchase of real estate.

1. Contract to purchase the Property for any price on any terms.
2. Execute, deliver, and accept any legal instruments relating to the purchase of the Property and to any borrowing for the purchase, including but not limited to deeds, notes, deeds of trust, guaranties, and closing statements.



3. Approve closing statements authorizing payment of prorations and expenses.
4. Pay Principal's net purchase price from funds provided by Principal.
5. Indemnify and hold harmless any third party who accepts and acts under this power of attorney.
6. Do everything and sign everything necessary or appropriate to purchase the Property and accomplish the powers set out.

Continue with the following.

Principal appoints Agent to act for Principal in accordance with the powers given with respect to the Property, and Principal ratifies all acts done under this appointment. Agent's authority will begin on the Effective Date and end [on the Expiration Date unless revoked sooner/only if revoked] by Principal's signing an instrument revoking this power of attorney and filing it for record in the real property records of [county] County, Texas. A signed and filed revocation instrument will be effective, without limitation or exception, including but not limited to being effective against a third party relying on this power of attorney without receipt of actual notice of the revocation, on the date and time of filing.

This is a durable power of attorney under chapter 751 of the Texas Estates Code, which is not affected by subsequent disability or incapacity of Principal and will not lapse because of a passage of time [include if applicable: , but it will expire on the Expiration Date].

If applicable, the following paragraph is a suggested indemnity clause.

Principal binds Principal and Principal's heirs and personal representatives to indemnify and hold Agent harmless from all claims, demands, losses, damages, actions, and expenses that Agent may sustain or incur in connection with carrying out the authority granted to Agent in this power of attorney.

Continue with the following.

THE ATTORNEY-IN-FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

\_\_\_\_\_  
[Name of principal]

Include acknowledgment.

**Affidavit of Attorney-in-Fact**

Date:

Principal:

Principal's Mailing Address:

Effective Date of Power of Attorney:

Affiant: [name of attorney-in-fact]

Affiant's Mailing Address:

Affiant on oath swears that the following statements are true and within the personal knowledge of Affiant:

1. Affiant is the attorney-in-fact for Principal, having been appointed in the Power of Attorney.

2. The power of attorney has not been terminated by revocation, by Principal's death, by Principal's divorce or the annulment of the marriage of Principal if the attorney-in-fact is Principal's spouse, or by the qualification of a guardian of the estate of Principal.

\_\_\_\_\_  
[Name of attorney-in-fact]

SWORN TO AND SUBSCRIBED before me on \_\_\_\_\_

by [name of attorney-in-fact].

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

STATE OF TEXAS

COUNTY OF [county]

This instrument was acknowledged before me on [date] by [name of attorney-in-fact].

---

Notary Public, State of Texas



## Appendix

### Third-Party Legal Opinion Letters

Lenders often require a borrower's counsel to issue a legal opinion letter to the lender on certain aspects of a loan transaction, including, among other matters, an opinion regarding the borrower's legal status and the enforceability of the lender's loan documents. Historically, the initial form of the legal opinion letter is presented to the borrower's counsel by the lender or its counsel. Although several national, state, and local private attorney organizations and bar association groups have published suggested standard third-party legal opinion letter formats for use in rendering a third-party legal opinion letter, neither a single opinion format nor a single standard for interpreting the opinions included in an opinion letter has been universally accepted by lenders, borrowers, or their respective legal counsel. Information and guidance on the preparation and use of third-party legal opinion letters may be obtained from sources listed in the selected bibliography in this appendix. Additional information can be obtained from the Legal Opinion Resource Center at <http://apps.americanbar.org/buslaw/tribar>.

Several of the articles listed in the bibliography discuss the Texas Supreme Court case of *McCamish, Martin, Brown & Loeffler v. F.E. Appling Interests*, 991 S.W.2d 787, 791 (Tex. 1999), which held that attorneys (as well as other professionals) could be liable in Texas for the tort of negligent misrepresentation, as defined by the *Restatement (Second) of Torts* § 552 (1977). Even as the supreme court reaffirmed the availability in Texas of the defense of a lack of privity in legal malpractice cases, it noted several times that section 552 does not require privity to impose liability for negligent misrepresentation or implicate the policy concerns behind the privity rule. See *McCamish*, 991 S.W.2d at 792–93, 795.

As the supreme court pointed out in *McCamish*, an attorney can be liable to a nonclient for negligent misrepresentation based on the issuance of an opinion letter; however, section 552 limits liability to situations in which (1) the attorney who provides the false information is aware of the nonclient and intends that the nonclient rely on the false information and (2) the nonclient justifiably relies on the false information. See *McCamish*, 991 S.W.2d at 793–94. Furthermore, the supreme court expressly recognized that “[a] lawyer may also avoid or minimize the risk of liability to a nonclient by setting forth (1) limitations as to whom the representation is directed and who should rely on it, or (2) disclaimers as to the scope and accuracy of the factual investigation or assumptions forming the basis of the representation or the representation itself.” See *McCamish*, 991 S.W.2d at 794. The foregoing quote explains a good deal of the scope of reliance disclaimers in current third-party opinion letter practice.

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