

CHANGES IN THE STATUS OF PROPERTY RIGHTS

*Drafting considerations for common situations involving
spouses, joint owners, fiduciaries, and entities*

Matthew J. Badders
DROUGHT, DROUGHT & BOBBITT LLP
2632 Broadway Street, Suite 400-South
San Antonio, Texas 78215
Phone: 210-225-4031
MJB@ddb-law.com

TexasBarCLE
33rd Annual
ADVANCED REAL ESTATE DRAFTING
March 17, 2022
Dallas

CHANGES IN THE STATUS OF PROPERTY RIGHTS

OUTLINE AND CONTENTS:

<u>Section and Topic:</u>	<u>FORMS:</u>	<u>EXAMPLES:</u>
1. <u>For Whom are we drafting?</u>		
1.1. Successors in Interest		
1.2. Title Policy Issuers		
1.3. Bureaucrats		
2. <u>Changes in the Status of Property Rights of SPOUSES</u>		
2.1. By Community Property Partition		
2.1.1. Particular fact pattern scenarios to consider		
2.1.1.1. The future refi		
2.1.1.2. Removal of FF&E		
2.1.1.3. New assets and future assets		
2.1.1.4. Estate Planning		
2.1.2. Particular documents to consider		
2.1.2.1. Partition or Exchange Agreement	2.1.2.1.	
2.1.2.2. Martial Partition Deeds		
2.1.2.3. Supplements	2.1.2.3.	
2.2. By Separate Property Conversion		
2.2.1. Conversion Agreements		
2.2.2. Gift Deeds	2.2.2.	2.2.2.
3. <u>Changes in the Status of Property Rights of JOINT OWNERS</u>		
3.1. By Partition in-kind or forced sale		
3.1.1. Original Petition for Partition	3.1.1.	
3.1.2. Order of Partition		
3.1.3. Partition Deed		
3.1.4. Other Documents to Consider		
3.2. By Survivorship		
3.2.1. Transfer on Death Deed	3.2.1.	
3.2.2. Survivorship Deeds		
4. <u>Changes in the Status of Property Rights of FIDUCIARIES</u>		
4.1. Trustees; Certification of Trust	4.1.1.	
4.2. Executors, Administrators, and Personal Representatives		
4.2.1. Distribution Deeds and Affidavits of Fact	4.2.1.	4.2.1.
4.2.2. Successor Personal Representatives		
4.3. Agents	4.3.	
5. <u>Changes in the Status of Property Rights regarding Entities</u>		
5.1. Management Changes	5.1.	
5.2. Closely-held Entity Agreements		
5.2.1. Rights of Survivorship		
5.2.2. Reversion or Future Interests		
5.2.3. Forfeiture Clauses in Entity Documents	5.2.3.	

CHANGES IN THE STATUS OF PROPERTY RIGHTS

Drafting considerations for common situations involving spouses, joint owners, fiduciaries, and entities

Numerous writings and resources exist on the subject of changing *ownership* of property. Changing ownership, obviously, changes the status of property rights from the grantor and the grantee. However, little seems to be directly written on the more seldom situations when the status of property rights change by some means other than ownership, necessarily. This article seeks, at a high level, to review some of those unusual situations, the documents which must or should be prepared to accomplish or respond to such changes, and drafting considerations for those documents. Specific considerations are grouped based on *whose* property rights are changed in these common client categories-- spouses, joint owners, fiduciaries, and entity managers.

1. For what audience are we drafting documents?

First, a preliminary note regarding drafting. For whom are we writing documents other than our client, the judge, or the jury? In scrivening any document, remember the audience in practice. In the particular context of real estate, the grantor, grantee, holders of title, or persons put on notice by public records are not the only audience to remember. In practice, three often overlooked – but special -- audiences for real property drafting to which the documents described in this article are tailored to address are (a) successors in interest, (b) title examiners, underwriters, and title insurance policy issuers, and (c) bureaucrats in places such as county clerk offices, lenders' customer service centers, home owners' associations, or other places where bargaining power against our clients is tremendous yet undeserved. In practical application, these audiences are more important than initially considered.

1.1. Successors in Interest. Successors in interest are, of course, subsequent grantees themselves, but on a more nuanced consideration, personal representatives of estates, corporate officers, and fiduciaries. The eyes of a successor in examining or attempting to ascertain changed rights reflected in a document will not have been the same eyes who bore witness to the circumstances that gave rise to the status change. Stated otherwise, 'a page of history is worth a volume of logic,' and a successor in interest does not have the benefit of the figurative page of history—so they are left with only the volume of logic.

1.2. Title Policy Issuers. Anyone who has ever cleared problems on Schedule C of a title policy knows what pains title examiners and policy issuers endure when trying to ascertain changed rights not abundantly clear from a vesting deed. Even when the academic and scholarly

answer is within a series of documents, our clients are only *better* served if we draft with a view towards making it easier to explain these circumstances to the title company on the eve of a closing. These are the folks who must be able to find the proper documents themselves, the applicable provision in such document, and an understanding of rights or obligations from the document itself.

1.3. Bureaucrats. As just mentioned, the understanding of rights reflected in documents may be certain to the parties and lawyers who prepared documents on clients' behalf, but complicated concepts must be understood by the lowest common denominator of intelligence in our society. Imagine, for example, your client trying to identify himself to a call-center customer service representative (who must only communicate with the proper person on a particular account) as "the vice president of a corporation that is named as the next successor trustee under a revocable living trust who is the reversionary holder of real property subject to a life estate".

For whom we draft documents surrounding changes in property rights is one consideration, but the documents we draft and circumstances requiring them are considered in the context of whose property rights get changed.

2. Changes in the Status of Property Rights of SPOUSES:

2.1. By Community Property Partition. Section 4.102 of the Texas Family Code expressly gives spouses the right to partition their community property. Simply put, a piece of (presumptive or actual) community property can be partitioned by agreement so that each spouse owns a portion of the property as his or her respective, separate property.

2.1.1. Particular Fact Patterns to Consider when Drafting. Unique issues may be created in the years following a partition agreement, based on the conduct or changed circumstances of the parties. Foresight in drafting can protect clients ahead of time, and here are a few of the future contingencies that could (or should) be addressed in drafting partition agreements or resulting related documents. Suggested language or example provisions are difficult to provide because the situations, although not uncommon, will be very fact specific, and drafting provisions in contemplation of these situations will depend on your particular client's objectives.

2.1.1.1 The Future Refi. Here is a fact pattern: Husband and wife have a properly drafted partition agreement regarding the wife's house, owned outright. The husband works and has income; the wife does not. Sometime much later, they want to take advantage of low interest rates and good credit. They jointly refinance the property because the wife put up her collateral, but the husband's income was

necessary to underwrite the loan. The Deed of Trust and Real Estate Lien Note are in both of their names. The forms prepared by the bank are standard, and do not provide custom drafting, nor did they even remember the partition agreement their lawyer prepared years ago when they closed the refinance. Husband's income is used to repay the mortgage with significant equity increasing over the years due to a rising market.

Issues which could have been addressed in the partition agreement under these facts:

- The partition agreement will likely already contain a provision regarding income from separate property, but what about obligations from separate property?
- What about appreciated value?
- Should it be the right of one spouse or either spouse to re-affirm the partitioned community property by reimbursing the other spouse? What pre-set requirements can be contained in the partition agreement providing the formula or answer to resolve this situation?

2.1.1.2. Removal of FF&E. Here is a fact pattern: husband and wife engage you to prepare a partition agreement in conjunction with the purchase of a farm while married. The wife's investment portfolio is partitioned as her separate property, and the husband's closely-held business is partitioned as his separate property, and at that time, they are mostly equal in value. The farm is community property, with a mortgage to be paid from community property income. The farm comes with furniture, fixtures, and equipment. Eventually, the husband removes the equipment from the community property farm, where it is unused, to his separate property business, where it is used to its full capacity for profit. Divorce or death of the husband exposes and confronts a result—the husband's separate estate is significantly more valuable than the wife's because of the use of community property equipment.

Issues which could have been addressed in the partition agreement under these facts:

- Could or should a provision in the instrument have been drafted to recognize and include FF&E either expressly as community regardless of possession, or expressly as separate regardless of source?

- Could or should a provision be included to discuss the income derived from the FF&E? Can such provision make different results based on its location or based on its operator?
- Consider a provision that addresses the appreciated value of separate property or community property FF&E based on its use. In the fact pattern, could or should the present value of the husband's closely held, separate property business be included in the community? Certainly that would have a higher value than the underlying equipment itself.
- Consider the function of timing in any of these drafting considerations. Would it suit the parties to put a reasonable window of time for FF&E to be considered community or separate based on their removal?

2.1.1.3. New assets and future assets. Some realistic fact scenarios: a married couple engages you to prepare a partition agreement. Later, one of the spouses creates a new business entity, acquires an existing business entity by mutating separate property, or receives by gift or inheritance, a closely held business entity and contributes community property towards its enhancement.

In any of these scenarios, draftsmanship is limited in its ability to help, because such assets or financial obligations cannot be fully disclosed as they don't exist at the time of the partition agreement. The typical Family Code provisions and case law regarding tracing would be helpful, but the goal of drafting is to avoid resorting to statutes and case law in subsequent litigation.

One drafting consideration is, to the extent possible, consider what the default presumption as to new or future assets. The best practice would be a supplement to the partition agreement, discussed below.

2.1.1.4. Estate planning. One fact pattern: Husband and wife have a properly drafted partition agreement from many years ago, confirming the ranch as the husband's separate property. They consult an estate planner who was uninvolved in the partition agreement. He recommends and prepares a revocable living trust. Husband and wife "fund" their revocable trust by deeding the ranch to themselves as trustees, believing themselves otherwise protected based on their partition agreement or altogether forgetting about the partition. Husband dies, the revocable trust continues for the benefit of the surviving wife, then on her death, remaining trust assets pass as she appoints in her last will. Husband's will, leaving

“all of his separate property” to his children from a prior marriage, is never probated.

With the proliferation of estate planning strategies all designed to avoid probate, it is worth considering an exception or at least mention in the partition agreement as to the effect of future estate planning transfers. One suggestion is a provision with words to the effect of:

Future transfers by either spouse of the separate or remaining community property made the subject of this Agreement are not to be construed as an amendment or conversion of separate property in the absence of an express written agreement to do so, provided that such transfer is to a trust or entity under the control or ownership of such party either directly or in a fiduciary capacity. Transfer of a spouse's separate property into a community property entity under the sole direction and control of a spouse shall not, by itself, be construed as to defeat such property's separate property character, and vice versa for transfers of community property into separately owned or controlled entities.

2.1.2. Particular Documents to Consider:

2.1.2.1. **The Partition Agreement.** To accomplish a partition of community property at all, the preparation and proper drafting of a partition agreement not merely a recommendation. It is *required* because one spouse cannot convey his or her interest in community property to a third party as a means of effectuating a partition. The property can only be partitioned upon compliance with Chapter 4 of the Family Code and the Texas Constitution. *Dalton v. Don J. Jackson, Inc.*, 691 S.W.2d 765 (Tex.Civ.App. 1985).

Much has been written on the subject itself of drafting such agreements. In general, the requirements are that a partition agreement must:

- (1) be in writing; Fam. Code §4.104, *see also, Miller v. Miller*, 700 S.W.2d 941, 951 (Tex. App.-Dallas 1985, writ ref'd n.r.e.);
- (2) identify the community property being partitioned or exchanged;
- (3) contain the specific intent of the parties “to partition or exchange the community property into separate property”, *see Pankhurst v. Weitingner & Tucker*, 850 S.W.2d 726, 730 (Tex.App.-Corpus Christi 1993, writ denied);
- (4) in the agreement itself, have the effect of actually partitioning or exchanging the property; it cannot be that a future action must occur in order

for it to take effect, *see Collins v. Collins* 752 S.W.2d 636, 637 (Tex.App.-Fort Worth 1988, writ ref'd);

(5) follow the full disclosure or waiver of full disclosure of both spouse's financial obligations and property to each other before signature; Fam. Code §4.105(a)(2);

(6) be signed by both spouses voluntarily; Fam. Code §4.104(a)(1); *Recio v. Recio*, 666 S.W.2d 645, 649 (Tex.App.-Corpus Christi 1984, no writ); and

(7) be notarized.

Unlike most other mutual agreements, the community property partition agreement does not need consideration to make it valid. Fam. Code §4.005.

With respect to the “full disclosure”, who will prepare exhibits or other information about each spouse's financial obligations? Consider or revisit the provision often found in general boilerplate as to how to interpret ambiguities. Should any ambiguity in interpretation be resolved by adopting the interpretation most favorable to the spouse holding the separate property, the spouse who prepare the disclosure (typically included as an exhibit or attachment), or against the spouse whose counsel prepared the partition agreement (in the case of spouses represented by separate counsel)?

2.1.2.2. **Marital Partition Deed.** The partition agreement itself may be recorded in the deed records to give constructive notice to good faith purchasers, and for creditor protection, it should be. See Fam. Code §4.106. When preparing the partition agreement, bear in mind the potential inadvertent disclosure of otherwise private information.

However, it may be that the benefits of creditor protection do not outweigh the need for privacy—particularly for high-net-worth clients. Note that Section 4.106 does not require recording to make the partition agreement enforceable as between the spouses, it only establishes constructive notice to creditors. However, we return to considerations of title and bureaucrats. Particularly in the case of more complicated partitions involving multiple properties, it may be advisable to record a deed as to each particular community property partitioned, so that the title is as clear as possible without extensive research into an extensive – although recorded – partition agreement.

- Date and Timing of Recording. It is recommended that a deed memorializing a partition be recorded at the same time or concurrently with the recording of the partition agreement itself. An effective date on the instrument can accomplish this even if executed after the actual partition agreement.
- Grantor and Grantee. For consistency, the grantee's name should always appear followed by the phrase "as [his/her] sole and separate property."
- Consideration. In this part of the deed, make reference or mention of the existence of the partition agreement. Words simply to the effect of:

In consideration of the terms and mutual promises and covenants of that certain Partition Agreement executed between the Grantor and Grantee pursuant to Section 4.102 of the Texas Family Code.

The usual "\$10" is unnecessary, as the Family Code expressly provides that consideration was not necessary for the partition.

- Property Description. Other items to be addressed in drafting relate to the income and expenses. It may be worth mentioning in the description of the property, depending on the terms of your underlying partition agreement, something along the lines of:

All of Grantor's right, title, and interest in and to (including but not limited to the fee simple and future rents, royalties, and income derived from) the following described real property: . . .

- Payment of ad valorem taxes. Terms of the partition agreement may be well served to be further described in the partition deed, particularly the obligation to pay ad valorem taxes and the consequence of the source of funds. However, more harm than good could result if scrivenering is not carefully done to be consistent with whatever the terms of the partition agreement dictate, if any, as to the result of expending community property income or principal towards separate property real estate.
- Exceptions to Conveyance and Warranties. As indicated above, once a community property asset is partitioned, it may be conveyed by the spouse to third parties. One consideration in preparing not just the partition agreement, but also the deed, is what kind of string, if any, the community may want to have attached. A particularly useful option can be found with rights of first

opportunity or rights of first refusal. However, rather than including in the partition agreement, it would be more fitting to include in the partition deed so as to place third parties on notice and underwrite the enforceability of the rights. An example of an agreement granting first rights is included in the appendix, and it may be part of a deed reserving such rights, or independently prepared and recorded.

2.1.2.3. Supplements to the Partition Agreement. As illustrated in the various fact pattern scenarios above, the conduct of the parties following a partition agreement, or the acquisition of new assets, makes drafting in advance of the fact impossible to adequately address. Instead, the use of supplements to partition agreements is encouraged. An example form of such a supplement is included in the appendix materials, and as it illustrates, the same requirements for the partition agreement itself are involved in the supplement.

A different drafting mechanism that may be a better option for clients is to adjust the default arrangement between then as to what properly constitutes a recharacterization. An example of such a provision may be as follows:

Any further changes, transfers, mutations, mergers, transactions, or recharacterizations (each a "Change Event") of the Property subject to this agreement made during the continued marriage of the Parties, is voidable at the option of either spouse if such purported Change Event is not contemporaneously accompanied by a written reference to this Agreement acknowledged by the Parties. It is the Parties' intent with this provision that the purposes of this Agreement and the partitions made by this Agreement, are not later defeated by accident or oversight, unintentional scrivener, or facilitation by third parties unaware of this Agreement.

At the very least, it would seem to require magic words for a subsequent conveyance which would run contrary to the partition agreement to have a tenable position against enforcement by the spouse injured by the conveyance. But, this is not to mean that properly partitioned community property can accidentally become community again so easily. More on that in the section that follows.

2.2. By Separate Property Conversion. Separate property has a way of becoming, presumptively, community property. This may be intentional, or under certain conditions, unintentional. Two types of documents on this point:

2.2.1. **Conversion Agreements.** Under Section 4.202 of the Texas Family Code, we find the opposite of the partition and exchange agreement. A conversion agreement allows spouses to convert separate property into community property. The requirements of this type of agreement are much like the partition and exchange agreement: (1) in writing; (2) must identify the property being converted; (3) must contain the fair and reasonable disclosure of the legal effects of converting so as to put both spouses on notice, and; (4) must be notarized. Like the partition and exchange agreement, a conversion agreement does not have to be supported by consideration.

This is relatively less common, but theoretically it would be simpler to effect based on the strong (yet rebuttable) presumption of community property in Texas. Perhaps for this reason, the legislature gave us express language to include in a conversion agreement to accomplish the “fair and reasonable disclosure of the legal effects of converting”. When it comes to partition agreements, the legislature did not offer us any analogous or such elaborate language regarding statements of intent.

In Section 4.205(b) of the Texas Family Code, we are told that fair and reasonable disclosure of the legal effect is accomplished if the following language appears in bold-faced type, capital letters, or underlined in the conversion agreement:

"THIS INSTRUMENT CHANGES SEPARATE PROPERTY TO COMMUNITY PROPERTY. THIS MAY HAVE ADVERSE CONSEQUENCES DURING MARRIAGE AND ON TERMINATION OF THE MARRIAGE BY DEATH OR DIVORCE. FOR EXAMPLE:

"EXPOSURE TO CREDITORS. IF YOU SIGN THIS AGREEMENT, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME SUBJECT TO THE LIABILITIES OF YOUR SPOUSE. IF YOU DO NOT SIGN THIS AGREEMENT, YOUR SEPARATE PROPERTY IS GENERALLY NOT SUBJECT TO THE LIABILITIES OF YOUR SPOUSE UNLESS YOU ARE PERSONALLY LIABLE UNDER ANOTHER RULE OF LAW.

"LOSS OF MANAGEMENT RIGHTS. IF YOU SIGN THIS AGREEMENT, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME SUBJECT TO EITHER THE JOINT MANAGEMENT, CONTROL, AND DISPOSITION OF YOU AND YOUR SPOUSE OR THE SOLE MANAGEMENT, CONTROL, AND DISPOSITION OF YOUR SPOUSE ALONE. IN THAT EVENT, YOU WILL LOSE YOUR MANAGEMENT RIGHTS OVER THE PROPERTY. IF YOU DO NOT SIGN THIS AGREEMENT, YOU WILL GENERALLY RETAIN THOSE RIGHTS."

"LOSS OF PROPERTY OWNERSHIP. IF YOU SIGN THIS AGREEMENT AND YOUR MARRIAGE IS SUBSEQUENTLY TERMINATED BY THE DEATH OF EITHER SPOUSE OR BY DIVORCE, ALL OR PART OF THE SEPARATE PROPERTY BEING CONVERTED TO COMMUNITY PROPERTY MAY BECOME THE SOLE PROPERTY OF YOUR SPOUSE OR YOUR SPOUSE'S HEIRS. IF YOU DO NOT SIGN THIS AGREEMENT, YOU GENERALLY CANNOT BE DEPRIVED OF OWNERSHIP OF YOUR SEPARATE PROPERTY ON TERMINATION OF YOUR MARRIAGE, WHETHER BY DEATH OR DIVORCE."

When the legislature writes it for us, there is not much in the way of drafting considerations. However, one drafting consideration may come in the form of whose side we represent in a proposed conversion transaction. For instance, imagine preparing a conversion

agreement in a situation in which one spouse rich in separate property is under the hen-pecking of their spouse who has only to gain. For the lawyer whose client would be prejudiced by conversion to community property (who realized it at the time and was reluctant to acquiesce), would it serve such a client's legal interests to deliberately omit the statutorily approved language and thereby plant the seed of unenforceability?

2.2.2. Gift Deeds between Spouses. Section 3.005 of the Texas Family Code refers to gifts between spouses, and provides, succinctly, that if one spouse makes a gift of property to the other spouse, the gift is presumed to include all the income and property that may arise from that property. The statute makes no mention of the characterization of the gift received by the donee spouse.

Community property cannot be gifted between spouses, because they already own it through the community.

A separate property interest can be gifted, but in the absence of the formalities of the conversion agreement, described above and in Section 4.202 of the Family Code, the donee spouse receives it as separate property. This is also consistent with Section 3.001(2) of the Texas Family Code, which expressly provides that separate property consists of property acquired by gift during marriage. It is widely accepted that spouses may gift or transfer separate property between themselves. For example (included in the appendix), if husband owned a parcel of real estate prior to marriage and signed a deed granting wife an undivided one-half interest in the property, both husband and wife would each own a one-half separate property interest in the real estate as tenants in common.

Gifting community property into separate property involves and requires, generally, a partition agreement as discussed above, with the formalities of Family Code §§ 4.104 and 4.105. However, partition agreements are not the only means by which community property may be transformed into separate property. For instance, in the *Matter of Marriage of Morrison*, a deed from a husband to a wife with no consideration created a presumption that the husband gifted the real estate to the wife such that the entire property became her separate property. 913 S.W.2d 689, 693 (Tex. App. 1995), writ denied (Apr. 12, 1996).

In any gift deed, and not just that between spouses, note the requirements of Section 5.021 of the Property Code. It must be signed, written, describe the property, and actually delivered. Case law as to deed, generally, further requires the document set forth (1) the intent of the grantor, (2) the delivery of the property to the grantee, and (3) the gift to be accepted by the grantee. On this third point, consider a field for the donee spouse to sign indicating his or her acceptance.

3. Changes in the Status of Property Rights of JOINT OWNERS:

3.1. By Partitions in-kind or by sale. Here is a common fact pattern: a group of siblings inherits a single piece of real estate. Perhaps by intestacy, or perhaps under a Will with such nonsense language as ‘share and share alike.’ And, sure enough, the siblings end up in disagreement. Perhaps a longstanding rivalry. Perhaps it’s over expenses such as taxes and maintenance. Or perhaps, one wants to sell the property, but another does not. Does this sound familiar?

Fortunately for the co-owner, Texas law does not force joint owners of real property to maintain joint ownership with other persons if he or she does not want to. Instead, joint owners of real property may compel a partition, and no reason is necessary. This longstanding public policy makes sense in the context of our state’s founding and settlement. Public policy protected expansion, settlement, agriculture, and commerce in what was almost entirely rural territory. This policy was thwarted when joint tenants were fighting over a farm. Hence, the state recognizes an absolute right of owners to get out of the circumstance creating the problem rather than preferring legal avenues for continuing joint ownership and gridlock. Ultimately, this accomplishes the state’s public policy interest of getting land back into productive use and ownership rather than litigation.

The absolute right of a partition is found in the Property Code, which states, rather succinctly in Section 23.001:

A joint owner or claimant of real property or an interest in real property or a joint owner of personal property may compel a partition of the interest or the property among the joint owners or claimants under this chapter and the Texas Rules of Civil Procedure.

Case law then tells us what this means. “Partitions may be in kind (meaning that the property is divided into separate parcels and each parcel is allotted to a separate owner) or by sale (meaning that property is sold, and sale proceeds are divided among the owners).” *Bowman v. Stephens*, 569 S.W.3d 210 (Tex.App.—Houston [1st District] 2018, no pet.). The right to a partition is absolute so long as the petitioning party is a joint owner of the land to be partitioned and has an equal right to possess it with the other joint owners, subject to leases.

The right is “absolute” in the sense that there is no effective defense to such an action that is properly brought by someone who qualifies. *Spires v. Hoover*, 466 S.W. 2d 344, 346 (Tex.App.—El Paso 1971, writ ref’d n.r.e.). Note, however, that the right to partition may be waived or contracted away by agreement of the parties. *Dimock v. Kadane*, 100 S.W.3d 622, 625

(Tex.App.—Eastland 2003, pet. denied). Note also that personal as well as real property is mentioned in Chapter 23 of the Property Code, meaning that the absolute right to partition extends to such things as furniture, fixtures, and equipment on real property.

The fight in a partition action is not about whether or not to do it. For instance, there is no statute of limitations to a partition. *Hipp v. Fall*, 213 S.W.2d 732,737 (Tex.App.—Galveston 1948, writ ref'd n.r.e.). It always boils down to **how** to do it, and that is where proper drafting is crucial once factfinders have finished their job.

As mentioned in the cited case, *Bowman*, it can be in-kind or by sale. Generally speaking, the law favors partition in-kind over a forced sale. “If the property can be divided in-kind without materially impairing its value, a sale will not be ordered, but when dividing the land into parcels causes its value to be substantially less than its value when whole, the rights of the owners are substantially prejudiced.” *Cecola v. Ruley*, 12 S.W.3d 848, 855 (Tex.App.—Texarkana 2000, no pet.). See also *Carter v. Harvey*, 525 S.W.3d 420 (Tex.App.—Fort Worth [2nd Dist.] 2017, no pet.) and *Bowman*, *Id.* Looking back, again, to the context of this policy, it makes sense to consider farms and ranches as more easily divisible (and valuable once agriculturally productive again), than a single-family residence in a subdivision.

For all types of partition, the following documents and pleadings are helpful, and provided as examples with this article:

3.1.1. Original Petition for Partition of Real Property.

Parties, Jurisdiction, Venue, (basic) facts, and Relief Requested are going to be relatively straightforward for the reasons discussed above, and this is illustrated in the example and form petition included in the appendix.

Facts as to the particular desired means of partition will vary, as with any real property, on what it is, where it is, and, most importantly, how your client wants to see it divided. In circumstances where no one has a preference, or when the petitioner is not an equitable interest holder (think a Trustee who needs to make a partial distribution of a trust asset), the appointment of commissioners to determine the proper method may be involved under either Rule 761 of the Texas Rules of Civil Procedure or Texas Estates Code §360.153.

Other Causes of Action. If the circumstances involve other issues than merely partition, the most common of which seems to be a suit over inequitable advancement of expenses, then those separate causes of action should certainly be included in the petition.

However, because the right of partition is absolute, an order for partition itself, apart from the other causes of action, may be obtained by summary judgment.

Exhibits would most helpfully include the often extensive metes and bounds description of rural real property, which of course, is the type of property most often partitioned in-kind. For property in a subdivision, the legal description can easily be included in the facts section of the pleading without creating a disruption to the reader. Other helpful, but not necessary exhibits are recommended to include a survey of the overall property, a survey or illustration of the manner in which partition in kind is desired, and for ease of reference, any vesting documents as to how the joint owners found themselves in joint ownership with one another, such as a will, trust instrument, or heirship illustration.

3.1.2. Order of Partition. Going back to the introductory comments, remember a future audience of this document will be not only the court and the litigants, but also successors-in-interest, title policy issuers, and bureaucrats.

Exhibits. It is recommended that exhibits such as surveys or graphic illustrations be generously included to reflect what the court's rulings on these cases. In cases with more causes of action than just the partition, it is recommended that a separate order be prepared, entered, and filed, as to only the partition in kind, with a separate final judgment entered on the other causes of action. One can reference the other, without forcing future title examiners, successors, or bureaucrats to sift through dozens or hundreds of pages of what will be, in their future contexts, irrelevant verbiage.

Removing Clouds on Title? Thinking particularly with a view towards title policy issuers, in the context of cases that settle or reach an agreement for partition, consider including in the order, a judgment quieting title as may be appropriate for the circumstances. A serious advantage to doing so at the same time as an order of partition is that you most likely have 'all parties whose interests could be affected by the declaration' present before the court anyway, as required by Section 37.006(a) of the Civil Practice and Remedies Code.

Recording. It is recommended to file a certified copy of the Order for Partition in the deed records of the county where the property sits. This is with a view in mind of successors in interest who may need the background. It also fits with the previous recommendation of keeping an order for partition separate from a final judgment on other causes of action.

3.1.3. Partition Deed. For partitions in-kind, why go further with a deed when we already have an order? Isn't this a bit redundant? Yes, it is, but it is recommended with a particular view to the audiences. Although the order (especially one quieting title) vests title, the world of the bureaucrats will have difficulty understanding that an order makes a valid conveyance and that properly recording a certified copy of such order in the deed records puts all parties on record notice. How will the county clerk's grantor/grantee index reflect the chain? It is recommended to make, perhaps even as an exhibits to the Order, a separate Partition Deed so that the future is clear for successors in interest, title policy issuers, and even bureaucrats.

Date. Is it the date of the order, or some sort of effective date based on the facts of the case?

Consideration. In litigated cases where partitions result from settlement, carefully consider any confidentiality obligations in a settlement agreement. We would not want to create a new cause of action for violating such a provision if we recite too many details about it as the basis for consideration. The failsafe by default is "at least \$10. . .", but there is some benefit to successors in interest in properly identifying the actual consideration paid. This is especially so if your grantee-client intends to sell the property partitioned during lifetime, at which time he will have to explain to the IRS his or her cost basis.

Grantor and Grantee. This is a tricky one and might depend on the nature of any warranty given. Most often it is simply the other joint owners or purported joint owners. In drafting the settlement agreement, be mindful of whether or not it serves a clients' interest to make an admission that the adverse party ever held any interest at all (in which case, you're preparing a quitclaim or quitclaim with warranty, which comes with its own unique issues).

Exceptions to Conveyance or Reservations. Again, here is one where any settlement agreement must be carefully evaluated against the drafting. Are there pending obligations of the other party? Are there special rights reserved, such as ROFRs, as part of a settlement? Does your boilerplate language properly cover existing oil and gas leases or other third parties? Very often, the partition in kind case involves a ranch with existing leases which commenced multiple grantors prior.

Warranty. This could be the subject of its own article just on partition deeds, but in general, the special warranty is almost certainly always the way to go. An exception to this preference by default would be if your client as a grantee has plans for future conveyances, in which case, advocating for a general warranty from your grantor is worthwhile. Consider also the previous recommendation regarding the order of partition

and the thought to include a judgment quieting title. If not representing a would-be grantee, and the order includes judgment quieting title, then a general warranty may not be as dangerous as it would be otherwise.

Acceptance by Grantees. From litigation, it only adds to the finality and desired conclusion of the matter to include express acknowledgment of acceptance of the property conveyed by a deed by its grantees. This is regardless of language in a “final” judgment, and regardless of your comfort in the finality of the settlement agreement. Those three other parties discuss early on might not and often will not be privy to those documents, and it gives them some assurance as to the certainty of the conveyance made when made.

3.1.4. Other Documents to Consider will vary widely based on the circumstances, but just a few ideas which might be considered when preparing and drafting partition case settlements:

- Notice to tenants or third parties in interest such as HOA’s
- Assignments of Interest in rents for property subject to leases
- Revised Memorandums of Oil, Gas, and Mineral Leases
- Tenant estoppel certificates
- Loan modification agreements (often the act of partition alone is defined in deeds of trust or real estate lien notes as an event of default)
- Loan subordination agreements (often settlements or judgments are affected by secured liens on the other shares following partition)

3.2. By Survivorship. Joint owners often hold their property as tenants in common with some form of a right of survivorship or pre-designated transferees by operation of law. Joint owners may also have different rights which change based on the nature of the interest, as with life estates, reversions, or contingent future interests.

3.2.1. Transfers on Death Deed (“TODD”). In 2015, Chapter 114 of the Texas Estates Code was enacted to statutorily create and authorize the TODD. Its main purpose is to allow a property owner, whose main asset is their home, to transfer their interest in the property to designated beneficiaries, outside of the probate. Some drafting issues surround the preparation of such instruments, suggesting that transfers with a retained life estate may be the more attractive alternative. These particular issues include:

- In 2019, the statutory version of the form was repealed because the poorly written form created more confusion and problems than intended.

- Estates Code 114.104 provides a “claw back” period of up to 2 years, allowing unpaid creditors to revoke the transfer on death back into the deceased owner’s probate estate, to pay the creditors.
- Title companies often refuse to write insurance policies for the property during the two year “claw back” period, or at best, it will appear on Schedule B to the policy. As a result, beneficiaries are unable to sell or refinance the property during these first two years after death.
- The TODD overrides any contrary provision in the owner’s Will, even if the Will is signed after the TODD. The only way to revoke a TODD is by either expressly revoking the TODD altogether or revoking the prior TODD by naming a new beneficiary. The revocation is not effective until the instrument is filed in the county clerk’s office where the property is located. See Estates Code 114.057.
- The beneficiary takes the property, subject to all conveyances, encumbrances, assignments, contracts, mortgages, and liens. In some instances, this can lead to a beneficiary not being able to pay off the lien obligations and forcing either a sale of the property, if possible, or a foreclosure.

To memorialize the transfer, it is useful for the public records to reflect the transferor’s death. One means is by recording the death certificate—but be mindful of sensitive information and social security numbers, which may and should be redacted. Another is by affidavit of fact, but a question lingers for subsequent case to clarify-- at what point is a creditor placed on constructive notice?

3.2.2. Right of Survivorship Agreement. Estates code 112 provides for survivorship agreements between spouses, and Section 112.052 provides the very simple language required. Often, this is done to avoid probate, but a title company may be hesitant to issue a policy without a personal representative joining the transaction. Section 112.101 provides a summary proceeding to adjudicate a survivorship agreement if it becomes an issue, which is an attractive option to the more cumbersome declaratory judgment action under Section 37 of the Civil Practice and Remedies Code (requiring notice to all persons whose interests would be affected, meaning, notice to all potential heirs at law).

It is recommended that the survivorship agreement be either recorded or contained in the context of a vesting deed to the spouses. Sections 112.203 through 205 detail the consequences of survivorship agreements to certain third parties with and without

constructive notice. The implication of which, is that the survivorship agreement and the surviving spouse is better served with the survivorship agreement recorded.

4. Changes in the Status of Property Rights of FIDUCIARIES.

The most common--and predictable--change in the status of property rights for a fiduciary typically comes in the form of a change of fiduciary. That is, how is a trustee named in a trust agreement, a successor executor appointed under a will, or an Asset Manager hired to administer property to communicate their position and authority to third parties, or secure the acknowledgment of third parties as to such fiduciary's rights and powers? Some options and best practices.

4.1. Trustees; *Certification of Trust*. Most trust agreements are private and never see the public eye. This is deliberate, and one aspect of the use of trusts that make them attractive asset protection arrangements under the right circumstances. But when dealing with a purported trustee, how do you know who is in charge? The best, if not most common, method is to prepare and record a Certification of Trust. Section 114.086 of the Texas Property Code details a particular form that may be used to evidence a trustee's authority, particularly with regard to real property.

A Certification of Trust under the statute lends itself well to real property. The statute delineates the information it may or must contain, and in the example form, the order of the statute is tracked. Many third parties who regularly do business in Texas recognize and understand Certifications, and do not require review or disclosure of the entire trust agreement. To their credit, a well-drafted certification includes specific notation of the language granting whatever powers or authority a trustee needs recognized, and the final section indicates that the trust assets are liable for a misrepresentation.

A Certification should be recorded in the real property records of (a) the county of the situs of administration, which is important for establishing venue in any future dispute with a trustee, and (b) the county where any real property held in trust is located. In the instance of corporate trustees, attached to the Certification it is recommended to include a corporate resolution or other instrument evidencing the authority of the individual to execute the Certification on behalf of the entity.

4.2. Executors, Administrators, and Personal Representatives. Title theoretically transfers from a decedent to a beneficiary, heir, or devisee immediately on death, and the will, heirship determination, or other administrative documentation is merely to memorialize the conveyance. However, third parties do not understand or accept this theory, and in practice, the conveyance must be proven.

4.2.1. Distribution Deeds and Affidavits of Fact. To put third parties on notice, personal representatives can “distribute” real property from an estate in a memorialization by distribution deed. Of course, the warranty can be special or general. Consideration should always reference the terms of the will or heirship determination. When representing a fiduciary, include language limiting the warranty to only the fiduciary capacity, as provided in the form and example with the appendix.

But what about estates without an administration? Other than affidavits of heirship, which are mostly statutory in substance, a more challenging experience comes in memorializing transfers by probating a will as a muniment of title. In a probate by muniment of title, there is no executor. Nor is there an administration. The purpose of the special probate procedure in Chapter 257 of the Texas Estates Code is simply to recognize the validity and authenticity of a Last Will to convey title, without requiring administration. The probate process is, initially, similar to a regular probate with an administration: an applicant submits the original will and application, provides proof of death, and obtains an Order Probating the Will as a Muniment of Title.

Probate courts are reluctant to accept or sign proposed orders that reference, in any way, particular property of a decedent. This is because it is not required in Estates Code 257, but as a practical matter, it could create a cloud on title if untrue and bring resolution of the matter back to a court with an already crowded docket. So how, then, do we get from Probate Court into the deed records to memorialize the transfer which theoretically effected immediately at death?

Affidavits of Fact are a common and user-friendly method to get a muniment transfer filed publicly, indexed to the property, and put third parties on record notice. A form is included in the materials, along with an example. It is recommended to do the Affidavit of Fact in addition to recording both (i) a certified copy of the Will, and (ii) a certified copy of the Order Admitting Will to Probate as a Muniment of Title. These too, will aid future title examiners in particular to find the conveyance in the index, find the terms of the Will, and find the Order establishing the Will as authentic. Even states that do not have Muniment of Title procedures in their law seem to recognize the Affidavit of Fact coupled with an Order and Will.

4.2.2. Successor Personal Representatives. When an executor, administrator, or guardian resigns or is replaced, often third parties do not know or will only recognize arrangements with the predecessor fiduciary. In these instances, drafting the Order appointing the successor should reference language of reliance for third parties and particularly financial institutions. In the example included with the appendix, the author

personally served and had no trouble securing the cooperation of banks and other financial institutions in recognizing the change and releasing the assets.

4.3. Asset Managers and Affidavits of Management. It is common practice for professional or corporate asset managers to be engaged to serve a property owner in such things as the management of oil and gas interests, for example, or the management of real property. In such instances, there are reasons to seek to put the public on notice of this arrangement. In the context of oil and gas, the manager will want their contact information readily available to potential oil companies who would seek to lease unleased mineral interests. In the case of property managers, many forms exist as promulgated by the Texas Association of Realtors or the Texas Real Estate Commission, but in some instances these forms are inadequate.

The deed record, by itself, typically only notifies us of a property's ownership. So how, then, does the potential third party contact the right party for, presumably, legitimate and desired business? Recording a management agreement or management contract itself would do an underlying client the disservice of revealing otherwise confidential information, such as fee schedules. Instead, it is common practice for asset managers to prepare and file an notice in the real property records in the form of an affidavit of agency. These are simple, and there is no promulgated form. The reason the form of a sworn affidavit is preferred is to give the third party a slightly higher degree of confidence in the apparent authority of the asset manager. Included in the appendix is a typical form of such a thing customary for oil and gas management agents.

5. Changes in the Status of Property Rights regarding ENTITIES

For many of our real estate clients, title to the asset is held in a closely-held entity. In these contexts, rights to property can change as a result of provision in the governing documents, or by a change in management. The subject of closely-held entity drafting could be a presentation unto itself, but here are some common drafting considerations for common changes regarding closely held entities.

How does the public ascertain who the proper party is to manage a closely-held entity? Who votes shares of stock when a stockholder dies or becomes incapacitated? What happens when a partner in a partnership divorces or files bankruptcy? Under what circumstances can the status of property rights in a closely-held entity change by the bad act of an equity holder?

5.1. Management Changes. Ordinarily, bureaucrats refer to the Texas Secretary of State's records and the individuals listed under the "management" tab in SOS Direct. How does this get updated in response to a resignation, removal, or voluntary change outside of the annual

meeting? Two methods. One, the annual Public Information Report (Franchise Tax Return) typically prepared by an accountant and filed with the controller *eventually* makes it way to the Secretary of State. The operative word here is eventually, and it can take months.

When the change needs to be updated promptly, an effective means of accomplishing record notice of the change is in the preparation and filing of a Certificate of Amendment. Promulgated Forms are available on the Secretary of State's website, or here: https://www.sos.state.tx.us/corp/forms_boc.shtml Forms 401 through 428 evidence management change of one form or another, and Form 424 is the most common one as it amends the Certificate of Formation for a domestic entity, on which the disclosure of governing persons is made.

When submitted with an extra fee for "expedited processing" by fax, the change can be reflected in the public record as quickly as one or two days. This tends to be a much better alternative to presenting minutes or corporate resolutions to third parties, as such third parties.

5.2. Changing Rights through Governing Documents. With regard to closely-held entities, the governing documents is a powerful but underutilized means of changing the status of rights to property, or preventing such change. By "governing documents" in this context, is intended to include and refer to corporate shareholder agreements, bylaws, LLC operating agreements, LP agreements, or any other arrangement between and among the equity holders of a closely held business entity.

The particular property to which rights may be changed by these governing documents is specifically the owner, member, shareholder, or partner's respective equity interest, LLC membership, shares of stock, or limited partnership percentage. Issues to be addressed when Governing documents can detail what happens on an owner's

5.2.1. Rights of Survivorship. Transfers on death may be accomplished for real property by deed, as discussed above. Transfers on death for assets held at a financial institution may be accomplished by the standard form that accompanies the signature card on an account. In some instances, this is tragic as the inadvertent check of a box on a form can undermine the most well-created estate planning.

One example of a rights of survivorship in a closely-held entities by a husband and wife is as follows:

Membership interests in this Company are held by the Members as joint tenants with all other Members with rights of survivorship among the other Members. Upon the death of any Member, the remaining Members shall succeed to that deceased Member's shares pro rata in proportion to the percentages of

the shares held by and among the remaining members. If a Member should die, and no other members survive him or her within 30 days, then such deceased Member's shares shall pass through his or her estate.

A different example comes from a partnership among siblings who wish to keep a portfolio of income-producing properties in consolidated ownership and management for the remainder of their lifetimes. The properties were acquired from their parents, and a separate closely-held entity was formed to hold assets between and among the grandchildren cousins. The provision regarding survivorship reads as follows:

Duration. The partnership begins on the date of the Agreement and it shall exist until the date of the last to die of the three limited partners, [Brother], [Sister1], and [Sister2]. Upon termination, all remaining partnership assets and liabilities shall be distributed to and contributed to the [Grandchildren's entity], or its successor(s) in interest, to be held and administered subject to the terms of its governing agreements.

5.2.2. Reversion or Future Interests. The example immediately preceding addresses another subject—revision or future rights to assets held in entities at the end of their term. Governing documents often specify the term or duration of the entity. In most circumstances, it is “perpetual”. However, in some, it is for a limited duration such as the lifetime of its equity holder. The governing documents themselves, if there be a limited duration or termination on a triggering event, specify the parties to whom the remaining entity assets get distributed on the entity's termination, and how. Particularly for real estate holding entities—is it desirable for individuals as the former equity holders to receive outright, undivided interests in real property on an entity's termination? Consider provisions for determining how assets get divided and who has discretion at or prior to the term to make the appointment. Management's authority would necessarily, end on the expiration of the term of an entity, which is why these sorts of provisions are usually thought through and addressed in entities with limited term. One message here is, do not presume an indefinite term for entities you did not participate in forming.

5.2.3. Forfeiture Clauses in Entity Documents. In the estate planning and probate context, the so-called “no contest” or “in terrorem” clauses, also known as forfeiture clauses, are rarely enforced and are addressed by statute. *See* Estates Code §254.005 and Property Code §112.038. In general, a beneficiary can lose their benefits under a will or under a trust if they contest the actions of the executor or trustee, unless they bring the action in good faith and with “just cause.” There are few cases finding a lack of good faith or just cause, and as such, these provisions in practical application are rarely enforced in the estate

planning context. In the estate plan context, forfeiture clauses are almost always narrowly and strictly construed and are usually construed against forfeiture, if at all possible. *Estate of Newbill*, 781 S.W.2d 727, 728 (Tex.App.-Amarillo 1989, no writ). Certainly, however, they still appear in documents as a deterrent to would-be troublemakers.

The case law, common law prior to codification, and policy analysis of the ‘good faith’ exception to estate planning forfeiture clauses is that the beneficiary of an estate was not a party who bargained for the will or trust. Instead, it was gratuitous, and the justification for exceptions to enforcement range from actions for mere construction of the documents to a desire to a policy interest in promoting proper administration of an estate or trust. *See* Restatement (Second) of Property, §9.1 (1981).

The entity context is a bit different. Between and among stakeholders in a closely-held entity, the governing document was bargained for. Similarly, there are (theoretically) other rights and remedies available to a non-management or minority equity holder that are not available to estate or trust beneficiaries. They can vote to remove, vote on matters reserved to owners, and exercise remedies under the Business Organizations Code such as the right to demand to inspect books and records.

For this reason, pro-management considerations in preparing entity documents are moving towards and more frequently including forfeiture provisions for the trouble-making minority stockholder. Refer to the example and sample language of such a provision included in the appendix.

No published or unpublished case quite on point has challenged these, but it is a drafting consideration when preparing real estate holding companies, and a drafting consideration when considering the future rights of minority or non-management equity holders.

***AGREEMENT IN PARTITION OR EXCHANGE
(POST MARITAL PROPERTY AGREEMENT)***

***[HUSBAND]
and
[WIFE]***

Initials

EACH PARTY TO THIS AGREEMENT UNDERSTANDS THAT BY SIGNING THIS DOCUMENT, HE OR SHE MAY PERMANENTLY SURRENDER CLAIMS HE OR SHE WOULD OTHERWISE HAVE UNDER TEXAS LAW.

EACH PARTY TO THIS AGREEMENT HAS CAREFULLY AND THOUGHTFULLY CONSIDERED THE CONTENTS OF THIS AGREEMENT AND HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY AND ONLY AFTER CONSULTING INDEPENDENT COUNSEL OR WAIVING CONSULTATION WITH INDEPENDENT COUNSEL.

AS INDUCEMENT TO THE OTHER PARTY TO ENTER INTO THIS AGREEMENT, EACH PARTY REPRESENTS TO THE OTHER THAT THIS AGREEMENT IS FAIR, REASONABLE, AND THE VOLUNTARY ACT OF THE FREE WILL AND INDEPENDENT JUDGMENT OF EACH OF THE PARTIES.

THE PORTION OF THIS DOCUMENT ENTITLED: "WAIVER OF DISCLOSURE OF FINANCIAL INFORMATION" WAS EXECUTED PRIOR TO THE EXECUTION OF THIS AGREEMENT BY THE PARTIES.

Parties

The parties to this Partition or Exchange Agreement are [HUSBAND], of McLennan County, Texas, and [WIFE], of McLennan County, Texas.

Stipulations

1. The parties are entering into this agreement in accordance with article XVI, section 15, of the Texas Constitution, as amended, and relevant sections of the Texas Family Code, as amended. Section 3.001 of the Texas Family Code defines a spouse's separate property as the property owned or claimed by the spouse before marriage; the property acquired by the spouse during marriage by gift, devise, or descent; and the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage. Section 3.002 of the Texas Family Code defines community property as the property, other than separate property, acquired by either spouse during the marriage. Texas law provides that income from separate property during the marriage is community property. A partition and exchange agreement makes what would otherwise be community property instead be separate property. The parties understand that this agreement is enforceable without consideration.

2. The parties acknowledge and agree that they are making and entering into this agreement voluntarily and without the intention to defraud or prejudice preexisting creditors.

Initials

3. The parties own as community property certain real and personal property as described in Schedules A and B, which are attached to this agreement. The parties intend by this agreement to partition or exchange those properties between themselves.

4. Each party desires to partition or exchange that community property in order for each party, following the execution of this agreement, to hold and possess his or her share of the property as his or her sole and separate property.

5. The parties intend to clarify their respective property rights to eliminate any uncertainty about those rights.

6. The parties intend by this agreement that no community property will be created during the remainder of their marriage.

In consideration of the mutual promises, agreements, partitions, exchanges, releases, and waivers contained in this agreement and in consideration of the parties' desire to establish certain rights and obligations by this agreement, and with the intent to be fully bound by the terms of this agreement, the parties covenant, agree, and contract as follows:

Article 1

Statement of Facts

1.1 Property of Parties

The parties own as community and separate property all the property described in Schedules A and B attached to this agreement.

1.2 Disclosure

Each party represents and warrants to the other party that he or she has, to the best of his or her ability, made to the other party a fair and reasonable disclosure of the nature and extent of the community and separate property of the parties, including values, and financial obligations, contingent or otherwise, and that the disclosure includes but is not limited to the property and liabilities set forth in Schedules A, B, C, and D attached to this agreement and other documentation exchanged between the parties before their signing of this agreement. Each party additionally acknowledges that, before the signing of this agreement, he or she has been provided a fair and reasonable disclosure of the community and separate property and financial obligations of the parties. Furthermore, and before the execution of this agreement, each party has previously offered to provide, or has provided, to the other party all information and documentation pertaining to all community property, including income and value, and all financial obligations that have been requested by the other party. Each party acknowledges that he or she has, or reasonably could have had, full and complete knowledge of the community estate of the parties and of all financial obligations of the community estate of the parties.

Initials

Article 2

Partition of Property

2.1 Property Partitioned to [HUSBAND]

The parties agree that [HUSBAND] will own, possess, and enjoy as his sole and separate estate, free from any claim of [WIFE], the property listed in Schedule A attached to this agreement. [WIFE] partitions and exchanges to [HUSBAND] all her community-property interest in and to all the property listed in Schedule A, together with any insurance policies covering the property and any escrow accounts that relate to it. [WIFE] grants, releases, and confirms to [HUSBAND] and to his heirs and assigns all right, title, and interest in and claims to the property listed in Schedule A, to have and to hold the same, with all and singular the hereditaments and appurtenances thereto belonging forever.

2.2 Property Partitioned to [WIFE]

The parties agree that [WIFE] will own, possess, and enjoy as her sole and separate estate, free from any claim of [HUSBAND], all the property listed in Schedule B attached to this agreement. [HUSBAND] partitions and exchanges to [WIFE] all his community-property interest in and to all the property listed in Schedule B, together with all insurance policies covering the property and all escrow accounts that relate to it. [HUSBAND] grants, releases, and confirms to [WIFE] and to her heirs and assigns all right, title, and interest in and claims to the property listed in Schedule B, to have and to hold the same, with all and singular the hereditaments and appurtenances thereto belonging forever.

2.3 Asset Descriptions

The parties have tried to use the correct legal description for each asset listed in any schedule attached to this agreement. If any asset is incorrectly described, the description used is adequate for the purposes of this agreement and accompanying schedules, and the parties agree to execute any additional paperwork required to confirm ownership in the name of the party in whose schedule the asset appears.

2.4 No Community Estate Will Arise

The parties agree that, following the partition or exchange of property as set forth in this agreement, no community estate will arise or be created during the remainder of their marriage. Therefore, the parties agree that all earnings for personal services and services rendered, income, employee benefits, partnership benefits, corporate benefits, including bonuses, director's compensation, commissions, and wages or salary of each party, as well as all other income received by a party, including interest and dividend income, profits, distributions, revenues, royalties, stock, stock options, warrants, and other compensation and benefits of any type and any income and property derived from the reinvestment of such earnings and income, will be the separate property of the respective party.

Initials

Article 3

Separate Property of the Parties

3.1 Separate Property of [HUSBAND]

[WIFE] covenants and agrees that, following the parties' execution of this agreement, the following will constitute the separate property of [HUSBAND]:

1. all properties listed in Schedule A attached to this agreement;
2. all mutations, changes, and increases in kind or in value of [HUSBAND]'s separate property;
3. all increases in kind or in value of [HUSBAND]'s separate property resulting from the time, talent, labor, or personal efforts of either or both parties;
4. all income and revenues from [HUSBAND]'s separate property, all income and property acquired as a result of [HUSBAND]'s separate property, and all income and property resulting from the reinvestment of that income, including interest and dividend income;
5. all of [HUSBAND]'s interest in or claim to any future profits of any partnership, joint venture, or corporation owned by [HUSBAND] at the time of the parties' execution of this agreement or acquired by [HUSBAND] thereafter, whether the profits are distributed or undistributed;
6. all profits, commissions, distributions, revenues, royalties, wages, salary, earnings, income, employee benefits, partnership benefits, corporate benefits, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received by [HUSBAND] after the date of the parties' execution of this agreement, and all income and property derived from the reinvestment of [HUSBAND]'s profits, commissions, distributions, revenues, royalties, wages, salary, earnings, income, employee benefits, partnership benefits, corporate benefits, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received by [HUSBAND] during the remainder of the marriage, together with all interest and dividend income received by [HUSBAND] during the remainder of the marriage;
7. all future contributions to all individual retirement accounts, all retirement plans, and all other employee benefit plans made by or on behalf of [HUSBAND] after the date of the parties' execution of this agreement, together with all increases in value of all such plans;
8. all interests in any trust in which [HUSBAND] has an interest, including but not limited to all corpus of the trusts, as well as all distributed and undistributed income from the trusts;

Initials

9. all recovery for personal injuries or property losses sustained by [HUSBAND] during the marriage, including any recovery for loss of earning capacity during the marriage; and

10. all property and property rights acquired by [HUSBAND] by gift, devise, or descent.

3.2 Separate Property of [WIFE]

[HUSBAND] covenants and agrees that, following the parties' execution of this agreement, the following will constitute the separate property of [WIFE]:

1. all property listed in Schedule B attached to this agreement;
2. all mutations, changes, and increases in kind or in value of [WIFE]'s separate property;
3. all increases in kind or in value of [WIFE]'s separate property resulting from the time, talent, labor, or personal efforts of either or both parties;
4. all income and revenues from [WIFE]'s separate property, all income and property acquired as a result of [WIFE]'s separate property, and all income and property resulting from the reinvestment of that income, including interest and dividend income;
5. all of [WIFE]'s interest in or claim to any future profits of any partnership, joint venture, or corporation owned by [WIFE] at the time of the parties' execution of this agreement or acquired by [WIFE] thereafter, whether the profits are distributed or undistributed;
6. all profits, commissions, distributions, revenues, royalties, wages, salary, earnings, income, employee benefits, partnership benefits, corporate benefits, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received by [WIFE] after the date of the parties' execution of this agreement, and all income and property derived from the reinvestment of [WIFE]'s profits, commissions, distributions, revenues, royalties, wages, salary, earnings, income, employee benefits, partnership benefits, corporate benefits, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received by [WIFE] during the remainder of the marriage, together with all interest and dividend income received by [WIFE] during the remainder of the marriage;
7. all future contributions to all individual retirement accounts, all retirement plans, and all other employee benefit plans made by or on behalf of [WIFE] after the date of the parties' execution of this agreement, together with all increases in value of all such plans;
8. all interests in any trust in which [WIFE] has an interest, including but not limited to all corpus of the trusts, as well as all distributed and undistributed income from the trusts;
9. all recovery for personal injuries or property losses sustained by [WIFE] during the

Initials

marriage, including any recovery for loss of earning capacity during the marriage; and

10. all property and property rights acquired by [WIFE] by gift, devise, or descent.

3.3 No Commingling Intended

Neither party intends to commingle his or her respective separate property with the separate property of the other party, except when intentionally done in a joint financial account, and neither party may claim an interest in any separate property of the other party as a result of such commingling, except as provided in this agreement.

3.4 Certain Events Not Evidence of Community Property

The following events may not, under any circumstances, be considered evidence of any intention to create community property:

1. the filing of joint tax returns;
2. the taking of title to property, whether real or personal, in joint tenancy or in any other joint or common form;
3. the designation of one party by the other party as a beneficiary of his or her estate or as trustee or any other form of fiduciary;
4. the combining or mixing by one party of that party's separate funds or property with the separate funds or property of the other party, including the pledging of joint or separate credit for the benefit of the other party's separate estate;
5. any oral statement by either party;
6. any written statement by either party, other than a written agreement signed by both parties to convert separate property to community property pursuant to the Texas Family Code;
7. the payment from the funds of either party for any obligations, including but not limited to the payment of mortgages, interest, or real property taxes, repairs, or improvements on a separately or jointly held residence; and
8. the joint occupation of a separately owned residence, even though designated as a homestead.

The provisions of this section 3.4 are not comprehensive.

3.5 No Legal Action against Separate Property of [HUSBAND]

In recognition of the fact that all property described on Schedule A of this agreement is

Initials

stipulated and agreed to be the separate property of [HUSBAND], [WIFE] expressly disclaims any right to take any legal action against any of the entities listed on Schedule A in connection with any divorce proceeding or other legal action regarding this agreement. Specifically, [WIFE] agrees that she is not entitled to, and shall not seek, any temporary restraining order, injunctive relief, receivership, or other legal relief that would in any way restrict, inhibit, or affect the ability of any of the entities listed on Schedule A of this agreement from operating their business affairs as each entity deems appropriate, including each such entity's right to sell, purchase, or alienate property, to transfer or pledge property, to incur or pay debt, to exercise stock options or warrants, to issue stock, to raise capital, to liquidate any assets, to enter into or change any contractual relationships, to make expenditures or incur any indebtedness, or to merge or in any way alter its business organization or form.

3.6 No Legal Action against Separate Property of [WIFE]

In recognition of the fact that all property described on Schedule B of this agreement is stipulated and agreed to be the separate property of [WIFE], [HUSBAND] expressly disclaims any right to take any legal action against any of the entities listed on Schedule B in connection with any divorce proceeding or other legal action regarding this agreement. Specifically, [HUSBAND] agrees that he is not entitled to, and shall not seek, any temporary restraining order, injunctive relief, receivership, or other legal relief that would in any way restrict, inhibit, or affect the ability of any of the entities listed on Schedule B of this agreement from operating their business affairs as each entity deems appropriate, including each such entity's right to sell, purchase, or alienate property, to transfer or pledge property, to incur or pay debt, to exercise stock options or warrants, to issue stock, to raise capital, to liquidate any assets, to enter into or change any contractual relationships, to make expenditures or incur any indebtedness, or to merge or in any way alter its business organization or form.

3.7 Other Temporary Orders during Dissolution

If either party files a dissolution proceeding, the parties agree that during the pendency of the action neither party will request or seek to enforce any restraining order or injunction that could have the effect of inhibiting or prohibiting a party from making decisions concerning or disposing of his or her separate property. Further, neither party will have the right to the temporary use or possession of any separate property owned solely by the other party, either real or personal. Nothing in this section 3.7 affects the ability of either party to request or seek to enforce any order for the benefit of a child of both parties.

Article 4

Income or Property Derived from Separate Property

Initials

4.1 Income from [HUSBAND]'s Separate Property

Except as noted below, and as provided in Article 8, [WIFE] agrees that all income, changes, mutations, and increases in kind or in value of [HUSBAND]'s separate property following the execution of this agreement and all property that he may hereafter acquire, including all property acquired as a result of the reinvestment of income from his separate property, will be the separate property of [HUSBAND]. Income from separate property includes but is not limited to interest, rents, royalties, stocks, splits, and dividends. Except as noted below, [WIFE] forever releases, relinquishes, and renounces any interest in such income, changes, mutations, and increases in kind or in value derived from [HUSBAND]'s separate property, including all property acquired as a result of the reinvestment of income from his separate property, in consideration of [HUSBAND]'s reciprocal agreement and release, relinquishment, and renunciation. All future earnings and income arising from [HUSBAND]'s separate property will be the separate property of [HUSBAND] unless the parties agree in writing to the contrary.

4.2 Income from [WIFE]'s Separate Property

Except as noted below, [HUSBAND] agrees that all income, changes, mutations, and increases in kind or in value of [WIFE]'s separate property following the execution of this agreement and all property that she may hereafter acquire, including all property acquired as a result of the reinvestment of income from her separate property, will be the separate property of [WIFE]. Income from separate property includes but is not limited to interest, rents, royalties, stocks, splits, and dividends. Except as noted below, [HUSBAND] forever releases, relinquishes, and renounces any interest in such income, changes, mutations, and increases in kind or in value derived from [WIFE]'s separate property, including all property acquired as a result of the reinvestment of income from her separate property, in consideration of [WIFE]'s reciprocal agreement and release, relinquishment, and renunciation. All future earnings and income arising from [WIFE]'s separate property will be the separate property of [WIFE] unless the parties agree in writing to the contrary.

4.3 Waiver of Claims

Except as otherwise provided in this agreement, each party agrees that the property being partitioned or exchanged between the parties as their respective separate property will be free from all claims that the other party may have before the date of this agreement, as well as all claims that may arise following the execution of this agreement. Any money used for the benefit of the other party will be presumed to be a gift to the other party, as contrasted with a payment for which reimbursement or repayment is later expected, unless the parties agree otherwise in writing. This waiver applies during the lifetime of both parties, as well as on the death of either or both parties. This waiver extends to any rights, whether choate or inchoate, that may arise under the laws of Texas or any other jurisdiction. Each party further agrees that, by signing this agreement and accepting any benefit whatsoever under it, he or she is estopped from making any claim of any kind at any time to any separate property or the separate estate of the other party, except as may expressly be provided for in this agreement.

Initials

Article 5

Liabilities

5.1 Liabilities of [HUSBAND]

The liabilities and obligations described in Schedule C, which is attached to this agreement and made a part of it for all purposes, and all other liabilities and obligations of [HUSBAND] as of the date of the parties' execution of this agreement that are not included in Schedule C are partitioned to [HUSBAND] as the sole and separate property liabilities and obligations of [HUSBAND] and must be satisfied and paid solely from his separate estate. [HUSBAND] agrees to forever hold harmless, indemnify, and defend [WIFE] and her property from any claim arising from these liabilities and obligations.

Any taxes, interest, or penalties that [HUSBAND] may owe to any taxing authority, foreign or domestic, for years or taxable periods before the date of the parties' execution of this agreement are the sole and separate property liabilities and obligations of [HUSBAND], to be satisfied and paid solely from his separate estate and from which he agrees to forever hold harmless, indemnify, and defend [WIFE] and her property from any claim.

5.2 Liabilities of [WIFE]

The liabilities and obligations described in Schedule D, which is attached to this agreement and made a part of it for all purposes, and all other liabilities and obligations of [WIFE] as of the date of the parties' execution of this agreement that are not included in Schedule D are partitioned to [WIFE] as the sole and separate property liabilities and obligations of [WIFE] and must be satisfied and paid solely from her separate estate. [WIFE] agrees to forever hold harmless, indemnify, and defend [HUSBAND] and his property from any claim arising from these liabilities and obligations.

Any taxes, interest, or penalties that [WIFE] may owe to any taxing authority, foreign or domestic, for years or taxable periods before the date of the parties' execution of this agreement are the sole and separate property liabilities and obligations of [WIFE], to be satisfied and paid solely from her separate estate and from which she agrees to forever hold harmless, indemnify, and defend [HUSBAND] and his property from any claim.

5.3 Future Business Transactions of [HUSBAND]

To protect [WIFE]'s separate property from liability associated with any future business transactions conducted by [HUSBAND], excluding transactions conducted by [HUSBAND] on behalf of his employer, [HUSBAND] agrees to take all reasonable steps and perform all reasonable actions to ensure that all future business transactions in which [HUSBAND] is involved during the parties' marriage are handled either through a separate-property entity of [HUSBAND] that exists now or through a new entity capitalized with [HUSBAND]'s separate property in the future. [HUSBAND] further agrees to take all steps and perform all actions

Initials

necessary to prevent [WIFE]'s separate property from being an obligor, a guarantor, or in any way liable for any future business transactions in which [HUSBAND] participates.

5.4 Future Business Transactions of [WIFE]

To protect [HUSBAND]'s separate property from liability associated with any future business transactions conducted by [WIFE], excluding transactions conducted by [WIFE] on behalf of her employer, [WIFE] agrees to take all reasonable steps and perform all reasonable actions to ensure that all future business transactions in which [WIFE] is involved during the parties' marriage are handled either through a separate-property entity of [WIFE] that exists now or through a new entity capitalized with [WIFE]'s separate property in the future. [WIFE] further agrees to take all steps and perform all actions necessary to prevent [HUSBAND]'s separate property from being an obligor, a guarantor, or in any way liable for any future business transactions in which [WIFE] participates.

5.5 Pending or Future Litigation

[HUSBAND] agrees to indemnify and hold [WIFE] and her property harmless from all costs and liabilities arising from all pending and future litigation caused or alleged to have been caused solely by [HUSBAND]'s acts or omissions.

[WIFE] agrees to indemnify and hold [HUSBAND] and his property harmless from all costs and liabilities arising from all pending and future litigation caused or alleged to have been caused solely by [WIFE]'s acts or omissions.

Article 6 Management of Properties

6.1 Management of Properties

Each party has the full, free, and unrestricted right to manage the separate property over which he or she has control under section 3.101 of the Texas Family Code or succeeding provisions of similar import and nature, including without limitation the right to convey or encumber the property; to dispose of it by sale, gift, or otherwise; and to deal with it without taking into consideration any rights or interests of the other party. If the joinder of [HUSBAND] or [WIFE] ("joining party") should be required by law in connection with the execution of any document by the other party with respect to the separate property of the other party, on request and from time to time, the joining party must execute all such documents necessary to effect the desires of the other party, including gift tax returns, but without any personal liability of the joining party. Neither party has the authority to encumber or dispose of the other party's separate property without the other party's express written consent. Notwithstanding any of the provisions set forth in this section 6.1, the parties agree that any gift, other than any gifts agreed to by the parties pursuant to this agreement, in excess of the annual gift tax exclusion that would be applied to either party's unified lifetime credit must be consented to in writing by the parties before the making of the gift.

Initials

Article 7
Future Credit Transactions

7.1 Future Credit Transactions of Parties

If either party enters into a transaction wherein either party becomes obligated on any debt, and unless a contrary intent is specifically and expressly stated, the obligation must be satisfied by the party incurring the obligation or liability wholly from that party's separate property, and that party must hold the other party and the other party's property harmless from the obligation and indemnify the other party if the other party is ever required to satisfy the obligation. The assets, if any, acquired through any such credit transactions will be and remain the separate property of a party to the extent the party obligates his or her separate property for the credit extended in acquiring the assets or resulting in the acquisition of the assets. Similarly, any business failure of the parties or any bankruptcy, reorganization, composition, arrangement, or other debtor/creditor action of or against a party will in no way affect the other party, and neither party is relying or will rely on the other party for any credit, accommodation, or indulgence in these regards.

Article 8
Partition of Certain Expenses

8.1 Partition of Certain Direct Expenses from [HUSBAND] to [WIFE] or for the Benefit of [WIFE] or [CHILD]

Notwithstanding any other provision in this agreement, the parties agree that, whether or not the parties remain married, income or property derived from [HUSBAND]'s separate property shall be responsible for the following expenses:

- a. Health and Dental insurance premiums for [CHILD] and [WIFE] at least until [CHILD] attains age 25;
- b. All Health Care expenses ("Health-care expenses" include, without limitation, medical, surgical, prescription drug, mental health-care services, dental, eye care, ophthalmological, and orthodontic charges but do not include expenses for travel to and from the provider or for nonprescription medication) for [CHILD], other than co-pays for medical visits and prescriptions at least until [CHILD] attains age 25;
- c. All of [CHILD]'s tuition expenses and associated fees, including any K-12 education as well as post-secondary (or post-graduate) education (including room, board, fees and travel to and from school), other than expenses for books or basic school supplies. This shall not include any of [WIFE]'s gas or transportation expenses for transporting [CHILD] to elementary school, middle school, or high school;
- d. All expenses related to [CHILD]'s extracurricular activities, including, but not limited to, sports, camps, or clubs, etc. and equipment and uniforms for those activities.

8.2 Partition of Property from [HUSBAND] to [WIFE]

Initials

Notwithstanding any other provision in this agreement, the parties agree that, [HUSBAND] shall partition the following property to [WIFE], as her separate property:

- a. Monthly payments of Twenty Thousand and No/100 Dollars (\$20,000.00) in cash to be partitioned to [WIFE] with the first installment payable on the date of the execution of this agreement and the following partition made on the first date of the first month following the execution of this agreement. Partitions under this section 8.2(a) shall occur every month during the marriage of [WIFE] and [HUSBAND] and shall terminate upon a final divorce decree of the marriage of [WIFE] and [HUSBAND].
- b. Three Million and No/100 Dollars (\$3,000,000.00) in cash to be payable to [WIFE] in monthly installments with the first installment payable on the first day of the month following a final divorce decree and the following payments payable on the first day of each month thereafter until the total payment of \$3,000,000.00 is made to [WIFE].
 - i. Each installment shall be a minimum of Twenty Thousand and No/100 Dollars (\$20,000.00). However, [HUSBAND] may make an installment which exceeds such amount, if he so chooses.
- c. In the event that the marriage between [WIFE] and [HUSBAND] is dissolved due to the death of [HUSBAND], then the estate of [HUSBAND] shall be responsible for the aforementioned payments under paragraph 8.2(b) of Three Million and No/100 Dollars (\$3,000,000) in cash to [WIFE] in monthly installments with the first installment payable on the first day of the month following the appointment of a personal representative of the estate of [HUSBAND] and the following payments payable on the first day of each month thereafter until the total payment of \$3,000,000 is made to [WIFE].
 - i. Each installment shall be a minimum of Twenty Thousand and No/100 Dollars (\$20,000.00). However, the personal representative of [HUSBAND] may make an installment which exceeds such amount, if he or she so chooses.

8.3 Taxes from Partition under Article 8

Notwithstanding any other provision of this agreement, any tax liability regarding any property partitioned pursuant to Article 8 shall be the responsibility of [HUSBAND] and all property partition pursuant to Article 8 shall pass free and clear to [WIFE] of any outstanding tax liability.

8.4 Non-Modification of Other Portions of this Agreement

The parties agree that the partitions set forth in this Article are only to remain in effect for the time periods set forth above and subject to the conditions as set forth above. The partitions in this Article shall not be construed to permit any other payments of any kind from [HUSBAND] to [WIFE] or her estate and shall not be construed to waive or modify any other

Initials

section in this Agreement, including, but not limited to the waiver of temporary spousal support, spousal maintenance, and alimony as set forth in section “11.5 Waiver of Temporary Spousal Support, Spousal Maintenance, and Alimony”.

Article 9

Joint Acquisition of Assets

9.1 Joint Acquisition of Assets

The parties have the option, but not the obligation, to acquire assets together in their joint names. If the parties jointly acquire assets following the execution of this agreement, such property shall be deemed to be owned as an undivided 50 percent of the separate property of [HUSBAND] and an undivided 50 percent as the separate property of [WIFE]. This ownership shall occur regardless of each party's contribution to such asset and regardless of any capital contributions to such asset. Additionally, any asset held jointly by both parties shall pass to the survivor of the two parties upon the death of the first party, regardless of anything to the contrary. The parties shall take reasonable efforts to ensure that such assets are properly designated to pass to the surviving party. In the event a designation or action fails or does not exist, the personal representative of the deceased party shall effectuate the transfer of the deceased party's share in the jointly-held property to the surviving party, regardless of any previously-executed beneficiary designation, will, or testamentary disposition.

Article 10

Taxes

10.1 Tax Liability

The parties agree to execute separate income tax returns following the execution of this agreement unless they agree that it is to their mutual advantage to file a joint tax return for any year.

For all tax years following the execution of this agreement, [HUSBAND] must report all of his separate-property income. In calculating [HUSBAND]'s separate-property tax liability, he is entitled to use all withholding, estimated tax payments, exemptions, deductions, charitable contributions, and tax credits (sometimes collectively called "adjustments") that are solely attributable to his separate-property estate and income. [HUSBAND] is entitled to use all current and prior year carryforwards (as well as all carryforwards arising in the future), including but not limited to net operating losses, passive losses, suspended losses, long-term capital losses, and short-term capital losses (sometimes collectively called "carryforwards") that are strictly associated with his separate-property estate and income. The income tax liability arising from [HUSBAND]'s separate property is the sole liability of [HUSBAND], who agrees to fully discharge that tax liability, including penalties and interest, if any, out of his separate-property estate. [HUSBAND] further agrees to indemnify and hold [WIFE] and her separate property harmless from (and [HUSBAND] releases [WIFE] and her separate property from) all such tax

Initials

liability, including penalties and interest, if any, together with all tax liens of every kind and character that might hereafter arise from the filing of his separate return or the failure to file necessary or proper returns or to pay the required taxes with respect to the separate-property taxable income of [HUSBAND].

For all tax years following the parties' execution of this agreement, [WIFE] must report all of her separate-property income. In calculating [WIFE]'s separate-property tax liability, she is entitled to use all withholding, estimated tax payments, exemptions, deductions, charitable contributions, and tax credits (sometimes collectively called "adjustments") that are solely attributable to her separate-property estate and income. [WIFE] is entitled to use all current and prior year carryforwards (as well as all carryforwards arising in the future), including but not limited to net operating losses, passive losses, suspended losses, long-term capital losses, and short-term capital losses (sometimes collectively called "carryforwards") that are strictly associated with her separate-property estate and income. The income tax liability arising from [WIFE]'s separate property is the sole liability of [WIFE], who agrees to fully discharge that tax liability, including penalties and interest, if any, out of her separate-property estate. [WIFE] further agrees to indemnify and hold [HUSBAND] and his separate property harmless from (and [WIFE] releases [HUSBAND] and his separate property from) all such tax liability, including penalties and interest, if any, together with all tax liens of every kind and character that might hereafter arise from the filing of her separate tax return or the failure to file necessary or proper returns or to pay the required taxes with respect to the separate-property taxable income of [WIFE].

Each party is solely obligated to pay, from his or her other separate-property estate, all estimated tax payments, if any, associated with his or her separate-property tax liability that are required to be paid for all taxable years that the parties are married.

All tax refunds that may be received in the future are the sole and separate property of the party whose separate-property estate generated the refund.

10.2 Joint Tax Returns

Notwithstanding the provisions of section 10.1 above and the intent and desire of the parties to file separate tax returns and to retain the wholly separate character of their respective separate properties, the parties acknowledge that the Internal Revenue Code, as amended, and the regulations thereunder, and similar codes and regulations of other states in certain instances provide, or may provide in the future, savings in taxes for married couples filing joint returns. If that is the case, the parties may file joint returns, but their election to file joint tax returns for any year of their marriage does not constitute a waiver of any provision of this agreement. At the option of either party, a party may request individual calculations to determine the pro rata share of any tax liability or tax refund as between each party's separate-property estate and the community-property estate in accordance with section 10.1 above.

Article 11

Initials

Dissolution of Marriage by Court Order

11.1 Property to [HUSBAND]

If either party files any proceeding for divorce, annulment, or to declare their marriage void (a "dissolution proceeding"), [WIFE] agrees that [HUSBAND] will be awarded all his separate property, including all property described in this agreement as being partitioned to him as his separate property. [WIFE] agrees to release all interests or claims she may have in [HUSBAND]'s separate property. [WIFE] further agrees to execute any documents necessary to set aside and confirm to [HUSBAND] his separate property and to release any and all claims that [WIFE] may have in and to [HUSBAND]'s separate property.

11.2 Property to [WIFE]

In the event of a dissolution proceeding between the parties, [HUSBAND] agrees that [WIFE] will be awarded all her separate property, including all property described in this agreement as being partitioned to her as her separate property. [HUSBAND] agrees to release all interests or claims he may have in and to [WIFE]'s separate property. [HUSBAND] further agrees to execute any documents necessary to set aside and confirm to [WIFE] her separate property and to release any and all claims [HUSBAND] may have in and to [WIFE]'s separate property.

11.3 Liabilities to [HUSBAND]

In the event of a dissolution proceeding between the parties, [HUSBAND] agrees to be responsible for and pay all liabilities and obligations associated with his separate property, including all property described in this agreement as being partitioned to him as his separate property. [HUSBAND] further agrees to indemnify and hold [WIFE] and her property harmless from all liabilities associated with [HUSBAND]'s separate property.

11.4 Liabilities to [WIFE]

In the event of a dissolution proceeding between the parties, [WIFE] agrees to be responsible for and pay all liabilities and obligations associated with her separate property, including all property described in this agreement as being partitioned to her as her separate property. [WIFE] further agrees to indemnify and hold [HUSBAND] and his property harmless from all liabilities associated with [WIFE]'s separate property.

11.5 Waiver of Temporary Spousal Support, Spousal Maintenance, and Alimony

As a result of the partitioning of assets between the parties in this agreement, both parties will own separate-property assets, and neither party will require the other party to pay temporary spousal support, spousal maintenance, or alimony of any kind in the event of a dissolution proceeding. Each party waives any right that may exist under law to seek or obtain temporary

Initials

spousal support, spousal maintenance, or alimony from the other party. If a court of competent jurisdiction orders either party to pay to the other party, or to a third party on behalf of the other party, temporary spousal support, spousal maintenance, or alimony of any kind during the pendency of a dissolution proceeding, that temporary spousal support, spousal maintenance, or alimony paid by one party to the other in connection with such a dissolution proceeding must be reimbursed to the party paying the temporary spousal support, spousal maintenance, or alimony within five days after receipt by the receiving party. Without limiting the generality of the foregoing, thus, for example, if \$1,000 in temporary alimony is paid by [HUSBAND] to [WIFE] during the pendency of a dissolution proceeding, the sum of \$1,000 must be reimbursed to [HUSBAND] by [WIFE] within five days after [WIFE] receives the \$1,000 from [HUSBAND].

The parties agree, in the event the receiving party fails to reimburse the paying party as required above, that the party paying the temporary spousal support, spousal maintenance, or alimony shall be allowed a dollar-for-dollar offset against all future temporary spousal support, spousal maintenance, or alimony payments to be paid by the paying party to the receiving party. In the event of a failure by the receiving party to reimburse any temporary spousal support, spousal maintenance, or alimony payment to the paying party within five days as required above, the paying party shall notify the receiving party of the paying party's intent to exercise his or her right to offset all amounts unreimbursed at that point against all subsequent temporary spousal support, spousal maintenance, or alimony payments to be paid by the paying party. The paying party shall also notify the receiving party exactly which financial obligations the unreimbursed payments will be offset against. On receipt of that notice from the paying party, the receiving party shall be discharged from the obligation of reimbursement to the extent of the amount of the offset.

11.6 Release and Waiver

If either party files a dissolution proceeding, neither party may request the Court to divide the property of either or both parties in a manner contrary to the terms of this agreement.

Each party relinquishes, disclaims, and waives all rights, title, and interest that he or she may have to seek a division of property and liabilities in a dissolution proceeding contrary to what is provided for in this agreement.

11.7 Division of Community Estate

If the parties' marriage is dissolved by court order, all community property acquired during the marriage, if any, must be equally divided between the parties according to the existing fair market value of each asset. If the parties cannot agree on the fair market value, the fair market value will be determined by appraisals. The division of the community property may be made by distributing the entire interest of certain properties to one party, with an equalizing distribution of the properties or funds to the other party.

11.8 Attorney's Fees

Initials

During the pendency of any dissolution proceeding, [HUSBAND] shall be responsible for all attorney's fees, costs, or other expenses, both for himself and any such expenses attributable to [WIFE].

Article 12

Dissolution of Marriage by Death

12.1 [HUSBAND]'s Acceptance of [WIFE]'s Will and Waivers to Be Signed on Death of [WIFE]

[HUSBAND] agrees to accept the provisions of any last will and testament and codicils that may be in effect at the time of [WIFE]'s death in full discharge, settlement, and satisfaction of any and all right, title, and interest that he, as [WIFE]'s spouse, might otherwise acquire in her estate and property.

Unless designated as a named beneficiary under a written instrument, [HUSBAND] waives and releases to [WIFE], her executors, administrators, or assigns any and all rights of election given to him as the spouse of [WIFE], or through him to his heirs, to take against her last will and testament under any statutes, now or hereafter in force, in Texas or any other state or foreign nation in which [WIFE] may have property at the time of her death.

If the marriage of the parties is dissolved by the death of [WIFE], [HUSBAND] agrees and hereby binds his personal representatives and heirs to agree to release and convey to [WIFE]'s estate any interest he may then have or claim to have in the separate property of [WIFE], including any property described in this agreement as being the separate property of [WIFE] or as belonging to [WIFE]'s separate estate, other than any benefit conferred on [HUSBAND] in this agreement. [HUSBAND] agrees to execute on request all instruments of release or conveyance that are necessary to give effect to this agreement. [WIFE] hereby binds her personal representatives and heirs to release and convey to [HUSBAND] all of the interest, if any, that [WIFE] or her estate may have in the then separate property of [HUSBAND] and in all the property described in this agreement as being the separate property of [HUSBAND] or as belonging to [HUSBAND]'s separate estate unless otherwise provided for in this agreement.

12.2 [WIFE]'s Acceptance of [HUSBAND]'s Will and Waivers to Be Signed on Death of [HUSBAND]

Without limiting or affecting the death payment under section 8.2 of this agreement, [WIFE] agrees to accept the provisions of any last will and testament and codicils that may be in effect at the time of [HUSBAND]'s death in full discharge, settlement, and satisfaction of any and all right, title, and interest that she, as [HUSBAND]'s spouse, might otherwise acquire in his estate and property.

Unless designated as a named beneficiary under a written instrument, [WIFE] waives and releases to [HUSBAND], his executors, administrators, or assigns any and all rights of election

Initials

given to her as the spouse of [HUSBAND], or through her to her heirs, to take against his last will and testament under any statutes, now or hereafter in force, in Texas or any other state or foreign nation in which [HUSBAND] may have property at the time of his death.

If the marriage of the parties is dissolved by the death of [HUSBAND], [WIFE] agrees and hereby binds her personal representatives and heirs to agree to release and convey to [HUSBAND]'s estate any interest she may then have or claim to have in the separate property of [HUSBAND], including any property described in this agreement as being the separate property of [HUSBAND] or as belonging to [HUSBAND]'s separate estate, other than any benefit conferred on [WIFE] in this agreement. [WIFE] agrees to execute on request all instruments of release or conveyance that are necessary to give effect to this agreement. [HUSBAND] hereby binds his personal representatives and heirs to release and convey to [WIFE] all of the interest, if any, that [HUSBAND] or his estate may have in the then separate property of [WIFE] and in all the property described in this agreement as being the separate property of [WIFE] or as belonging to [WIFE]'s separate estate unless otherwise provided for in this agreement.

12.3 Family Allowance to Surviving Spouse

The parties agree that the surviving spouse will have the right to petition the court for the payment of a family allowance for the support of the surviving spouse following the death of a party, in accordance with the provisions of the Texas Estates Code.

12.4 Life Estate in Homestead

The parties agree that the surviving spouse will have a life estate in the homestead of the parties if, at the time of a party's death, the parties are still married to each other or are sharing a homestead.

Article 13

Retirement Benefits and Life Insurance

13.1 Waiver of Retirement Benefits by [HUSBAND]

Unless named by a written instrument as a beneficiary by [WIFE], [HUSBAND] waives all right, title, and interest, if any, that he may acquire by virtue of his marriage to [WIFE] in all of [WIFE]'s retirement benefits and disability benefits, whether lump sum or installment, any profit-sharing interests, and any other employee benefits arising out of [WIFE]'s past, present, or future employment. [HUSBAND] acknowledges that this waiver includes all rights that he may have to receive benefits or payments from any 401(k) plan, SEP account, individual retirement account, profit-sharing plan, or any other type of employee benefit plan that [WIFE] has or may have in the future. [HUSBAND] further waives all rights he may have to participate in any decisions concerning the designation of beneficiaries or election of benefits or any other types of decisions to be made by [WIFE] under the terms of her current or future employee benefit plan or plans. [HUSBAND] agrees to consent in writing to, and accept, [WIFE]'s designation of beneficiary with respect to the plan or plans and to sign any spousal consent that might be

Initials

requested or required by [WIFE] at any time with respect to any such plan or plans, even if the consent does not provide for the payment of survivor benefits on [WIFE]'s death.

13.2 Waiver of Retirement Benefits by [WIFE]

Unless named by a written instrument as a beneficiary by [HUSBAND], [WIFE] waives all right, title, and interest, if any, that she may acquire by virtue of her marriage to [HUSBAND] in all of [HUSBAND]'s retirement benefits and disability benefits, whether lump sum or installment, any profit-sharing interests, and any other employee benefits arising out of [HUSBAND]'s past, present, or future employment. [WIFE] acknowledges that this waiver includes all rights that she may have to receive benefits or payments from any 401(k) plan, SEP account, individual retirement account, profit-sharing plan, or any other type of employee benefit plan that [HUSBAND] has or may have in the future. [WIFE] further waives all rights she may have to participate in any decisions concerning the designation of beneficiaries or election of benefits or any other types of decisions to be made by [HUSBAND] under the terms of his current or future employee benefit plan or plans. [WIFE] agrees to consent in writing to, and accept, [HUSBAND]'s designation of beneficiary with respect to the plan or plans and to sign any spousal consent that might be requested or required by [HUSBAND] at any time with respect to any such plan or plans, even if the consent does not provide for the payment of survivor benefits on [HUSBAND]'s death.

13.3 Life Insurance

The parties acknowledge that there is currently a Northwestern Mutual life insurance policy (#21140194) on the life of [HUSBAND]. The parties agree that [HUSBAND] shall be solely be responsible for the payments of such policy and shall keep such policy current. [WIFE] shall remain the primary beneficiary of such policy and [CHILD] shall be the contingent beneficiary of such policy.

Article 14 Gifts

14.1 Gifts

The parties acknowledge that during the remainder of their marriage, each party may, from time to time, make gifts of property to the other party. These interspousal gifts may be made on a special occasion, such as a birthday or anniversary, or on any other occasion a party may choose. The parties recognize that frequently claims of "gifts" are alleged in the context of a dissolution proceeding. To remove any uncertainty about the issue of interspousal gifts, the parties agree that:

1. Gifts of wearing apparel, jewelry, and athletic equipment may be established by parol testimony if the item or property is customarily used and enjoyed exclusively by the party claiming it as a gift to him or her;

Initials

2. Gifts of other items of personal property not covered by item 1. above, such as furnishings, artwork, cash, and collections, must be established by clear and convincing evidence; and

3. Any property that is held by title, as in a deed, in a certificate, or by account name, may not be effectively transferred to the party claiming it as a gift unless, in fact, the deed, certificate, or account is transferred by name to the party claiming the gift.

14.2 Gift Tax Consequences

Each party retains the right to make gifts of his or her separate property without regard to blood or other relationship of the donee. Conditional on any such gift being made from the separate property of a party, the party making the gift may deem the other party as the donor of one-half of the gift for federal tax purposes, if allowable under the relevant law, but without personal liability to the deemed donor. If the deemed donor is held responsible for the payment of federal gift tax, the actual donor must indemnify and hold harmless the deemed donor and his or her property from the liability and must reimburse the deemed donor the amount of the tax, including all penalties and interest, if any, within ten days after the deemed donor has paid any such taxes, penalties, or interest. Notwithstanding any of the provisions set forth in this section 14.2 to the contrary, the parties agree that any gift in excess of the annual gift tax exclusion that would be applied to either party's unified lifetime credit must be consented to in writing by the parties before the making of the gift.

Article 15

Independent Conveyances or Bequests

15.1 Independent Conveyances or Bequests

If either party voluntarily conveys to the other party an interest in his or her separate property that is declared by law, or by this agreement, to be the separate property of one party, either by will, survivorship agreement, or instrument of conveyance or by document of title signed by the transferring party, the provisions of that will, survivorship agreement, instrument of conveyance, or document of title control over the provisions of this agreement to the extent of any conflict between the two documents regarding such property other than property that is personal to the other party. Absent such a will, survivorship agreement, instrument of conveyance, or document of title expressly conveying such property, all properties remain in the ownership of the party owning or designated as owning the property as his or her separate property.

Nothing in this agreement may be construed as prohibiting one party from giving property to the other party by will, survivorship agreement, instrument of conveyance, document of title, or other written instrument between the parties.

Article 16

Initials

General Agreements

16.1 General Agreements

Except as specifically set forth in this agreement to the contrary, the parties agree to the following:

1. That the property described or created in this agreement as being the separate property of or belonging to the separate estate of each party is free from any claim of the other party that may arise during the remainder of the parties' marriage.

2. That any money used for the benefit of the other party is presumed to be a gift to the other party, as contrasted with a payment for which reimbursement or repayment is later expected, unless the parties agree otherwise in writing.

3. That this agreement applies during the lifetime of both parties, including on dissolution of their marriage by court order, as well as on the death of either or both parties.

4. That this agreement extends to any rights, whether choate or inchoate, that may arise under the laws of any jurisdiction.

5. That this agreement is not intended to relieve or discharge either party of any legal obligation of support to one another or to their descendants.

Article 17 Reimbursement

17.1 No Reimbursement Claims

[HUSBAND] waives the right to assert any claim for reimbursement that he might presently or in the future have on behalf of or against the community estate. [HUSBAND] further waives the right to assert any claim for reimbursement that he might presently or in the future have against the separate estate of [WIFE].

[WIFE] waives the right to assert any claim for reimbursement that she might presently or in the future have on behalf of or against the community estate. [WIFE] further waives the right to assert any claim for reimbursement that she might presently or in the future have against the separate estate of [HUSBAND].

Article 18 Undisclosed Property

18.1 Undisclosed Property

Initials

All community property not listed in any schedule attached to this agreement is owned by the parties as equal cotenants with right of survivorship. Each party hereby grants, conveys, and assigns to the other party an undivided one-half interest in any such unlisted community property owned in the name of the granting party.

Article 19

Arbitration

19.1 Arbitration

The provisions for binding arbitration must be in accordance with Texas arbitration laws, including but not limited to sections 6.601 and 153.0071 of the Texas Family Code.

The parties agree to submit to binding arbitration any dispute or controversy regarding the validity, interpretation, or enforceability of this agreement, as well as all issues involving its enforcement in connection with a dissolution proceeding between the parties. Each party expressly waives any right to trial by a court or trial by a jury. If a dissolution proceeding or declaratory judgment proceeding is filed in Texas, the arbitrator appointed under this agreement will simultaneously be designated as special master under the Texas Rules of Civil Procedure, and the parties agree to jointly apply to the court for any orders that are necessary to vest the arbitrator with all powers and authority of a special master under the rules.

The parties agree to appoint one arbitrator, whose decisions will be binding in all respects. Any arbitrator appointed by the parties must be an attorney who has undergone arbitration training conducted by the American Bar Association or the American Academy of Matrimonial Lawyers and is in good standing with the State Bar of Texas. The first party requesting arbitration must designate the name of an arbitrator in the request. The other party must then designate the name of an arbitrator. If the parties cannot agree on an arbitrator within fourteen days after either party's written request for arbitration, the two designees must select a qualified arbitrator, who will be designated the sole arbitrator of the dispute. If the parties cannot agree on the ground rules and procedures to be followed during the arbitration proceedings, the arbitrator shall have the sole authority to establish the ground rules and procedures to be followed during the arbitration proceeding. The parties agree to attend the arbitration on the date and at the time and place set by the arbitrator. The cost of arbitration must be borne as the arbitrator directs. The award of the arbitrator will be binding and conclusive on the parties, and a judgment setting forth the arbitration award may be entered in any court of competent jurisdiction.

Article 20

General Provisions

20.1 Effective Date

This agreement takes effect when it is executed by both parties and will remain in effect

Initials

during the remainder of the parties' marriage and thereafter until it is fully performed, amended, or revoked, even when the parties' marriage is dissolved by death or otherwise.

20.2 Execution of Documents

Each party agrees to cooperate fully with each other in performing all acts and in executing, acknowledging, and delivering all instruments and documents required to accomplish the intent of this agreement, including but not limited to deeds, assignments, and promissory notes. Each party agrees to execute all documents required to accomplish the intent of this agreement within fourteen days after the documents are presented to the party for execution.

20.3 Incorporation of Schedules

All schedules and other instruments referred to in this agreement are incorporated into this agreement as completely as if they were copied verbatim in the body of it.

20.4 Presumption of Separate Property

Any property held in [HUSBAND]'s individual name is presumed to be the separate property of [HUSBAND]. Any property held in [WIFE]'s individual name is presumed to be the separate property of [WIFE]. Any property or liability inadvertently omitted from the schedules attached to this agreement is the separate property or liability of the party to whom it belongs or by whom it was incurred.

20.5 Enforceability

This agreement may be enforced by suit in law or equity by either of the parties or by their heirs, executors, attorneys, or assigns. Each party agrees that by signing this agreement and accepting any benefit whatsoever under it, he or she is estopped and barred from making any claim of any kind at any time to any separate property or the separate estate of the other party or to any property described in this agreement as being the separate property of the other party. Each party waives his or her right to make claims to any separate property of the other party or to any property designated as belonging to the separate estate of the other party, whether the property is acquired before or after this agreement is signed.

20.6 Successors

This agreement, including any gift or obligation of either party, binds and inures to the benefit of the parties and their respective legatees, devisees, heirs, executors, legal and personal representatives, trustees, assigns, transferees, and successors in interest.

20.7 Amendment or Modification

This agreement may be waived, abandoned, modified, amended, discharged, or terminated only by a written instrument signed by both parties that specifically identifies the

Initials

waiver, abandonment, modification, amendment, discharge, or termination.

20.8 Attorney's Fees and Expenses for Enforcement

If either party brings an action or other proceeding to enforce this agreement or to enforce any judgment, decree, or order made by a court in connection with this agreement, the prevailing party will be entitled to recover reasonable attorney's fees and other necessary costs from the other party. If either party files a declaratory judgment proceeding to determine the enforceability of this agreement, neither party will be entitled to an award of attorney's fees unless a party successfully challenges the validity of this agreement, in which event the court will be authorized to award attorney's fees. If either party seeks to invalidate some or all of this agreement or seeks to recover property in a manner at variance with this agreement, the successful party will be entitled to recover reasonable attorney's fees and other necessary costs from the other party.

20.9 Exclusive Remedy for Nonmonetary Breach

Except as expressly provided otherwise in this agreement, the exclusive judicial remedy of either party against the other for failure to perform any nonmonetary duty or obligation under any provision of this agreement is judicial enforcement by judgment for specific performance or mandatory injunction and writ of execution to compel performance, plus reasonable attorney's fees. Neither party is entitled to recover any damages, actual or consequential, for any nonmonetary breach. No failure of either party to perform any nonmonetary duty or obligation under this agreement diminishes or impairs the full effectiveness of its provisions.

20.10 Waiver of Breach or Term

The waiver of any breach of any provision of this agreement does not waive any other breach of that or any other provision. Waiver of any term of this agreement may be accomplished only concerning future performance and only by a written instrument signed by both parties expressly stating the provisions waived.

20.11 Partial Invalidity

If any provision of this agreement is for any reason found to be unenforceable, all other provisions nonetheless remain enforceable.

20.12 Assignment Prohibited

This agreement is personal to the parties, and neither party may assign or delegate any of his or her rights or obligations under it.

20.13 Entire Agreement

Initials

This instrument contains the parties' entire agreement on the subject it purports to cover. This agreement replaces any earlier agreements or understandings, whether written or oral, and there are no contemporaneous written or oral agreements that are not fully expressed in it.

20.14 Titles and Captions

Article headings, titles, and captions contained in this agreement are merely for reference and do not define, limit, extend, or describe the scope of this agreement or any provision.

20.15 No Construction against Draftsman

No provision of this agreement may be interpreted for or against any party because the party or the party's legal representative drafted the provision.

20.16 Representation

The law firms representing [HUSBAND] are the Law Office of Jason S. Bashara and Drought, Drought & Bobbitt. The law firm representing [WIFE] is Naman, Howell, Smith & Lee, PLLC. [HUSBAND] has not received any legal, financial, or other kind of advice from [WIFE] or from her law firm, Naman, Howell, Smith & Lee, PLLC, in connection with the advisability or nonadvisability of entering into this agreement. [WIFE] has not received any legal, financial, or other kind of advice from [HUSBAND] or from his law firms, Law Office of Jason S. Bashara and Drought, Drought & Bobbitt in connection with the advisability or nonadvisability of entering into this agreement. [HUSBAND] is relying on his own judgment and the advice of his lawyer in entering into this agreement. [WIFE] is relying on her own judgment and the advice of her lawyer in entering into this agreement.

20.17 Nondisqualification

If any dispute arises out of this agreement, whether by arbitration or litigation, each party waives any claim of disqualification against representation of the other party by the attorneys who participated in negotiating and drafting this agreement.

20.18 Place of Performance; Governing Law; Application

All rights, duties, and obligations under this agreement are payable and enforceable in the county in which [WIFE] is residing at the time such obligation accrues.

Texas law in effect as of the date this agreement is signed governs the construction, interpretation, and enforcement of this agreement to the maximum extent permitted by law.

The parties expressly intend and agree that this agreement applies to and governs all real and personal property, wherever situated, owned by either party at the time this agreement is signed or acquired by either party thereafter, regardless of any change of domicile of the parties or the location of the real estate. [WIFE] is domiciled in Minnesota at the time of execution of

Initials

this agreement. Notwithstanding the current domicile of [WIFE], if one or both of the parties is, at the time of execution of this agreement, or ever becomes, domiciled in a jurisdiction other than Texas, the status of all property thereafter acquired by that party must be controlled to the maximum extent by the terms of this agreement interpreted under Texas law in effect when this agreement is signed. The desire of the parties that each preserve his or her separate property or separate estate under Texas law and keep it free from the claims of the other party corresponds to their desire that each party should have and hold the property free from the claims of the other party under the laws of all other jurisdictions, even if the other jurisdictions do not recognize community property but instead speak of "marital property" and "nonmarital property" or like terms. For any property of either party whose ownership is not controlled by the marital property laws of Texas, when this agreement speaks of property as being the separate property of a party, reference is made to property acquired in such a manner that it would meet the definition of separate property under the Texas Constitution or the Texas Family Code, as amended.

20.19 Multiple Originals

This agreement is executed in multiple originals. This agreement is signed after the execution of the Waiver of Disclosure of Financial Information.

20.20 Confidentiality

This agreement shall remain confidential amongst the parties and neither party shall disclose this agreement or any portion of this agreement to any third-party without the written permission of the other party.

20.21 Severability

In case any provision in this agreement shall be prohibited or held to be void or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Article 21 Representations and Warranties

WARNING

EACH PARTY TO THIS AGREEMENT UNDERSTANDS THAT BY SIGNING THIS DOCUMENT HE OR SHE IS PERMANENTLY SURRENDERING RIGHTS AND CLAIMS HE OR SHE WOULD OTHERWISE HAVE UNDER TEXAS LAW AND UNDER THE LAW OF OTHER JURISDICTIONS.

21.1 Representations and Warranties of [HUSBAND]

My name is [HUSBAND]. I represent and warrant that:

1. I have carefully read each and every page of this agreement and all schedules attached

Initials

or referred to, in their entirety.

2. I am fully and completely informed by my attorney about the law relating to the subject matter of this agreement and about the spousal rights and liabilities of both parties.

3. I AM ENTERING INTO THIS AGREEMENT VOLUNTARILY AFTER RECEIVING THE ADVICE OF INDEPENDENT COUNSEL.

4. I have given careful and mature thought to the making of this agreement.

5. I fully and completely understand each provision of this agreement, concerning both the subject matter and the legal effect. I further acknowledge that this agreement was not procured by fraud, duress, or overreaching.

6. I have investigated the property and financial obligations of [WIFE] sufficiently to satisfy any questions I have in that regard, and I expressly waive any right to disclosure of the property and financial obligations of [WIFE] beyond the disclosures provided.

7. I am not relying on any fiduciary obligations owed by one party to the other or on any duty of disclosure founded on a confidential or other relationship between the parties. Furthermore, I am not relying on any legal or accounting advice or representation of fact or law provided by [WIFE] or anyone acting on her behalf.

8. I fully understand that, by signing this agreement and accepting any benefit whatsoever under it, I will be estopped from making any claim of any kind at any time to any separate property or the separate estate of [WIFE], except as expressly provided for in this agreement.

9. I fully understand that by executing this agreement I may be adversely affecting my inheritance rights and property and that I am permanently surrendering rights to income and property I would otherwise have under Texas law.

10. I am executing this agreement with intent to be bound fully by all its terms.

[HUSBAND]

21.1 Representations and Warranties of [WIFE]

My name is [WIFE]. I represent and warrant that:

1. I have carefully read each and every page of this agreement and all schedules attached or referred to, in their entirety.

Initials

2. I am fully and completely informed by my attorney about the law relating to the subject matter of this agreement and about the spousal rights and liabilities of both parties.

3. I AM ENTERING INTO THIS AGREEMENT VOLUNTARILY AFTER RECEIVING THE ADVICE OF INDEPENDENT COUNSEL.

4. I have given careful and mature thought to the making of this agreement.

5. I fully and completely understand each provision of this agreement, concerning both the subject matter and the legal effect. I further acknowledge that this agreement was not procured by fraud, duress, or overreaching.

6. I have investigated the property and financial obligations of [HUSBAND] sufficiently to satisfy any questions I have in that regard, and I expressly waive any right to disclosure of the property and financial obligations of [HUSBAND] beyond the disclosures provided.

7. I am not relying on any fiduciary obligations owed by one party to the other or on any duty of disclosure founded on a confidential or other relationship between the parties. Furthermore, I am not relying on any legal or accounting advice or representation of fact or law provided by [HUSBAND] or anyone acting on his behalf.

8. I fully understand that, by signing this agreement and accepting any benefit whatsoever under it, I will be estopped from making any claim of any kind at any time to any separate property or the separate estate of [HUSBAND], except as expressly provided for in this agreement.

9. I fully understand that by executing this agreement I may be adversely affecting my inheritance rights and property and that I am permanently surrendering rights to income and property I would otherwise have under Texas law.

10. I am executing this agreement with intent to be bound fully by all its terms.

[WIFE]

Initials

EXECUTED in multiple originals on the dates and at the times of the acknowledgments shown below.

STATE OF TEXAS)
COUNTY OF [COUNTY])

This instrument was acknowledged before me at _____ .M.
on _____ by [HUSBAND].

Notary Public, State of Texas

I, the notary public whose signature appears above, certify that I am not an attorney representing either party to this agreement.

STATE OF TEXAS)
COUNTY OF _____)

This instrument was acknowledged before me at _____ .M.
on _____ by [WIFE].

Initials

Notary Public, State of _____

I, the notary public whose signature appears above, certify that I am not an attorney representing either party to this agreement.

Initials

Schedule A
To Partition or Exchange Agreement between
[HUSBAND] and [WIFE]

Property of [HUSBAND]

1. All sums of cash in the possession of or subject to the control of [HUSBAND], together with all interest income, mutations, enhancements, and increases therefrom, including money on account in banks, savings institutions, or other financial institutions, which accounts stand in [HUSBAND]'s name or from which [HUSBAND] has a right to withdraw funds or which are subject to [HUSBAND]'s control, including but not limited to money on account in the following banks, savings institutions, or other financial institutions:

_____.

2. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases, mutations, enhancements, interest income, and the proceeds therefrom, and all other rights related to any Keogh plan, profit-sharing plan, retirement plan, pension plan, annuity, money market investment account, individual retirement account, or like benefit program existing by reason of [HUSBAND]'s past, present or future employment, including but not limited to:

None

3. All wearing apparel, jewelry, and other personal effects in the possession of or subject to the control of [HUSBAND] or otherwise owned by him as of the date of this agreement.

4. All personal property, household furnishings, fixtures, artwork, antiques, china, silver, crystal, equipment, guns, and other household items currently in the possession of or subject to the control of [HUSBAND], as well as all other items otherwise owned by him as of the date of this agreement.

5. All policies of life insurance, including all cash values and any increases, mutations, enhancements, interest income, and dividend income received therefrom, insuring the life of [HUSBAND], including but not limited to the following:

Life insurance company

Policy number

[HUSBAND]

[HUSBAND] shall be solely be responsible for the payments of this policy and shall keep such policy current. [WIFE] shall remain the primary beneficiary of this policy and [CHILD] shall be the contingent beneficiary of such policy.

6. The [VEHICLES]

7. All business entities owned by [HUSBAND], including but not limited to the

Initials

following:

9. All other property and property rights set aside to [HUSBAND] under the terms of this Partition or Exchange Agreement.

[HUSBAND]

Initials

Schedule B
To Partition or Exchange Agreement between
[HUSBAND] and [WIFE]

Property of [WIFE]

1. All sums of cash in the possession of or subject to the control of [WIFE], together with all interest income, mutations, enhancements, and increases therefrom, including money on account in banks, savings institutions, or other financial institutions, which accounts stand in [WIFE]'s name or from which [WIFE] has a right to withdraw funds or which are subject to [WIFE]'s control, including but not limited to money on account in the following banks, savings institutions, or other financial institutions:

_____.

2. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases, mutations, enhancements, interest income, and the proceeds therefrom, and all other rights related to any Keogh plan, profit-sharing plan, retirement plan, pension plan, annuity, money market investment account, individual retirement account, or like benefit program existing by reason of [WIFE]'s past, present or future employment, including but not limited to:

None

3. All wearing apparel, jewelry, and other personal effects in the possession of or subject to the control of [WIFE] or otherwise owned by her as of the date of this agreement, including, but not limited to all Tiffany jewelry and any jewelry gifted to [WIFE] by [HUSBAND], including gifts of jewelry that previously belonged to [HUSBAND]'s mother, as well as all jewelry currently located in a safe deposit box at Frost Bank in San Antonio, Texas.

4. All personal property, household furnishings, fixtures, artwork, antiques, china, silver, crystal, equipment, guns, and other household items currently in the possession of or subject to the control of [WIFE], as well as all other items otherwise owned by her or as of the date of this agreement, including any property selected by [WIFE] from her and [HUSBAND]'s current homestead and storage units.

5. All policies of life insurance, including all cash values and any increases, mutations, enhancements, interest income, and dividend income received therefrom, insuring the life of [WIFE], including but not limited to the following:

Life insurance company

Policy number

[HUSBAND]

6. The Partition obligations from [HUSBAND] to [WIFE] as set forth in this Partition and Exchange Agreement, including, but not limited to, Article 8.

7. [VEHICLES]

Initials

8. The following real property including but not limited to all rental income, sales proceeds, warranties, keys, house plans, service contracts, and utility deposits relating to it, and more particularly described as follows:

9. All other property and property rights set aside to [WIFE] under the terms of this Partition or Exchange Agreement.

[WIFE]

Initials

Schedule C
To Partition or Exchange Agreement between
[HUSBAND] and [WIFE]

Liabilities of [HUSBAND]

1. All indebtedness due on any separate-property asset listed in Schedule A of this agreement, unless specifically provided herein to the contrary, including any debts personally guaranteed by [HUSBAND].

2. All obligations of [HUSBAND] specifically referred to in article 5 of this agreement.

3. All ad valorem taxes, personal property taxes, and assessments or other charges due or to become due in connection with any asset owned by [HUSBAND] as his separate property.

4. The balance due, including principal and interest, on all credit cards and charge accounts in [HUSBAND]'s name or [WIFE]'s name that are due and payable as of the date of his execution of this agreement, together with all amounts that may be charged or outstanding as of the date of the funding of the \$1,000,000 to [WIFE]'s bank account, namely:

5. Outstanding [BILLS]

6. The partition obligations from [HUSBAND] to [WIFE] as set forth in this Partition and Exchange Agreement, including, but not limited to, Article 8, including any tax liabilities associated therewith.

7. All attorney's fees and other costs incurred by [HUSBAND] or [WIFE] in connection with the preparation of this Partition and Exchange Agreement, including reimbursement of all fees previously paid by [WIFE] with regards to this agreement.

8. All foreign, federal, and state income tax liabilities, including all penalties and interest, if any, of [HUSBAND] for the year 2020 and all prior years.

[HUSBAND]

Initials

Schedule D

To Partition or Exchange Agreement between
[HUSBAND] and [WIFE]

Liabilities of [WIFE]

1. All indebtedness due on any separate-property asset listed in Schedule B of this agreement, unless specifically provided herein to the contrary.
2. All obligations of [WIFE] specifically referred to in article 5 of this agreement.
3. All ad valorem taxes, personal property taxes, and assessments or other charges due or to become due in connection with any asset owned by [WIFE] as her separate property.
4. All foreign, federal, and state income tax liabilities, including all penalties and interest, if any, of [WIFE] for the year 2020 and all prior years.

[WIFE]

Initials

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.

AGREEMENT TO PARTITION COMMUNITY PROPERTY

STATE OF TEXAS

§

§

COUNTY OF BEXAR

§

KNOW ALL MEN BY THESE PRESENTS:

1.

We, ALFONSO PICHARDO (hereinafter referred to as “Husband”) and MARIA P. ZAPATA-PICHARDO (hereinafter referred to as “Wife”), of Bexar County, Texas, own certain real property as community property (hereinafter referred to as the “Property”) described in Paragraph 2 of this Agreement. The spouses desire to partition the Property in order that each party will henceforth own a portion of this Property as his or her separate property, without prejudice to pre-existing creditors.
2.

Husband and Wife described the Property to be partitioned by this Agreement as follows:

LOT 17, BLOCK 4, NEW CITY BLOCK 14062, GARDEN COURT EAST, UNIT 3, AN ADDITION TO THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 5870, PAGE 130, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS.
3.

Husband and Wife hereby agree that the Property is hereby partitioned as follows:

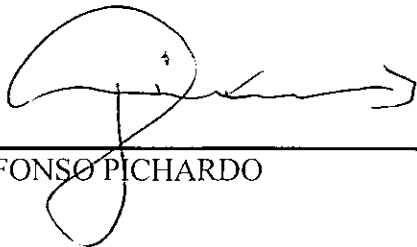
(a) Husband shall hold and possess, as his separate property, 50% of the Property. Husband hereby grants, conveys, releases, and confirms to Wife and to her heirs, executors, administrators, and successors the remaining percentage of all of his right, title, and interest in the Property, to have and to hold the interest in the Property forever.

(b) Wife shall hold and possess, as her separate property, 50% of the Property. Wife hereby grants, conveys, releases, and confirms to Husband and to his heirs, executors, administrators, and successors the remaining percentage of all of her right, title, and interest in the Property, to have and to hold the interest in the Property forever.
4.

This Agreement has been fully explained to each party and each party has carefully read this Agreement and is completely aware of both its content and its legal effect.

EXECUTED ON THE FOLLOWING DATE:

April 25, 2016



ALFONSO PICHARDO

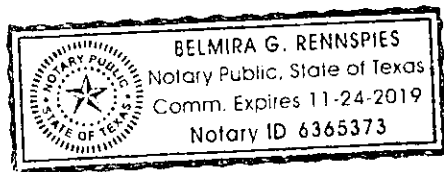


MARIA P. ZAPATA-PICHARDO

(ACKNOWLEDGEMENT)

STATE OF TEXAS §
COUNTY OF BEXAR §

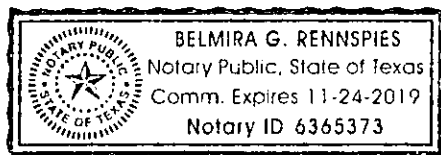
This instrument was ACKNOWLEDGED before me, on this the 25th day of April, 2016, by ALFONSO PICHARDO.


Notary Public, State of Texas

(ACKNOWLEDGEMENT)

STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was ACKNOWLEDGED before me, on this the 25th day of April, 2016, by MARIA P. ZAPATA-PICHARDO.


Notary Public, State of Texas

AFTER RECORDING RETURN TO:

Maria Pichardo
559 Windmill Breeze
Bulverde, TX 78163

Prepared in the Law Offices of:

West & West
Attorneys at Law, P.C.
2929 Mossrock, Suite 204
San Antonio, Texas 78230

Doc# 20160076707
Pages 3
04/27/2016 11:42AM
e-Filed & e-Recorded in the
Official Public Records of
BEXAR COUNTY
GERARD C. RICKHOFF
COUNTY CLERK
Fees \$30.00

STATE OF TEXAS
COUNTY OF BEXAR
This is to Certify that this document
was e-FILED and e-RECORDED in the Official
Public Records of Bexar County, Texas
on this date and time stamped thereon.
04/27/2016 11:42AM
COUNTY CLERK, BEXAR COUNTY TEXAS



Gerard C. Rickhoff

**[FIRST] SUPPLEMENT TO POSTNUPTIAL
PARTITION AND EXCHANGE AGREEMENT**

WILMA WIFE (“[WIFE]”) and [HUSBAND] (“[HUSBAND]”), both of [COUNTY] County, Texas, hereby enter this First Supplement to Postnuptial Partition and Exchange Agreement (the “Supplement”) effective as of the date both parties have executed this Supplement. In this Supplement, [WIFE] and [HUSBAND] also will be referred to individually as a “Party” and collectively as the “Parties”.

RECITALS AND BACKGROUND:

- (i). The Parties previously entered that Postnuptial Partition and Exchange Agreement, dated effective May 14, 2009 (the “2009 Agreement”).
- (ii). The Parties intend by this Supplement to confirm, among other things, the current status and identity of their respective separate property assets and to correct certain oversights contained within the 2009 Agreement.
- (iii). Except as supplemented by this Supplement, the Parties intend that the 2009 Agreement remain in full force and effect.

AGREEMENT:

For the purposes and consideration identified throughout this Agreement, and in the manner described by Section Parties therefore hereby agree as follows:

1. Confirmation of Current Separate Property. The Parties agree and confirm that the attached Exhibit A shall serve as a supplement to Exhibit A attached to the 2009 Agreement and is a partial and non-exhaustive list of [WIFE]’s separate property as of the last day of the month before the effective date of this Supplement. The parties intend for the attached Exhibit A to supplement, rather than to replace, the prior Exhibit A attached to the 2009 Agreement and intend that the 2009 Agreement be construed as if it contained all items disclosed in both Exhibits A. The Parties also agree and confirm that the attached Exhibit B shall serve as a supplement to Exhibit B attached to the 2009 Agreement and is a partial and non-exhaustive list of [HUSBAND]’s separate property as of the last day of the month before the effective date of this Supplement. The parties intend for the attached Exhibit B to supplement, rather than to replace, the prior Exhibit B attached to the 2009 Agreement and intend that the 2009 Agreement be construed as if it contained all items disclosed in both Exhibits B.
2. Confirmation of Pages 3 and 4 of 2009 Agreement. When the Parties executed the 2009 Agreement, page 4 of the 2009 Agreement contained certain typographical and scrivener errors. Also, the first executed copy of the 2009 Agreement did not include page 3. The Parties agree and confirm that the attached Exhibit C contains the correct pages 3 and 4 of the Agreement. The Parties agree and confirm that in the event that (i) either spouse dies or (ii) the parties divorce while owning an interest in [BUSINESS], the buy-sell restrictions set out in Exhibit D attached to this Supplement shall apply to any such interest.

3. Confirmation of Intent Regarding [BUSINESS], LLC. Paragraph 2(e) of the 2009 Agreement, in part, granted [WIFE] a continuing option to acquire up to fifty percent (50%) of [HUSBAND]'s membership interest in [BUSINESS], LLC ("[BUSINESS]"). [WIFE] has exercised her option with respect to a forty-nine percent (49%) membership interest in [BUSINESS] and she continues to have an option with respect to a one percent (1%) membership interest. Pursuant to Paragraph 3(b)(3) of the 2009 Agreement, and before [WIFE] exercised her option with respect to [BUSINESS], the Parties had agreed that any net after tax income received by [HUSBAND] which is earned and distributed to him from [BUSINESS], shall be owned by the Parties as their community property. The Parties agree and confirm that their intent was that if [WIFE] exercised her option to acquire a membership interest in [BUSINESS] that any net after tax income received by [WIFE] which is earned and distributed to her from [BUSINESS], also shall be owned by the Parties as their community property in the same exact manner as the exception applied to [HUSBAND]. Accordingly, the Parties hereby agree to amend the 2009 Agreement by deleting Paragraph 3(b)(3) in its entirety and replacing it with the following:

(3) The second exception to the general rule stated in Paragraph 3.b.(1) is that any net after tax income received by either [HUSBAND] or [WIFE] (the tax liabilities being handled in the same manner set forth in subparagraph (2) above), which is earned and distributed to either him or her from [BUSINESS], LLC, shall be owned by the Parties as their community property, in equal shares and interests.

4. Confirmation of Irrevocable Life Insurance Trust. Pursuant to Paragraph 14(a) of the 2009 Agreement, [HUSBAND] agreed to contribute a referenced life insurance policy to an irrevocable life insurance trust ("ILIT") if one was formed by [WIFE] (the "Contribution Requirement"). [WIFE] did not form an ILIT in connection with the Agreement. Rather, [HUSBAND] formed two ILITs, known respectively as the [HUSBAND] 2014 Special Trust No. 1, UAD 04/25/2014, (the "No. 1 Trust") and the HUSBAND 2014 Special Trust Agreement No. 2, UAD 08/29/2014, (the "No. 2 Trust"). [WIFE] was the Trustee and primary beneficiary of both trusts. Her children were secondary beneficiaries. Trust No. 1 acquired a new life insurance policy on [HUSBAND]'s life. [HUSBAND] subsequently contributed the referenced life insurance policy to Trust No. 2, which also acquired additional policies on [HUSBAND]'s life. Ultimately and on December 31, 2017, [WIFE], as Trustee of both Trusts, merged Trust No. 1 into Trust No. 2, such that Trust No. 2 is the only remaining trust. She remains the Trustee of Trust No. 2. The Parties agree and confirm that [HUSBAND]'s contribution of the referenced life insurance policy to Trust No. 2 satisfies the Contribution Requirement of Paragraph 14(a) of the 2009 Agreement in all respects.

5. Binding Effect. This Supplement shall inure to the benefit of and be binding upon the Parties hereto, their respective heirs, successors, representatives and assigns.

6. Representations of Parties. EACH PARTY ACKNOWLEDGES THAT HE OR SHE:

a. WAS URGED BY THE OTHER PARTY TO SECURE LEGAL COUNSEL IN CONNECTION WITH THIS SUPPLEMENT;
b. HAS CAREFULLY READ AND UNDERSTOOD THE PROVISIONS OF THIS SUPPLEMENT;
c. UNDERSTANDS THAT HIS OR HER MARITAL RIGHTS IN THE PROPERTY LISTED ON EXHIBITS A AND B TO THIS SUPPLEMENT MAY BE ADVERSELY AFFECTED BY THIS AGREEMENT;
d. HAS GIVEN INFORMED CONSENT TO THIS SUPPLEMENT AND WAS NOT SUBJECTED TO FRAUD, DURESS OR OVERREACHING; AND
e. WAS PROVIDED A FAIR AND REASONABLE DISCLOSURE OF THE PROPERTY AND FINANCIAL OBLIGATIONS OF THE OTHER PARTY, HAS AN ADEQUATE KNOWLEDGE OF THOSE OBLIGATIONS AND EXPRESSLY WAIVES ANY RIGHT TO DISCLOSURE OF THE PROPERTY OR FINANCIAL OBLIGATIONS OF THE OTHER PARTY BEYOND THE DISCLOSURE PROVIDED BY THE OTHER PARTY.

7. Choice of Law. This Supplement shall be governed, interpreted and in all matters construed in accordance with the provisions of the laws of the State of Texas.

8. Interspousal Immunity. Each Party agrees that he or she will not raise the defense of interspousal immunity in any jurisdiction in which an action is brought to enforce this Supplement.

9. No Third Party Beneficiary Contract. This Supplement is executed for the sole and exclusive benefit of the Parties hereto and shall provide no rights to any third party.

10. Counterparts. This Supplement may be executed in two or more counterparts, each of which shall be deemed to be an original document.

11. Ratification. Except as supplemented herein, each Party hereby ratifies and confirms the 2009 Agreement.

EXECUTED on this _____ day of _____, 2020.

WIFE

THE STATE OF TEXAS §
COUNTY OF [COUNTY] §

SUBSCRIBED AND SWORN TO before me on the _____ day of _____, 2020, by [WIFE]

NOTARY PUBLIC in and for the State of Texas

EXECUTED on this _____ day of _____, 2020.

[HUSBAND]

SUBSCRIBED AND SWORN TO before me on the _____ day of _____,
2020, by [HUSBAND]

NOTARY PUBLIC in and for the State of Texas

Exhibit A

[WIFE] Schedule of Separate property

- Trust – revocable trust, [CHILD] is Trustee and [GRANDCHILD] is the primary beneficiary
- Trust – irrevocable trust, [CHILD] is Trustee and [GRANDCHILD] is the primary beneficiary
- [BUSINESS], LLC
owned 25% by Black Lab Trust
owned 25% by Rockham Trust
- [BUSINESS], LLC
owned 49% by [WIFE] individually
- Cadillac SRX
- Chase checking and savings account \$46,394
- Wells Fargo account \$82,957
- Schwab account \$239,811
- Real property located at [ADDRESS] (50% undivided interest)
- Jewelry- not limited to the following
- Cartier Watch with diamonds
- Cartier Watch two-tone
- 3.5 ct. diamond ring
- Various David Yurman, John Hardy and miscellaneous jewelry
- Diamond hoop earrings
- Tiffany Gold scarf necklace
- Diamond and gold “s” shaped necklace
- 2 ct. Diamond pendant
- Topaz / gold ring with diamonds
- Gold and silver coin collection
- Luongo oil painting
- Amstater oil painting
- Matisse drawing
- Leroy Neiman paintings

Exhibit B

[HUSBAND] Schedule of Separate Property

- Men's Rolex Stainless Steel Submariner Watch
- Man's Rolex Gold Plated Oyster Perpetual Watch
- Man's Bulova Watch
- Boy's diamond set in gold ring
- Half interest in coin collection in three safe deposit boxes at Chase (Other half interest is owned by [SISTER].)
- Cash on hand - \$86,000
- Charles Schwab Cash Account - \$130,879
- Real property located at [ADDRESS] (50% undivided interest)
- [BUSINESS], LLC – 51% Membership Interest
- [BORROWER], LP Promissory Note (12/20/2015) -- \$125,000
- Beneficial Interest in the tangible personal property of the Estate of [MOTHER]
- Beneficial Interest in Trust A, established under the [MOTHER] 2008 Living Trust Agreement, dated 03/12/2008

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY 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 DRIVERS LICENSE NUMBER.

SCANNED

GIFT DEED



LT1-81-20090066385-1

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF BEXAR §

I, **ROBERT D. TIPS** ("Grantor"), of the County of Bexar and State of Texas, owning the below described real property as my separate property, for and in consideration of the love and affection I have for my wife, **KRISTIN DEYON TIPS**, have GIVEN, GRANTED, AND CONVEYED, and by these presents do GIVE, GRANT, AND CONVEY, unto **KRISTIN DEYON TIPS** ("Grantee"), of the County of Bexar and State of Texas, an undivided one-half interest in and to the following-described real property in Bexar County, Texas, to-wit:

Lot 33R, Block 1, Terrell Hills, in the City of Terrell Hills, Bexar County, Texas, according to plat thereof recorded in Volume 9544, Page(s) 203, Deed and Plat Records of Bexar County, Texas.

THIS CONVEYANCE IS MADE AND ACCEPTED SUBJECT TO easements, rights-of-way, and prescriptive rights, whether of record or not; subject to all presently recorded instruments, liens, mortgages and conveyances, that affect the Property; and subject to taxes for 2009 and future years, payment of one-half of which Grantee assumes.

The Property is conveyed by Grantor and accepted by Grantee in its present "as is" condition and Grantor makes no representations or warranty whatsoever as to the condition of the Property.

TO HAVE AND TO HOLD the above-described premises and Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto said Grantee and her



LT2-13939-1688-2

heirs and assigns, forever; and Grantor does hereby bind Grantor and Grantor's heirs to WARRANT AND FOREVER DEFEND all and singular the said premises and Property unto the said Grantee and her heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

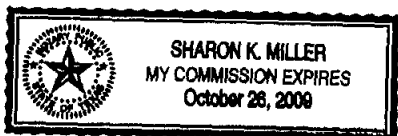
EXECUTED this 13 day of April, 2009.



ROBERT D. TIPS

Acknowledgment

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this 13th day of April, 2009, by ROBERT D. TIPS.




Notary Public, State of Texas

Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal law STATE OF TEXAS, COUNTY OF BEXAR
I hereby certify that this instrument was FILED in File Number Sequence on this date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

APR 15 2009




COUNTY CLERK BEXAR COUNTY, TEXAS

Doc# 20090066385 Fees: \$20.00
04/15/2009 10:44AM # Pages 2
Filed & Recorded in the Official Public
Records of BEXAR COUNTY
GERARD RICKHOFF COUNTY CLERK

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.

GIFT DEED

Date: [DATE]

Grantor: [WIFE]

Grantor's Address: [GRANTOR ADDRESS]

Grantee: [HUSBAND], as his separate property

Grantee's Address: [GRANTEE'S ADDRESS]

Consideration: Love of, and affection for, Grantee.

Property (including any improvements): All of my right, title, and interest in (being an [FRACTION] undivided interest in and to the whole of) three (3) tracts of land being described as follows, and being more particularly described by metes and bounds on Exhibit "A" attached hereto and made a part hereto for all purposes.

First Tract:

Second Tract:

Third Tract:

Being the undivided interest in and to the same three tracts conveyed to and accepted by Grantor under the Last Will and Testament of [Grantor's Mother] dated _____ and admitted to probate in cause number [CAUSE]

Reservations from Conveyance: [AS APPROPRAITE]

Exceptions to Conveyance and Warranty: Any validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing instruments, other than conveyances of the surface fee estate, that affect the Property; and taxes for [YEAR], which Grantee assumes and agrees to pay.

Grantor, for the Consideration and subject to the Reservations from

Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee, in equal shares, 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. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

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

[WIFE]

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF [COUNTY] §

This instrument was acknowledged before me this [DAY] day of [MONTH], [YEAR], by [WIFE].

Notary Public, State of Texas

CAUSE NO. _____

IN RE:	§	IN THE DISTRICT COURT
	§	
PARTITION OF THE	§	____ JUDICIAL DISTRICT
	§	
[big county] RANCH	§	[cowboy] COUNTY, TEXAS

PETITION FOR PARTITION OF REAL ESTATE

TO THE HONORABLE JUDGE OF SAID COURT:

[big county ranch], LLC, Petitioner in the above numbered and styled cause, brings this Petition pursuant to the provisions of Chapter 23 of the Texas Property Code (to partition real property) and the provisions of Section 4, Rules 756 through 778, of the Texas Rules of Civil Procedure (partition of real estate), and for cause of action would respectfully show the Court as follows:

Discovery Level

1. Plaintiff intends to conduct discovery in this cause under a Level 3 Discovery Plan, Texas Rules of Civil Procedure 190.4.

Jurisdiction and Venue

2. This Court has venue of this cause pursuant to the provisions of Section 23.002(a) of the Texas Property Code and Section 15.011 of the Texas Civil Practice and Remedies Code.

Parties and Service

3. [big county ranch], LLC ("Petitioner") is a Texas limited liability company.

4. [respondent1] ("Brother") is an individual residing in Bexar County, Texas, and can be served at his residence located at [respondent 1 address].

5. [respondent 2] (“Sister”) is an individual residing in Bexar County, Texas, and can be served at her residence located at [respondent 2 address].

Conditions Precedent

6. All conditions precedent to the making of the claim contained herein and the prosecution of this lawsuit have been performed or have been fulfilled in accordance with Tex. R. Civ. P. 54.

Partition

7. The parties are joint owners in varying percentages specified below of the real property comprising the surface estate of the [big county ranch] (“Ranch”) in [cowboy] County, Texas:

<i>Individual / Entity</i>	<i>Interest</i>
[big county ranch], LLC	51.00%
[Brother]	24.50%
[Sister]	24.50%
	100%

8. [big county ranch], LLC is controlled by its managers, [Brother]. [Sister] is [Brother]’s Sister.

9. The Ranch is more particularly described on the attached **Exhibit 1**.

10. Despite many attempts by Petitioner to reach an agreement with Sister regarding the partition of the Ranch and other properties owned by the family, none has been reached, which has left Petitioner no other option than filing this petition.

11. Petitioner seeks an equitable partition of the Ranch in keeping with the

varying percentages of ownership.

12. The Ranch is susceptible of being partitioned in kind and requests this Court to appoint three (3) competent and disinterested persons as commissioners to make such partition.

Prayer for Relief

Plaintiff requests that the Court enter a Decree as follows:

- a. Determining the share of each of the joint owners of the property sought to be partitioned;
- b. Determining that such property is susceptible to partition and directing partition in accordance with the respective shares of the parties;
- c. Appointing three competent and disinterested persons as commissioners to make such partition in accordance with the Decree and the law, subject to confirmation by the Court on notice to all parties;
- d. Directing the issuance of a Writ of Partition; and
- e. Awarding recovery of costs, interests, and such other relief to which the Plaintiff may be justly entitled.

Respectfully submitted,

[signature block]

ATTORNEYS FOR [big county ranch], LLC

TRANSFER ON DEATH 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: [DATE]
Transferor: [TRANSFEROR]
Transferor's Mailing Address: [ADDRESS]
Beneficiary: [TRANSFEE]
Beneficiary's Mailing Address: [TRANSFEE ADDRESS]

Property (including any improvements):

[LEGAL DESCRIPTION]

Address of Property: [ADDRESS FOR CONVENIENCE]

Transfer on Death: Pursuant to Chapter 114 of the Texas Estates Code, at my death, I grant and convey to [DESIGNATED TRANSFEE], all my right, title, and interest in the property to have and to hold forever. I may revoke this deed.

If [DESIGNATED TRANSFEE] dies before I do, then alternatively, I grant and convey [DESIGNATED TRANSFEE]'s interest and share to [ALTERNATIVE DESIGNEES].

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

PREPARED WITHOUT THE BENEFIT OF TITLE EXAMINATION

 [TRANSFEROR]

STATE OF TEXAS §
 §
 COUNTY OF BEXAR §

This Transfer on Death Deed was acknowledged before me on the ____ day of

June 2021, by [TRANSFeree].

Notary Public, State of Texas

CERTIFICATION OF TRUST
PURSUANT TO TEXAS ESTATES CODE §114.086

STATE OF TEXAS §
 § **BE IT KNOWN BY ALL PERSONS THAT:**
BEXAR COUNTY §

(1) On [DATE OF TRUST AGREEMENT] [GRANTOR] (“Grantor”) of San Antonio, Bexar County, Texas, executed a written agreement establishing a trust known by its terms as the “[NAME OF TRUST] TRUST”, (hereinafter referred to as “the Trust”). [REFER TO AND DESCRIBE ANY SUBSEQUENT AMENDMENTS].

(2) The Settlor of the Trust was Grantor, [GRANTOR].

(3) The mailing address of the currently acting trustee is:
 [Trustee]
 [ADDRESS]
 [CITY, STATE, ZIP].

The Trustee may also be contacted by means of
 [PHONE, FAX OR EMAIL]

(4) The Trustee is specifically vested with [all powers granted to Trustees under the Texas Trust Code, as it existed at inception and to include subsequent amendments to the extent they increase the powers of a trustee], as well as the power to “[CITE LANGUAGE SPECIFIC TO THE INTENDED AUDIENCE].” The Trustee is also authorized, “_____.”

(5) The Trust is [IRREVOCABLE OR REVOCABLE?], cannot be amended, and has not been modified in any manner that would cause the representations in this Certification to be incorrect.

(6) This Certification is signed by all of the currently acting trustees of the trust, and there are no co-trustees.

(7) The manner in which title to trust property should be taken is, “[NAME OF TRUSTEE, Trustee of the _____ Trust.”

(8) Anyone dealing with the Trustee may assume that the Trustee is acting within the scope of its authority and that it shall not be necessary to review the entire Trust Agreement. This Certification is made in accordance with Texas Trust Code §114.086.

SIGNED on _____.

 [TRUSTEE]

VERIFICATION

SWORN TO AND SUBSCRIBED BEFORE ME on _____, upon proper oath
by _____, in the capacity indicated.

Notary Public, State of Texas

EXAMPLE 4.2.1

AFFIDAVIT OF FACT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

SCANNED

BEFORE ME, the undersigned authority, on this day personally appeared ROBERT WYNN, who first being by me duly sworn upon oath states as follows:

“My name is ROBERT WYNN, I am a Senior Vice President and Trust Officer of Frost Bank, am over the age of 18 years, am in all ways competent to make this Affidavit and know of my own knowledge that each of the following statements of fact is true and correct.

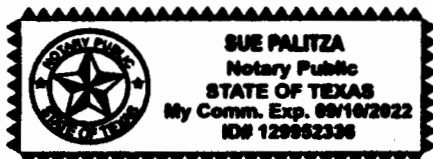
AGNES D. BEHRENS who is deceased left a Will which was admitted to Probate as a Muniment of Title by Order of the Court signed December 31, 2018 in No. 2018-PC-4416, Styled “Estate of Agnes D. Behrens, Deceased,” filed in Probate Court No. 2, Bexar County, Texas, which Will left all property which she owned, other than certain designated tangible personal property, to Frost Bank as Trustee of the Agnes D. Behrens Trust. Included among the assets of the Estate of Agnes D. Behrens which passed to the Trustee of the Agnes D. Behrens Trust is the following described real property, to wit:

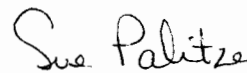
Lot 7, Block 5, NCB 14625 situated in the city of San Antonio, Bexar County, Texas also known as 5718 Gillis Dr., San Antonio, Texas.”

FURTHER AFFIANT SAYETH NOT.


ROBERT WYNN

SUBSCRIBED AND SWORN TO BEFORE ME by Robert Wynn, on January 7, 2019 to certify which witness my hand and seal of office.

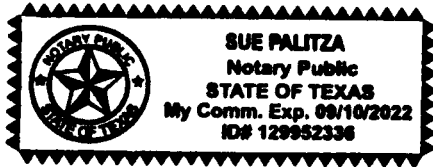



Notary Public, State of Texas
Notary's Name Printed: Sue Palitza
My commission expires: 9/10/22

STATE OF TEXAS §

 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on January 7, 2019 by Robert Wynn.



Notary Public, State of Texas
Notary's Name Printed: Sue Palitza
My commission expires: 9/10/22



VG-5-2019-20190004350

File Information

**FILED IN THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY
LUCY ADAME-CLARK, BEXAR COUNTY CLERK**

Document Number: 20190004350
Recorded Date: January 09, 2019
Recorded Time: 11:30 AM
Total Pages: 3
Total Fees: \$30.00

**** THIS PAGE IS PART OF THE DOCUMENT ****

**** Do Not Remove ****

Any provision herein which restricts the sale or use of the described real property because of race is invalid and unenforceable under Federal law

STATE OF TEXAS, COUNTY OF BEXAR

I hereby Certify that this instrument was FILED in File Number Sequence on this date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Bexar County, Texas on:
1/9/2019 11:30 AM



Lucy Adame-Clark
Lucy Adame-Clark
Bexar County Clerk

**AFFIDAVIT OF FACT
REGARDING A WILL PROBATED AS A MUNIMENT OF TITLE**

Date: [DATE]

Decedent/Grantor: [DECEDENT]

Devisee/Grantee: [CLIENT OR DEVISEE]

Property: [Legal description(s)]

STATE OF TEXAS §
§
COUNTY OF [COUNTY] §

Before me, the undersigned authority, on this date personally appeared [CLIENT OR DEVISEE], who first being duly sworn upon oath states as follows:

1. My name is [CLIENT OR DEVISEE]. I am over the age of eighteen (18) years, am in all ways competent and qualified to make this Affidavit and have personal knowledge of all of the facts contained herein, which are true and correct.
2. [DECEDENT] died on [DATE OF DEATH], leaving a Last Will which was admitted to Probate on [DATE OF PROBATE] as a muniment of title by that certain Order Admitting Will to Probate as a Muniment of Title in Cause number [CASE #], styled Estate of [DECEDENT], in Probate Court _____, Bexar County, Texas. A Certified Copy of said Order and Last Will are attached.
3. Included among the assets of the [DECEDENT] subject to Decedent's Last Will is each of the Properties referenced above.
4. I am the same [CLIENT OR DEVISEE] named in [SECTION] of the Last Will of [Decedent].

[CLIENT OR DEVISEE]

Sworn to and subscribed before me on this _____ day of _____, 20____, by [CLIENT OR DEVISEE].

Notary Public, State of Texas

**AFFIDAVIT AND NOTICE
OF OIL AND GAS MANAGEMENT AND AGENCY**

Effective Date: [DATE]

Manager or Agent: [MINERAL MANAGER OR FIRM]

On behalf of: [CLIENT]

Interests: [Legal description, survey, Section, Township, Range – or Exhibit containing the same]

or

[All / Percent of those certain interests previously held by [Decedent] but transferred/devised/gifted to [Client] under [Decedent's] Last Will and Testament dated ____, and admitted to probate in Cause Number ____, Probate Court number __ of [County] County, Texas.]

STATE OF TEXAS §
 §
COUNTY OF [COUNTY] §

KNOW ALL BY THESE PRESENTS:

[Printed Name of Mineral Manager or Firm] hereby deposes that he is an officer of [Mineral Manager or Firm] and that as such is authorized and is otherwise competent and he has sufficient knowledge to make this affidavit, and states on his oath that:

1. According to the terms of the [Identify Document, for example., "Mineral Management Agreement" or the LLC agreement itself] dated the [date of contract with the mineral manager], the [Officers? Directors? Members? Board of Trustees? Or name of individual Client] of the [Client Name] appointed [Mineral Manager or Firm] as its/their exclusive agent and manager for oil, gas, and mineral management, including but not limited to representation and communications on behalf of [Client] to third parties.
2. [Client] owns oil and gas mineral interest(s), overriding royalty interest(s) and/or working interest(s) located within the following legal descriptions in [COUNTY] County, Texas:

[Legal description, survey, Section, Township, Range – or Exhibit containing the same]

or

[All / Percent of those certain interests previously held by [Decedent] but transferred/devised/gifted to [Client] under [Decedent's] Last Will and Testament dated _____, and admitted to probate in Cause Number _____, Probate Court number ____ of [County] County, Texas.]

3. The [Contract or Agreement] appointing [Mineral Manager or Firm] as Agent and Manager, provides for [Mineral Manager or Firm] to hold, operate, control and manage ALL oil and gas properties owned by [Client], including any not shown, as well as any acquired hereafter in accordance with the terms of the Agreement;

4. The address and other contact information for [Mineral Manager or Firm] is:

[Mineral Manager or Firm]

Attn: _____

Address: _____

City, ST Zip: _____

Phone: _____

Email: _____

5. On this _____ day of _____ 2022, [Mineral Manager or Firm] [optional: and Client?] are signing this Affidavit as confirmation of the Oil and Gas Management and for the purpose of providing notice to third parties for all inquiries or other communications related to [Client's] oil and gas interests as described herein.

[Mineral Manager or Firm]

By: [Print Name]

Title: [Title]

Sworn to and subscribed before me on this _____ day of _____, 20____, by [Printed Name] as [Title] of [Mineral Manager or Firm] to me known (or so proven) to be the identical person who signed the name of the maker thereof to the within and foregoing instrument as an officer and acknowledged to me that he

executed the same as his free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Notary Public, State of Texas

[Optional section below—have Client execute]

ACKNOWLEDGED BY CLIENT:

[CLIENT]

Acknowledged before me on this ____ day of _____, 2022 by [Client].

Notary Public, State of Texas

**Form 424—General Information
(Certificate of Amendment)**

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

Commentary

Sections 3.051 to 3.056 of the Texas Business Organizations Code (BOC) govern amendments to the certificate of formation of a Texas filing entity. A filing entity may amend its certificate of formation at any time and in as many respects as may be desired, *as long as the certificate as amended contains only such provisions as could have been included in the original certificate of formation*. Amendments may be adopted to change the language of an existing provision, to add a new provision, or to delete an existing provision. If extensive amendments are proposed, the entity should consider filing a restated certificate of formation pursuant to section 3.059 of the BOC (Form 414).

Procedural Information by Entity Type

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. Do not include confidential information, such as social security numbers. If amending information relating to directors or governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

For-profit or Professional Corporation

Sections 21.052 to 21.055 of the BOC set forth the procedures for amending the certificate of formation for a for-profit corporation or professional corporation. The board of directors adopts a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the shareholders. Written or printed notice setting forth the proposed amendment is given to each shareholder of record entitled to vote not later than the 10th day and not earlier than the 60th day before the date of the meeting, either personally, by electronic transmission, or by mail (BOC § 21.353). (Please refer to chapters 6 and 21 of the BOC for further information.)

Pursuant to section 21.364 of the BOC, the proposed amendment is adopted on receiving the affirmative vote of two-thirds of the outstanding shares entitled to vote. If any class or series of shares is entitled to vote as a class, the amendment must also receive the affirmative vote of two-thirds of the shares within each class or series that is entitled to vote as a class. Any number of amendments may be submitted to the shareholders and voted on at one meeting. Alternatively, amendments may be adopted by unanimous written consent of the shareholders.

If no shares have been issued, the amendment is adopted by a resolution of the board of directors and the provisions for adoption by shareholders do not apply.

An officer must sign the certificate of amendment. If no shares have been issued and the amendment was adopted by the board of directors, a majority of the directors may sign the certificate of amendment.

Professional Association

The provisions of chapters 20 and 21 of the BOC apply to a professional association, unless there is a conflict with a specific provision in title 7. A professional association may amend its certificate of formation by following the procedures set forth in its certificate of formation. If the certificate of

formation does not provide a procedure for amending the certificate, the certificate of formation is amended by a two-thirds vote of its members.

An officer must sign the certificate of amendment.

Nonprofit Corporation

Sections 22.105 to 22.108 of the BOC set forth the procedures for amending the certificate of formation for a nonprofit corporation. If the corporation has members with voting rights, the board of directors adopts a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members, which may be either an annual or special meeting. The proposed amendment is adopted on receiving two-thirds of the votes that members present, in person or by proxy, were entitled to cast (BOC § 22.164). Any number of amendments may be submitted to the members and voted on at one meeting. Alternatively, the amendment may be adopted without a meeting if a written consent, setting forth the action to be taken, is signed by all the members entitled to vote. (Please refer to chapters 6 and 22 of the BOC for further information.)

If the corporation has no members or no members with voting rights, the amendment is adopted by a majority vote of the board of directors.

An officer of the nonprofit corporation must sign the certificate of amendment.

A nonprofit corporation formed for a special purpose under a statute or code other than the BOC may be required to meet other requirements for a certificate of amendment than those imposed by the BOC. This form may not comply with the requirements imposed under the special statute or code governing the special purpose corporation. Please refer to the statute or code governing the special purpose corporation for specific filing requirements for a certificate of amendment.

Cooperative Association

Section 251.052 of the BOC sets forth the procedure for amending the certificate of formation of a cooperative association. The board of directors may propose an amendment to the certificate of formation by a two-thirds vote of the board members. Notice of the meeting to consider the proposed amendment must be provided to the members no later than the 31st day before the date of the meeting. To be approved, the amendment must be adopted by the affirmative vote of two-thirds of the members voting on the amendment. The cooperative association must file the certificate of amendment with the secretary of state within thirty (30) days after its adoption by the members.

An officer of the cooperative association must sign the certificate of amendment.

Limited Liability Company or Professional Limited Liability Company

Chapter 101 of the BOC governs limited liability companies. Pursuant to section 101.356(d), an amendment to the certificate of formation must be approved by the affirmative vote of all of the company's members. If the company has managers, but has yet to admit its initial member, the amendment would be approved by the affirmative vote of the majority of all the company's managers as permitted by section 101.356(e).

If the limited liability company has managers, an authorized manager must sign the certificate of amendment. If the company does not have managers and is managed by its members, an authorized managing-member must sign the certificate of amendment.

Limited Partnership

Chapter 153 of the BOC governs limited partnerships. A certificate of limited partnership may be amended at any time for any proper purpose determined by the general partners. However, section 153.051 *requires* a certificate of amendment when there is:

- (1) a change of name of the partnership;
- (2) an admission of a new general partner; or
- (3) a withdrawal of a general partner.

Section 153.051 of the BOC also requires that a limited partnership amend its certificate of formation when there is a change of address for the registered office or a change of name or address of the registered agent of the partnership. However, rather than filing an amendment, the partnership may file a statement of change pursuant to section 5.202 of the BOC to effect a change to its registered agent or registered office.

Pursuant to section 153.553, at least one general partner must sign the certificate of amendment. In addition, each general partner designated as a new general partner also must sign the certificate of amendment. A withdrawing general partner need not sign the certificate of amendment. The execution of a certificate by a general partner is an oath or affirmation, under a penalty of perjury, that to the best of the executing party's knowledge and belief, the facts contained in the certificate are true and correct (BOC §153.553(c)).

Instructions for Form

- **Entity Information:** The certificate of amendment must contain the legal name of the entity and identify the type of filing entity. *If the amendment changes the name of the entity, the name as it currently appears on the records of the secretary of state should be stated.* It is recommended that the date of formation and file number assigned by the secretary of state be provided to facilitate processing of the document.
- **Amendments: 1. Amended Name.** This form is designed to provide a standardized amendment form to effect a change of name for the filing entity. If the legal name of the entity is to be changed, state the new name of the entity in section 1. Please note that the legal name of the entity must include an appropriate organizational designation for the entity type.

The new entity name will be checked for availability on submission of the certificate of amendment. Under section 5.053 of the BOC, if the new name of the entity is the same as, deceptively similar to, or similar to the name of an existing domestic or foreign filing entity, or any name reservation or name registration filed with the secretary of state, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, [subchapter C](#)) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate under a name does not authorize the use of a name in violation of another person's rights to the name.

- **Amendments: 2. Changes to Registered Agent and/or Registered Office.** It is not necessary to file a certificate of amendment if the entity seeks only to change its registered agent or its

registered office. A filing entity may file a statement of change of registered agent/registered office pursuant to section 5.202 of the BOC.

However, if the entity is changing its name or making other changes to its certificate of formation, any changes to the registered agent or registered office may be included in a certificate of amendment. Section 2 can be completed to effect a change to the registered agent or registered office address. The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The filing entity cannot act as its own registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although the consent of the person designated as registered agent is required, a copy of the written or electronic consent need not be submitted with a certificate of correction that corrects the name of the registered agent. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Amendment to Registered Office: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Amendments: 3. Other Provisions to be Added, Altered, or Deleted.** Section 3 of this form contains three text areas that may be used to make alterations or changes to other provisions in the certificate of formation or to identify those provisions to be deleted. If the space provided in a text area is insufficient, include the provisions as an attachment to this form.
 - **Add:** If the amendment is an addition to the certificate of formation, check the "Add" statement and provide an identification or reference for the added provision and the full text of each provision added in the text area.
 - **Alter:** If the amendment alters or changes an existing article or provision in the certificate of formation, check the "Alter" statement and provide an identification of the article number or description of the altered provision and the text of the article or provision as it is amended to read in the text area.
 - **Delete:** If the amendment deletes an existing article or provision in its entirety, check the "Delete" statement and provide a reference to the article number or provision being deleted in the text area.
- **Statement of Approval:** As required by section 3.053 of the BOC, the form includes a statement regarding the approval of the amendment. In general, amendments are adopted and approved in the manner set forth in the title of the BOC governing the entity. General procedural information relevant to each filing entity that may use this form precedes the instructions for completing the form.
- **Effectiveness of Filing:** A certificate of amendment becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a

future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of amendment must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Please refer to the procedural information relating to the specific entity type for further information on execution requirements. Generally, a governing person or managerial official of the entity signs a filing instrument.

The certificate of amendment need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

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

- **Payment and Delivery Instructions:** The filing fee for a certificate of amendment is **\$150**, unless the filing entity is a nonprofit corporation or a cooperative association. The filing fee for a certificate of amendment for a nonprofit corporation or a cooperative association is **\$25**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

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

Revised 05/11

Form 424
(Revised 05/11)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: See instructions



This space reserved for office use.

Certificate of Amendment

Entity Information

The name of the filing entity is:

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

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

- | | |
|--|---|
| <input type="checkbox"/> For-profit Corporation | <input type="checkbox"/> Professional Corporation |
| <input type="checkbox"/> Nonprofit Corporation | <input type="checkbox"/> Professional Limited Liability Company |
| <input type="checkbox"/> Cooperative Association | <input type="checkbox"/> Professional Association |
| <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Limited Partnership |

The file number issued to the filing entity by the secretary of state is: _____

The date of formation of the entity is: _____

Amendments

1. Amended Name

(If the purpose of the certificate of amendment is to change the name of the entity, use the following statement)

The amendment changes the certificate of formation to change the article or provision that names the filing entity. The article or provision is amended to read as follows:

The name of the filing entity is: (state the new name of the entity below)

The name of the entity must contain an organizational designation or accepted abbreviation of such term, as applicable.

2. Amended Registered Agent/Registered Office

The amendment changes the certificate of formation to change the article or provision stating the name of the registered agent and the registered office address of the filing entity. The article or provision is amended to read as follows:

Registered Agent
(Complete either A or B, but not both. Also complete C.)

☐ A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

☐ B. The registered agent is an individual resident of the state whose name is:

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

The person executing this instrument affirms that the person designated as the new registered agent has consented to serve as registered agent.

C. The business address of the registered agent and the registered office address is:

<i>Street Address (No P.O. Box)</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>
		TX	

3. Other Added, Altered, or Deleted Provisions

Other changes or additions to the certificate of formation may be made in the space provided below. If the space provided is insufficient, incorporate the additional text by providing an attachment to this form. Please read the instructions to this form for further information on format.

Text Area (The attached addendum, if any, is incorporated herein by reference.)

☐ **Add** each of the following provisions to the certificate of formation. The identification or reference of the added provision and the full text are as follows:

☐ **Alter** each of the following provisions of the certificate of formation. The identification or reference of the altered provision and the full text of the provision as amended are as follows:

☐ **Delete** each of the provisions identified below from the certificate of formation.

Statement of Approval

The amendments to the certificate of formation have been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.

Effectiveness of Filing (Select either A, B, or C.)

- A. ☐ This document becomes effective when the document is filed by the secretary of state.
- B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____
- The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____

Signature of authorized person

Printed or typed name of authorized person (see instructions)

Print

Reset

SAMPLE LANGUAGE OF A NO-CONTEST PROVISION IN A CLOSELY-HELD ENTITY (LLC) OPERATING AGREEMENT:

No-Contest, Release, and Waiver. Each and every benefit conferred or secured upon a Class B Member or Assignee (specifically including but not limited to periodic dividends, if any, increase of a member's Capital Account, or any gain, realized or unrealized, pursuant to a sale under Section [regarding formula for calculating the purchase price for a member's interest under a mandatory sale]) is made on the condition precedent that the Member accepts and re-affirms each and every provision of this Agreement and the actions of the Managers. Accordingly:

1. If any Class B Member or Assignee shall:
 - a. contest the validity of any provision of this Agreement or any instrument executed pursuant to this Agreement; or
 - b. contest the actions of the Managers, especially the amount or frequency of dividends; or
 - c. institute, join in (except as a party defendant), fail to actively defend against, or acquiesce to any proceeding to contest the validity of this Agreement, any instrument executed pursuant to this Agreement, or any action of the Managers, or to prevent any provision hereof or of such instrument from being administered according to its terms; or
 - d. attempt to force the Managers to declare a dividend, or
 - e. contest any action of any agent, contractor, or employee of the Managers,

then any and all benefits provided for such Member or Assignee, or such benefits which would in any manner pass to a person successful in challenging this Agreement or action of Management, shall instead pass to the other Class A and Class B Members according to their respective sharing ratios.

2. By receiving and accepting any benefit by a Class B Member or Assignee, such party expressly WAIVES, RELEASES, AND AGREES TO FOREVER HOLD HARMLESS, in any capacity, any claim against the Managers, known or unknown, discoverable or undiscoverable, for any action taken during the period of time following the previous receipt and acceptance of a benefit and the present receipt and acceptance. This Waiver and Release is intended to specifically include claims for negligence, gross negligence, breach of fiduciary duty, fraud, or any other equitable remedy. This provision is included as specific consideration for the provisions of Section [regarding a Class B Member's right to information, books, and records].
 - a. In the course of applying this provision, a party is said to have received and accepted a benefit when such party: (i) negotiates a check, regardless of any special endorsement language such as "under protest" or otherwise; (ii) in the case of a party who receives an electronic wire of funds or ACH, when such party fails to return all of the funds so sent within three (3) business days, or

(iii) in the event of any other method of conferring a benefit, failing to take written, affirmative measures to deny acceptance of the benefit within three (3) business days.