

CERTIFICATE OF FORMATION EXAMPLE PROVIDED BY JACKSON WALKER L.L.P.

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CERTIFICATE OF FORMATION
OF

(a Texas For-Profit Corporation)

The undersigned natural person of the age of eighteen years or more, acting as an organizer of a corporation under the Texas Business Organizations Code, does hereby adopt the following Certificate of Formation for such corporation:

1. The entity being formed is a for-profit business corporation. The name of the corporation is _____ (the "Corporation").
2. The purpose for which the Corporation is organized is the transaction of any and all lawful purposes for which a for-profit corporation may be organized under the Texas Business Organizations Code.
3. The duration of the entity shall be _____.

[Above not required if the duration is perpetual.]

4. The business address of the initial registered office of the Corporation is _____, TX _____, and the name of the initial registered agent at such address is _____.

**[Note: if agent is an entity, it cannot be the entity formed by this filing,
and if agent is an individual, he/she must be a Texas resident].**

5. The name and address of the organizer of the Corporation are as follows:

NAME

ADDRESS

6. The initial Board of Directors shall be comprised of ____ directors, and the name(s) and address(es) of each person who will serve as a director until the first annual meeting of shareholders or until a successor is elected and qualified are:

NAME

ADDRESS

7. The aggregate number of shares of capital stock that the Corporation will have authority to issue is _____, _____ of which will be shares of Common Stock, having a par value of \$ _____ per share, and _____ of which will be shares of Preferred Stock, having a par value of \$ _____ per share.

Preferred Stock may be issued in one or more series as may be determined from time to time by the Board of Directors. All shares of any one series of Preferred Stock will be identical except as to the date of issue and the dates from which dividends on shares of the series issued on different dates will cumulate, if cumulative. Authority is hereby expressly granted to the Board of Directors to authorize the issuance of one or more series of Preferred Stock, and to fix by resolution or resolutions providing for the issue of each such series the voting powers, designations, preferences, and relative, participating, optional, redemption, conversion, exchange or other special rights, qualifications, limitations or restrictions of such series, and the number of shares in each series, to the full extent now or hereafter permitted by law.

**ABOVE COMPLETES THE MINIMUM STATUTORY REQUIREMENTS.
BELOW ALL OPTIONAL:**

8. No shareholder of the Corporation will, solely by reason of holding shares of any class, have any preemptive or preferential right to purchase or subscribe for any shares of the Corporation, now or hereafter to be authorized, or any notes, debentures, bonds or other securities convertible into or carrying warrants, rights or options to purchase shares of any class, now or hereafter to be authorized, whether or not the issuance of any such shares or such notes, debentures, bonds or other securities would adversely affect the dividend, voting or any other rights of such shareholder. The Board of Directors may authorize the issuance of, and the Corporation may issue, shares of any class of the Corporation, or any notes, debentures, bonds or other securities convertible into or carrying warrants, rights or options to purchase any such shares, without offering any shares of any class to the existing holders of any class of stock of the Corporation.

[NOTE: Shareholders of Texas corporations will not have preemptive rights, unless those rights are expressly granted by the Certificate of Formation. See TBOC § 21.203. Therefore, this Section is not necessary to deny preemptive rights. Nevertheless, it does clarify that there are none. If preemptive rights are desired, modify accordingly.]

9. Shareholders of the Corporation will not have the right of cumulative voting for the election of directors or for any other purpose.

[NOTE: Shareholders of Texas corporations will not have cumulative voting rights, unless those rights are expressly granted by the Certificate of Formation. See TBOC § 21.360. Therefore, this Section is not necessary to deny cumulative voting rights. Nevertheless, it does clarify that there are none.]

OR:

Cumulative voting by the shareholders at any election for directors is permitted if a shareholder who intends to cumulate his or her votes gives written notice of such intention to the secretary of the corporation on or before the day preceding the election at which such shareholder intends to cumulate votes.

10. In addition to any other manner of calling a special meeting of shareholders that may be set forth in the Bylaws of the Corporation, a special meeting of shareholders may be called at the request of the holders of at least 50% of all shares issued, outstanding and entitled to vote.

[Note: Pursuant to TBOC § 21.352, can range from a minimal percentage to 50% - If not otherwise provided in the Certificate of Formation, the statute provides that the holders of 10% may call a meeting.]

11. With respect to any matter, a quorum will be present at a meeting of shareholders if the holders of one-third [or greater fraction] of the shares entitled to vote on that matter are represented at the meeting in person or by proxy.

[Note: Pursuant to TBOC § 21.358, can range from one-third to 100% - If not otherwise provided in the Certificate of Formation, the statute provides that a quorum is present if the holders of a majority of the shares entitled to vote are represented.]

12. Any action that under the provisions of the Texas Business Organizations Code would, but for this Section ____, be required to be authorized by the affirmative vote of the holders of any specified portion of the shares of the Corporation will require the approval of the holders of a majority of the shares of the Corporation entitled to vote on that matter, notwithstanding the vote required by the Code.

[Note: Pursuant to TBOC § 21.365, can range from a majority to 100%. This section should be included if it is desired to change the specified voting requirements contained in the TBOC; i.e., any requirements of a 2/3 vote will be lowered to a majority.]

13. The Board of Directors is expressly authorized to alter, amend or repeal the Bylaws of the Corporation or to adopt new Bylaws.

14. Any action required or permitted by law, this Certificate of Formation, or the Bylaws of the Corporation to be taken at a meeting of the shareholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed and dated by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

Prompt notice of the taking of any action by shareholders without a meeting by less than unanimous written consent shall be given to those shareholders who did not consent in writing to the action.

**[See TBOC § 6.202 for procedural requirements
where the consent is less than unanimous.]**

15. The Corporation [**may/will**], to the fullest extent permitted by the Texas Business Organizations Code, as the same exists or may hereafter be amended, indemnify any and all persons who are or were serving as director or officer of the Corporation, or who are or were serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee or employee of another corporation, partnership, limited liability company, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, from and against any and all of the expenses, liabilities or other matters referred to in or covered by such Code. Such indemnification may be provided pursuant to any Bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in the capacity of director or officer and as to action in another capacity while holding such office, will continue as to a person who has ceased to be a director or officer and inure to the benefit of the heirs, executors and administrators of such a person.

If a claim under this Section is not paid in full by the Corporation within 30 days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant will be entitled to be paid also the expense of prosecuting such claim. It will be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct that make it permissible under the laws of the State of Texas for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense will be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its shareholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the laws of the State of Texas nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its shareholders) that the claimant has not met such applicable standard of conduct, will be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

16. To the fullest extent permitted by the laws of the State of Texas as the same exist or may hereafter be amended, a director of the Corporation will not be liable to the Corporation or its shareholders for monetary damages for an act or omission in the director's capacity as a director. Any repeal or modification of this Section will not increase the personal liability of any director of the Corporation for any act or occurrence taking place before such repeal or modification, or adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification. The provisions of this Section shall not be deemed to limit or preclude indemnification of a director by the Corporation for any liability of a director that has not been eliminated by the provisions of this Section.

[Add any other desired provisions not inconsistent with law relating to the organization, ownership, governance, business, or affairs of the filing entity here.]

This Certificate of Formation shall become effective upon filing with the Secretary of State of the State of Texas.

SIGNED AND DATED as of the ____ day of _____, 20__.

[Name]
Organizer

EXAMPLE