

**General information starting a small business in Texas. Types of business entities (assumed names, assumed name for us, limited partnership, partnerships etc) summary of some Texas limited partnership law**

**General information starting a small business in Texas**

1. It is easy to start a business in Texas. Unlike some other states, Texas has relatively few requirements to begin a new business. The first step is to choose the type of business entity that the business will be organized as.
2. There are types of business entities to choose from:

Sole proprietorship,  
Partnership,  
Limited Partnership,  
Limited Liability Partnership,  
Registered Limited Liability Partnership  
Corporation,  
Professional Corporation,  
Professional Association,  
Limited Liability Company,  
Professional Limited Liability Company,  
Joint Venture,  
Trust,  
and some other specialized business organizations.

3. Once the business organization has been selected, you must select a name for the business. You must make sure that you are not using a name that is already being used. Look in the telephone book, check the local assumed name records and call the Secretary of State's Office to find out what names are available.
4. After a name is chosen, you must ascertain if there are any licensing, permit or other governmental agency requirements that are applicable or govern your business. One of the best sources to keep up with these type of requirements is by joining a trade association.
5. After you have formed your business, you will need to make sure that you have set up your payroll and other tax processes so that taxes may be reported and paid timely.

**Sole proprietorships, assumed names and assumed name certificates**

1. The following comments and forms provide basic information on how to operate a business in Texas as a sole proprietorship. An individually owned business is called a sole proprietorship. An assumed name certificate must be filed for all sole proprietorship and other businesses if the business name is conducted in a name other than the owner's full legal name.

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2. An assumed name is any name other than the name stated in a corporation's Certificate of Formation. A corporation must file an assumed name certificate with the Secretary of State and with the county clerk in the county where the corporation maintains its registered office and the county in which the principal office is located, if such county is different from the county of the registered office [Bus & Com C Section 36.11].

3. Any business desiring to market or advertise under a name that is different from its legal or corporate name is also required to file an assumed name certificate in the office of the county clerk of each county in which the business intends to operate.

4. The certificate must set forth the name under which the business is to be conducted, the name and address of each owner, and the length of time, not to exceed 10 years, that the assumed name will be used. The period of use may be extended beyond 10 years by filing renewal applications.

5. All assumed name certificates must be signed before a notary and must be filed in each county where the assumed name will be used.

6. Any corporation that regularly conducts business or renders professional services in Texas under an assumed name must comply with the assumed name procedures.

7. Unincorporated businesses or professions must file assumed name certificates in each county where business premises are maintained [see Bus & Com C Section 36.10].

8. If no business premises are maintained in any county, then the certificate is filed in each county where the entity conducts business or renders professional services.

9. Filing an assumed name certificate does not give the registrant the right to use a name when this use would be contrary to the common law or statutory law of unfair competition, unfair trade practices, or common law copyright [Texas Business & Commerce Code Section 36.17].

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Form: Assumed names and assumed name certificates for an unincorporated business or profession

# PREVIEW

## ASSUMED NAME RECORDS

### CERTIFICATE OF OWNERSHIP FOR UNINCORPORATED BUSINESS OR PROFESSION

State of Texas  
County of \_\_\_\_\_

NOTICE: "CERTIFICATES OF OWNERSHIP" are valid for a period not to exceed 10 years from the date filed in the county clerk's office [Business & Commerce Code sec. 36.13]. This certificate, properly executed, is to be filed immediately with the county clerk.

# PLEASE DO NOT COPY

#### NAME IN WHICH BUSINESS IS OR WILL BE CONDUCTED

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_

STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

Period (not to exceed 1 year) during which assumed name will be used: \_\_\_\_\_

# THIS DOCUMENT

Business is to be conducted as a:

- Proprietorship
- Sole Practitioner
- Joint Stock Company
- General Partnership
- Limited Partnership
- Joint Venture
- Real Estate Investment Trust

Other: [specify]

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CERTIFICATE OF OWNERSHIP

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I/We, the undersigned, are the owner(s) of the above business, and my/our name(s) and address(es) given is/are true and correct, and there is/are no ownership(s) in this business other than those listed below.

[List names and addresses of owners and leave space for signatures of each person listed].

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ by

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\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Notary's typed or printed name

My commission expires:  
\_\_\_\_\_

[or Notary's Stamp]

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Form: Assumed names and assumed name certificates for a partnership

**PREVIEW**  
ASSUMED NAME CERTIFICATE FOR A PARTNERSHIP

State of Texas  
County of \_\_\_\_\_

We, the undersigned partners of \_\_\_\_\_, a partnership, for the purpose of complying with the Assumed Business or Professional Name Act (Chapter 36, Title 4, of the Business and Commerce Code of the State of Texas) do certify the following facts:

1. The name under which the partnership will conduct and transact business is

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2. The true and full names and addresses of the partners conducting or transacting such business are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The business conducted in \_\_\_\_\_ County under such assumed name will be entered by the general partnership.

**THIS DOCUMENT**

4. The name, \_\_\_\_\_, under which partnership will conduct and transact business, will be used from [date].

IN TESTIMONY WHEREOF, we have set our hands this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Partner  
**THANK YOU**  
\_\_\_\_\_  
Partner

State of Texas  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_

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\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
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My commission expires:  
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[or Notary's Stamp]

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## Partnership information and forms

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1. The following comments and forms provide basic information on Texas partnership law and some sample forms.

2. General partnerships differ significantly from limited partnerships in the following principal ways:

a. There is general liability of all partners.

b. The death, withdrawal, or bankruptcy of a partner in a general partnership causes the dissolution of the partnership, which is not necessarily true of a limited partnership.

c. An interest in a general partnership is not considered a security, while an interest offered by a limited partnership is considered a security subject to compliance with federal and state securities laws.

3. A General partnership is preferred if all the proposed partners intend to be actively involved and engaged in management and operation of the partnership business. The limited partnership agreement is most appropriate if it is desired to provide the favorable tax benefits of a partnership plus limited liability to investors who wish to invest in a venture but who do not have time to become actively involved in its day to day operations.

4. In a general partnership all of the partners have the right to be involved in the day to day affairs and management of the partnership. They share in the profits according to the terms of their partnership agreement, and are liable for partnership debts.

5. Limited partnerships restrict the partnership's business management to the general partners, and afford the limited partners limited liability so that they are not liable for the partnership's debts or liabilities.

6. Family limited partnerships are a specific type of limited partnership designed to protect and manage family assets. These partnerships are used in advanced estate planning and asset protection.

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## Differences between limited liability companies, partnerships and registered limited liability partnerships

# PREVIEW

1. There are several important difference between limited liability companies, (LLC) partnerships and registered limited liability partnerships( RLLP). A LLC shields its members from LLC obligations in much the same manner as a limited partnership shields its limited partners from the limited partnership's debts. A LLC may afford more protection to its members than a limited partnership affords to its limited partners.

2. A limited partnership affords greater protection to the limited partners than is afforded to members of a registered limited liability partnership. In a limited partnership, the general partner (which may be a corporation) has unlimited liability and exposure for the limited partnership's debts and obligations. Members in a LLC have no such exposure.

3. Generally, the limited partners are not liable for the limited partnership's debts and obligations unless they have actively engaged in the management of the business. On the other hand, a registered limited liability partner may participate in the management or control of the partnership business and still enjoy the limited liability afforded by the RLLP.

4. A general partner and a RLLP partner are liable for general partnership debts and obligations, however, a RLLP partner is not liable for the negligence or malpractice of other registered limited liability partners in the partnership, unless he or she was involved in the negligent act or a part of the negligent act. A partner in a general partnership is liable for all other partner's actions in the partnership even if he or she had nothing to do with the negligent action.

5. LLC's must pay a franchise tax, whereas general partnerships do not pay the Texas franchise tax.

6. The attorney should review the consequences and affect of the franchise tax before choosing a limited liability company, partnership, limited partnership, or registered limited liability partnership.

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**How to choose between limited liability companies, partnerships, and registered limited liability partnerships**

# **PREVIEW**

1. RLLP's allow pre-existing partnerships to enjoy similar benefits to those afforded LLCs. Due to the tax consequences of disbanding a partnership and then forming a new entity, i.e. a LLC, many pre-existing partnerships will prefer to chose the RLLP form rather than the LLP form. An RLLP has many of the same benefits of a LLC but avoids the tax consequences of changing the organization of a pre-existing partnership.
2. For example large law firms that desire the benefits of an LLC but do not want to form a LLC due to the tax consequences can form a RLLP.

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### Requirements to form a limited partnership

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1. The practitioner should read the Texas Business Corporations Code (BOC). Note that the code requires that every new limited partnership doing business in Texas appoint a registered agent and a registered office to receive service of process; see BOC Section 5.201.
2. The formation of a Texas limited partnership requires the filing of a Certificate of Limited Partnership executed by one or more partners, including the general partners. The original signed copy and one duplicate must be filed with the Secretary of State, together with the filing fee of \$750. Previously the fee was one-half (1/2) of one percent (1%) of the contribution of cash, on the agreed value of the property.
3. A foreign limited partnership must register with the Secretary of State before transacting business in Texas. The foreign limited partnership must also pay a \$750 filing fee and file the certificate described above.
4. Under the prior law, registration of foreign limited partnerships with the state was optional. Now, a foreign limited partnership is required to register with the Secretary of State by filing the original application for registration as a foreign limited partnership, together with a duplicate copy, executed by the general partner.

### Registered agent and office

1. The general partner's consent to be served through its registered agent is no longer required. The Texas Business Corporations Code (BOC) section 5.201 requires every domestic and foreign limited partnership to maintain a registered agent and registered office in Texas.
2. The registered agent may be an individual or a resident, a domestic or foreign corporation qualified to do business in Texas, whose business office is the same as the limited partnership's registered office. Note that the registered office may be in a place other than its place of business.
3. The former law did not require a limited partnership to designate a registered agent and address.

### Principal office

1. Every domestic limited partnership must also establish and maintain a principal office in the United States where business and financial records of the partnership are maintained, see The Texas Business Corporations Code (BOC) section 153.551.

### Name of the limited partnership

1. The name of a limited partnership must end with the words "Limited Partnership" or "Limited Partnership, Limited Liability Partnership" or "Limited Partnership, Limited Liability Company".

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2. The limited partnership name may not be the same as or deceptively similar to the name of an existing corporation or other limited partnership licensed and registered to do business in Texas, unless written consent has been obtained. see The Texas Business Corporations Code (BOC) section 5.053.

### Regulatory law

1. Limited partnerships are governed by title 4 of the Texas Business Organizations Code (BOC) chapters 151 and 153. See Title 1, chapter 3, subchapter A of the BOC for the required provisions to be set forth in the certificate of formation for a limited partnership.

a. The BOC codified the provisions of the prior law found in the Texas Business Corporation Act (TBCA), Texas Non-Profit Corporation Act (TNPCA), Texas Miscellaneous Corporation Law Act (MCLA), Texas Limited Liability Company Act (LLCA), Texas Revised Limited Partnership Act (TRLPA), Texas Real Estate Investment Trust Act (TREITA), Texas Uniform Unincorporated Nonprofit Associations Act (TUUNAA), Texas Professional Corporations Act (TPCA), Texas Professional Associations Act (TRPA), the Texas Revised Partnership Act (TRPA), the Cooperative Associations Act (CAA), and other provisions of the Texas laws that governed domestic business entities.

b. The BOC became effective January 1, 2006.

c. The BOC does not apply to entities that existed on January 1, 2006 unless the entity expressly elects after January 1, 2006 to adopt the BOC as its governing statute. The code applies thereafter on January 1, 2010. The BOC applies and governs all new entities that are formed after January 1, 2006.

2. All limited partnerships, domestic and foreign, are also governed by the Texas Revised Limited Partnership Act.

### Name registration

1. A limited partnership name may be registered by a foreign limited partnership that is not authorized to transact business in Texas, if its name is available.

2. Foreign limited partnerships which intend to transact business in Texas must file an application for registration pursuant to chapter 9 of Texas Business Organizations Code (BOC) and subchapter K of chapter 151 of the BOC.

3. The application for a name reservation must be executed by a general partner of the foreign limited partnership. The application must state the following:

4. The name of the foreign limited liability partnership, the address, the street address of its registered agent, the name of its registered agent,

5. The state under the laws of which it is formed,

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6. The date of its formation

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7. A statement that it is carrying on or doing business, and

8. A brief statement of the nature of business in which it is engaged.

9. The application must be accompanied by a filing fee, and a certificate stating that the foreign limited liability partnership is in good standing or existence under the laws of the state for which it was formed.

10. The certificate of good standing must be signed or executed by the Secretary of State of that state, or by the state official who has custody of the records pertaining to that foreign limited partnership.

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11. A name registration is effective for one year from the date of filing. A name registration may be renewed during the 90 days that precede the expiration of the current registration. A renewal application must include the same items required in the original application, and include a filing fee.

#### **Limited partnerships practice summary**

1. Limited partnerships differ significantly from general partnerships in the following principal ways:

**THIS DOCUMENT**

a. There is no general liability of all partners. A general partner who manages and controls the partnership business for a salary or fee (and possibly a carried [free] interest in the partnership), however, has unlimited liability for partnership obligations.

b. Multiple limited partners, as long as they do not participate in the management and control of the partnership business, are liable for partnership obligations only to the extent of the amount each has contributed or is obligated to contribute to the partnership.

c. The death, withdrawal, or bankruptcy of a limited partner does not necessarily cause the dissolution of the partnership, as may happen in a general partnership, or as may happen in a limited partnership on the death, withdrawal, or bankruptcy of the general partner.

d. The interest offered by a limited partnership is a security, which is therefore subject to compliance with federal and state securities laws.

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2. For legal references to limited partnerships, see:

a. Limited partnerships are governed by title 4 of the Texas Business Organizations Code (BOC) chapters 151 and 152. See Title 4, chapter 3, subchapter A of the BOC for the required provisions to be set forth in the certificate of formation for a limited partnership.

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Foreign limited partnerships are governed by section of Texas Business Organizations Code (BOC) and subchapter K of chapter 52 of the BOC.

**PREVIEW**

3. Compliance with the Texas Business Organizations Code (BOC) Texas Revised Limited Partnership Act.

a. Texas Business Organizations Code (BOC) requires every new limited partnership doing business in Texas, to appoint a registered agent and have a registered office in order to receive service of process see BOC 5.201.

b. Foreign limited partnerships are also required to appoint a registered agent and have a registered office. Under the prior law, registration of a foreign limited partnership with the state was optional; now it is a requirement. The foreign limited partnership must register with the Secretary of State's office by filing an original application for registration as a foreign limited partnership together with a duplicate copy executed by the general partner, and pay the filing fee of \$750.00.

c. Every domestic limited partnership must also establish and maintain a principal office where its business and financial records are maintained.

4. The following entities can be limited partners:

- a. a corporation,
- b. a general or limited partnership,
- c. a trustee or trust,
- d. an executor, administrator, or estate, and
- e. a natural person.

5. Limited liability of limited partner

a. A limited partner is not bound by the obligations of the partnership unless, he or she participates in the business. In such case, the liability extends only to a person who transacts business with the partnership reasonably believing that the limited partner is a general partner.

6. Limited partner's liability to the partnership

a. A limited partner is liable to the partnership only for the difference between his or her contribution as actually made and that stated in the certificate as having been made, and for any unpaid contribution that the limited partner agreed in the certificate to make in the future.

7. Limited partner's right

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a. A limited partner's interest in the partnership is personal property and is assignable.

**PREVIEW**

b. A limited partner has the same rights as a general partner to have the partnership books kept at the principal place of business of the partnership and to inspect and copy them. When circumstances render his or her request just and reasonable, the limited partner is entitled to a formal accounting of partnership affairs. Such partner also has the right to seek the dissolution of the partnership and the winding up of its affairs by court decree.

c. Although a limited partner may contribute cash or other property, he or she may not contribute services to the partnership.

d. A limited partner has the right to receive partnership profits or other compensatory income, provided that after such payment is made the partnership assets are in excess of all liabilities of the partnership, except liabilities to limited partners on account of their contributions and liabilities to general partners.

e. A limited partner also has the right to the return of his or her contribution to the partnership as provided by the BOC.

#### 8. Rights and liabilities of a general partner

a. A general partner in a limited partnership has all of the rights and powers, and is subject to all of the restrictions and liabilities, of a partner in a general partnership. Most limited partnership agreements restrict the general partner from doing the following without the written consent or ratification of the limited partners:

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i. Doing any act in contravention of the certificate,

ii. Doing any act that would make it impossible to carry on the ordinary business of the partnership,

iii. Confessing a judgment against the partnership,

iv. Possessing partnership property, or assigning his or her rights in specific partnership property, for other than a partnership purpose,

v. Admitting a person as a general partner,

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vi. Admitting a person as a limited partner, unless the right to do so is given in the certificate or partnership agreement, or

vii. Continuing the business with partnership property on the death, retirement or insanity of a general partner, unless the right to do so is given in the certificate, or the partnership agreement.

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9. Reservation and Registration of Limited Partnership Names

**PREVIEW**

a. Parties proposing to form a limited partnership may reserve a name with the office of the Secretary of State of Texas. A foreign limited partnership may also register its name in Texas.

b. In order to reserve a name, a person must send a letter to the Secretary of State and pay the applicable filing fee.

c. If the Secretary of State's office finds that the name is available for use by a domestic or foreign limited partnership, then the Secretary will reserve that name for the exclusive use of the applicant for a period of 120 days. An applicant may reserve the same name for one or more successive 120-day periods by filing a new application and paying the applicable filing fee before the period expires. The right to use the exclusive name may be transferred to another person by filing with the Secretary of State's office a notice of the transfer executed by the applicant for whom the name was reserved. The notice should specify the name and address of the transferee.

d. Name Registration: A limited partnership name may be registered by a foreign limited partnership that is not authorized to transact business in Texas, if its name is available. Foreign limited partnerships which intend to transact business in Texas, must file an application for registration.

e. The application for a name reservation must be executed by a general partner of the foreign limited partnership. The application must state the following:

i. The name of the foreign limited liability partnership, the address, the street address of its registered agent, the name of its registered agent,

ii. The state under the laws of which it is formed,

iii. The date of its formation,

iv. A statement that it is carrying on or doing business, and

v. A brief statement of the nature of business in which it is engaged.

vi. The application must be accompanied by a filing fee, and a certificate stating that the foreign limited liability partnership is in good standing or existence under the laws of the state for which it was formed. That must be signed or executed by the Secretary of State of that state, or by the state official who has custody of the records pertaining to that foreign limited partnership.

f. A name registration is effective for one year from the date of filing. A name registration may be renewed during the 90 days that precede the expiration of the current

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registration. A renewal application must include the same items required in the original application, and include a filing fee.

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### **Security law issues**

1. The offer and sale of most limited partnership units involves the offer and sale of a security as that term is defined in federal and state security statutes. The general rule in such statutes is that no security can be offered and sold to others unless it is either registered or exempt from registration.

2. For reasons of economy and time, most general partners and promoters of limited partnership units (LPU) prefer to seek an exemption rather than comply with the very expensive and time-consuming registration provisions. Although there are many exemptions available, the one most widely used in Texas with respect to the sale of LPUs is the so-called private placement exemption, which in the past few years has been codified by the United States Securities and Exchange Commission in Regulation D, enacted under the authority granted by the Securities Act of 1933. Like most states, Texas has incorporated Regulation D exemption requirements into its statutory framework. Although it takes a securities lawyer to be able to read, much less understand, all of the complexities of Regulation D, it is perhaps not unfair to say that in general, the regulation permits the offering and sale of a security to a small group of investors who (1) are sufficiently well-informed about the issue; (2) are sufficiently financially sophisticated to be able to evaluate the merits and risks of the investment; and (3) are financially able to afford the investment and hold it, if necessary, for several years.

3. To insure that potential investors are adequately informed about, for example, a new limited partnership which the general partner would like to form to purchase and lease for the benefit of investors certain capital equipment, most counsel for general partners prepare an offering memorandum to be distributed to potential purchasers of the LPU which describes the issue, how it proposes to use the money raised, and, perhaps most important, the inherent risks in the investment.

4. Although the retention of securities counsel is an absolute must in this area in which ignorance of the law clearly is no excuse, nevertheless the forms that follow provide illustrative examples of how the required disclosure mandated by the Regulation D exemptive requirements is accomplished.

5. The tax and securities laws are complex and subject to rapid change. Accordingly, the practitioner is advised to seek complete securities and tax consultation prior to using the following forms.

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## Comparison of a limited partnership with a general partnership

**PREVIEW**

1. A general partnership is preferable if all the proposed partners intend to be actively involved and engaged in management and operation of the partnership business.
2. The limited partnership agreement is most appropriate if it is desired to provide the favorable tax benefits of a partnership plus limited liability to investors who wish to invest in a venture but who do not have time to become actively involved in its day to day operations.

## Differences between limited liability companies, limited partnerships, limited liability partnerships, partnerships and registered limited liability partnerships

1. There are several important differences between limited liability companies (LLC) partnerships and registered limited liability partnerships (RLLP). An LLC shields its members from LLC obligations in much the same manner as a limited partnership shields its limited partners from the limited partnership's debts. An LLC may afford more protection to its members than a limited partnership affords to its limited partners.
2. A limited partnership affords greater protection to the limited partners than is afforded to members of a registered limited liability partnership. In a limited partnership, the general partner (which may be a corporation) has unlimited liability and exposure for the limited partnership's debts and obligations. Members in an LLC have no such exposure.
3. Generally, the limited partners are not liable for the limited partnership's debts and obligations unless they have actively engaged in the management of the business. On the other hand, a registered limited liability partner may participate in the management or control of the partnership business and still enjoy the limited liability afforded by the RLLP.
4. A general partner and an RLLP partner are liable for general partnership debts and obligations. However, an RLLP partner is not liable for the negligence or malpractice of other registered limited liability partners in the partnership unless involved in the negligent act or aware of the negligent act. A partner in a general partnership is liable for all other partner's actions in the partnership even if the partner had nothing to do with the negligent action.

## How to choose between limited liability companies, partnerships, and registered limited liability partnerships

1. RLLP's allow pre-existing partnerships to enjoy similar benefits to those afforded LLCs. Due to the tax consequences of disbanding a partnership and then forming a new entity, i.e. an LLC, many pre-existing partnerships will prefer to chose the RLLP form rather than the LLP form.
2. An RLLP has many of the same benefits of an LLC but avoids the tax consequences of changing the organization of a pre-existing partnership.

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3. For example large law firms that desire the benefits of an LLC but do not want to form a LLC due to the tax consequences can form an FLP.

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**Items to include in a certificate of limited partnership**

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1. the partnership's name,
2. the registered agent's name and address,
3. the partnership's principal place of business where its records are kept in the United States,
4. the name, mailing address, and the street address of the residence or business of each general partner.
5. Limited partnerships are governed by title 4 of the Texas Business Organizations Code (BOC) Chapters 154 and 155. See Title 1, Chapter 3, Subchapter A of the BOC for the required provisions to be set forth in the certificate of formation for a limited partnership:
  - a. the character of the business,
  - b. the partnership's duration,
  - c. the amount of cash, a description of, and the agreed value of the other property contributed by each limited partner,
  - d. the time when the contribution of each limited partner shall be returned.
  - e. the share of the profits or other compensation that each limited partner shall receive for his or her contribution,
  - f. the right of a limited partner to substitute an assignee as a contributor in his or her place, and the terms and conditions of the substitution,
  - g. the right of partners to admit additional limited partners,
  - h. the right of one or more of the limited partners concerning their contribution or as to compensation by way of income, and the nature of such priority,
  - i. the right of the remaining general partner or partners to continue the business on the death, retirement, or insinuation of a general partner, and
  - j. the right of a limited partner to demand and receive property other than cash in return for his or her contribution.

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**Certificate of limited partnership**

**PREVIEW**

1. In order to form a limited partnership, the parties must file a certificate of limited partnership with the Office of the Secretary of State of Texas and pay the required filing fee. See Title 1, chapter 3, subchapter A of the BOC for the required provisions to be set forth in the certificate of formation for a limited partnership.
2. The certificate must contain at least the following information, if applicable:
  - a. The partnership name, which must include the words Limited Partnership, Limited, L.P., or Ltd. after the name;
  - b. The address of the registered office and the name and address of the registered agent for service of process;
  - c. The address of the principal office in the United States where records are to be kept or made available;
  - d. The name, mailing address and street address of the business or residence of each general partner; and other matters the general partners determine to include.
3. Under prior law, additional information regarding contributions of partners and various terms and conditions of the partnership was also required.
4. The forms that follow comply with the legal requirements set forth above.

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# PREVIEW

|   |  |
|---|--|
| <b>CERTIFICATE OF FORMATION<br/>FOR A LIMITED PARTNERSHIP</b> | This space reserved for SOS office use |
|---|--|

1. The entity to be formed is a limited partnership and the name under which the limited partnership is to be conducted is:

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2. The name and address of the limited partnership's initial registered agent is:

\_\_\_\_\_.

3. The limited partnership's initial registered office address is:

\_\_\_\_\_.

4. The address of the principal office in the United States where records shall be kept is:

**THIS DOCUMENT**

5. The name, mailing address and street address of the business or residence of each general partner is:

\_\_\_\_\_.

\_\_\_\_\_.

6. The character of the business intended to be transacted by such partnership is as follows:

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7. The location of the principal place of business is:

\_\_\_\_\_.

8. The [partnership shall exist for [an indefinite term or a term of \_\_\_\_\_ years, or time at which the partnership is to begin is the \_\_\_\_\_ day of \_\_\_\_\_ (month and year), and the time at which the partnership is to be dissolved is \_\_\_\_\_ day of \_\_\_\_\_ (month and year).

9. **Special Provisions:**

# PREVIEW

**Indemnification:** To the extent permitted by law, the Company shall indemnify any present or former manager, member, officer, employee, or agent of the Company against judgment, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with a proceeding in which the person is or was a manager, member, officer, employee, or agent of the company.

To the extent permitted by law, no manager of the Company shall be liable to the Company or its members for monetary damages for an act or omission in the manager's capacity as manager.

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**Unanimous Consent:** Any action required to be taken at any annual or special meeting of the managers or members of the company, and any action which may be taken at any annual or special meeting of members or managers, 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 be signed by the managers or the members, as the case may be, having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all managers or members, as the case may be, entitled to vote on the action were present and voted.

10. This document becomes effective [when the document is filed by the secretary of state, at a later date, which is not more than ninety (90) days from the date of signing, the following date \_\_\_\_\_, upon the occurrence of a future event or fact, other than the passage of time or The following event or fact will cause the document to take effect in the manner described below:]

# THIS DOCUMENT

Date \_\_\_\_\_.

I, the undersigned General Partner have signed this Certificate of formation subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

# THANK YOU

General Partner

\_\_\_\_\_  
Limited Partner

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Limited Partner

**PREVIEW**

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**Information about filing fees, filing documents by facsimile transmission and a filing letter to the Secretary of State's office for the certificate of formation for a limited partnership**

**PREVIEW**

**Fax filing & original signatures**

1. The Secretary of State's office maintains a plain paper facsimile machine for the receipt of documents and messages.
2. The Secretary of State's fax number is (512) 463-5709.
3. If a document is to be submitted to the office by facsimile transmission, it requires either the simultaneous receipt of the filing fee, or the delivery of any applicable fees by the close of the same business day.

4. If the applicable fees are not received on the same date as the transmission, the document will be returned without filing.

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**Payment of filing fees**

**PREVIEW**

1. Filing fees are set forth in Section 402.002 of the Texas Business Organizations Code (BOC) Filing fees may be paid by personal check, firm check, a client's check, cashier's check, money order, credit card, or debit system account. When filing documents by facsimile transmission, fees may be paid by credit card so that the fees will be paid on the same date as the transmission. The Secretary of State's office does not accept cash.

2. Credit card charges. The Secretary of State's office accepts Visa and MasterCard credit cards. The fees are subject to a transaction charge of 2.7% of total fees incurred. The 2.7% processing cost fee is subject to change and should be verified on a regular basis to see if fee has increased.

3. The transaction charge is assessed for the credit card transaction. To make payments by credit card, a completed credit card payment form must be sent with the transmission, or submit the following information along in writing. This can be included in the facsimile transmission.:

- a. The credit card to be used
- b. The account number,
- c. The expiration date,
- d. The signature of the card holder,
- e. The total fees charged and

f. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

**THIS DOCUMENT**

When submitting a filing instrument by fax, credit card information must accompany the transmission

**Expedited Processing**

A cover letter or cover sheet should accompany the filing instrument or order request and provide a daytime phone number and contact name. The cover must specifically request expedited processing. The document/order request will be processed by close of business on the business day following the day of receipt. Expedited processing is not provided for trademark documents.

**THANK YOU**

|   |       |
|---|-------|
| Expedited Processing Fee per document                                     | 25.00 |
| Expedited Processing Fee per certified copy/certificate of status or fact | 10.00 |

4. To pay filing fees by debit system account, contact the Secretary of State's office at (512) 435-3604. Debit fees are paid through an automated clearing house, a debit

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system account established between the account applicant and the financial institution under contract with the Secretary of State's office.

**PREVIEW**

5. Texas Secretary of State SOS Direct

Online access to the business entity and UCC databases is available through SOS Direct . The fees associated with an SOS Direct account are the fees imposed for a document filing, for copies and certificates ordered, and inquiries submitted.

The cost of an inquiry is \$1.00 per name searched. The \$1.00 fee is not charged when the search is made when ordering copies/certificates or when making a document filing. There are no monthly subscription fees. For more information, call (512) 475-2755 or visit the SOS web site at [www.sos.state.tx.us](http://www.sos.state.tx.us)

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**Payment of filing fees and fax filing**

# PREVIEW

1. Facsimile filings are now accepted as well as payment of filing fees by credit cards. See the above sections for a discussion of the Secretary of State filing procedures, fees, and forms:
2. The following form may be used to pay fees by a credit card.

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**PREVIEW**  
FOR CREDIT CARD USE ONLY (PLEASE PRINT OR TYPE)

|   |  |               |
|---|--|---------------|
| Cardholder Name:  |  |               |
| Address:  |  |               |
| City :  | State:   | Zip:          |
| Phone No.: ( )  | Fax No.: ( )   |               |
| TYPE DOCUMENT TO BE FILED:  | ENTITY NAME(s):  |               |
| <b>PLEASE DO NOT COPY</b>   |  |               |
| SHIP TO ADDRESS: <i>(if different than Address above)</i>   | EXPEDITED HANDLING REQUESTED: <input type="checkbox"/> YES <input type="checkbox"/> NO<br><br><i>(Additional charge of \$25 for expedited service)</i> |               |
| SELECT PAYMENT TYPE AND PROVIDE REQUESTED INFORMATION   |  |               |
| Charge to: Secretary of State Client ID No.: <i>(if applicable)</i>   |  |               |
| Charge to: <input type="checkbox"/> VISA® <input type="checkbox"/> MasterCard® <input type="checkbox"/> Discover® | Charge to: <input type="checkbox"/> LegalEase <sup>SM</sup>  |               |
| * Fees paid by credit card are subject to a convenience fee (currently 2.7%) of the total fees incurred.          | * For information about LegalEase <sup>SM</sup> , call 1-800-253-5749  |               |
| Card No.: - - -   | Card No.: 5 0 0 6 7 9 - - -  |               |
| Expiration Date: / (MO/YR)  | Client No.: Case No.:  |               |
| Signature:  | Signature:   |               |
|   | AMOUNT   | BATCH NUMBER: |
| FILING FEE  | <b>THANK YOU</b>   |               |
| EXPEDITED HANDLING FEE  |  |               |
| TOTAL AMOUNT  | \$   |               |

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**Filing letter to secretary of state**

**PREVIEW**

1. The filing letter accompanies the Certificate of Formation along with the required filing fee.
2. These are collectively sent to the Secretary of State's office. Filing fees for the Certificate of Formation must be paid at the time the Certificate are filed.
3. For an additional fee, the Secretary of State's office will afford the Certificate special handling which expedites the incorporation process.
4. The fee generally assures that the Certificate are filed the same day, that they are received by the Secretary of State's office and that the Secretary of State's office will call the attorney to advise the exact date of filing and charter number.

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Form: Filing letter to secretary of state

**PREVIEW**  
[Date]

Office of the Secretary of State of Texas  
Statutory Filings Division  
Corporations Section  
Special Handling  
P.O. Box 13697  
Austin, Texas 78711-3697

Dear Intake Division:

Enclose please find duplicate original of the Certificate of Formation for the above-named limited partnership and a check for [ amount of filing fee i.e. \$750] from the Organizer in the required amount for the filing fees.

[Add, if desired: I have also enclosed a check for \$25 to cover the costs for special handling.]

Your expeditious cooperation is appreciated. Thank you in advance for your assistance and cooperation.

Very truly yours

**THIS DOCUMENT**  
[Attorney Name]

**THANK YOU**

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**PREVIEW**  
Matters to be considered when drafting a limited partnership agreement. See Title 1, chapter 3, subchapter A of the BOC for the required provisions to be set forth in the certificate of formation for a limited partnership.

1. Limited partnership's name,
2. Limited partnership's address,
3. Limited partnership's registered agent and address,
4. Name and residence address of each general and limited partners for the certificate of limited partnership,
5. Marital status of each partner,
6. Amount of cash, description and agreed value of other property, contributed by each limited partner, and by each general partner,
7. Additional contributions, to be made by each limited partner, and the events, procedure and consequences for failure to make the additional contributions,
8. Time when each limited partner's contribution shall be returned,
9. Share of profits or other compensation that each limited partner shall receive for his or her contribution,
10. Right of a limited partner to substitute an assignee as a contributor in his or her place, and the terms and conditions of such substitution,
11. Right of partners to admit additional limited partners,
  - a. With the consent of all partners,
  - b. With the consent of all general partners, or
  - c. Other.
12. Right of one or more limited partners to have priority over other limited partners, as to contributions or as to compensation and the nature of such priority,
13. Right of a limited partner to demand and receive property other than cash in return for his or her contribution, and
14. Right of limited partner to vote on matters affecting the following

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- a. the basic structure of the partnership,
- b. the election or removal of general partners,
- c. the termination of the partnership,
- d. the amendment of the partnership agreement,
- e. the sale of all or substantially all of the assets of the partnership, and
- f. any other matters of a similar nature.

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## Limited partnership agreement

# PREVIEW

1. The form that follows allows a group of investors with capital to purchase an apartment complex that is to be operated and managed by a general partner. The purpose of the partnership can, of course, be changed as needed.
2. Note the broad powers given to the general partner, including the power to act as attorney-in-fact for the limited partners and the warranties and representations of the limited partners set forth in Section 13. These are required in order to take advantage of a recognized private placement exemption from the registration requirements of federal and Texas securities laws.
3. Section 4 of the Agreement contains a forfeiture of any defaulting limited partner's prior payments. Section 8 requires a 3/4 vote to remove the general partner, unlike some Agreements which require a 5/4 vote. Section 11 gives the general partner the right of first refusal on any bona fide purchase offer received by a limited partner.
4. Upon the death of any limited partner, the general partner must purchase the deceased's partnership interest at a purchase price computed as set forth in Section 11. For example, the price may be set by appraisers.

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LIMITED PARTNERSHIP AGREEMENT  
**PREVIEW**  
TABLE OF CONTENTS

1. Formation
2. Names and Place of Business
3. Term of Partnership
4. Contributions of Capital
5. Profits and Losses
6. Ownership of Partnership Property
7. Fiscal Matters
8. Management of Partnership Affairs
9. Liabilities
10. Prohibited Transactions
11. Restrictions on Transfers
12. Termination of the Partnership:
13. Representations and Warranties of Limited Partners
14. Compensation of General Partner(s)
15. Limited Partners Right to Sell Partnership Property

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**AGREEMENT AND CERTIFICATE OF  
LIMITED PARTNERSHIP  
OF [NAME], LTD.**

THE SECURITIES REPRESENTED BY THIS INSTRUMENT OR DOCUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

WITHOUT SUCH REGISTRATION, SUCH SECURITIES MAY NOT BE SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED AT ANY TIME WHATSOEVER, EXCEPT UPON DELIVERY TO THE PARTNERSHIP OF AN OPINION OF COUNSEL SATISFACTORY TO THE GENERAL PARTNERS OF THE PARTNERSHIP THAT REGISTRATION IS NOT REQUIRED FOR SUCH TRANSFER OR UPON THE SUBMISSION TO THE GENERAL PARTNERS OF THE PARTNERSHIP OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO THE GENERAL PARTNERS TO THE EFFECT THAT ANY SUCH TRANSFER SHALL NOT BE IN VIOLATION OF THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS OR ANY RULE OR REGULATION PROMULGATED THEREUNDER.

This document evidences the following agreement and certificate of limited partnership entered into and to be effective on the date it is filed with the Secretary of State in Austin, Texas, by and between [name], as general partner ("General Partner") and each of the individuals whose names are set forth on Exhibit "A" attached to this Agreement as limited partners ("Limited Partners").

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1. FORMATION

1.1 The parties hereby form a Limited Partnership (Partnership) under and pursuant to the Texas Business Organizations Code (BOC).

1.2 This Certificate of Limited Partnership shall be filed with the Secretary of State of the State of Texas, and thereafter the partners shall execute and cause to be filed and otherwise published such original or amended certificates evidencing the formation and operation of this Limited Partnership as may be required under the laws of the State of Texas and of any other states where the Partnership shall determine to do business.

1.3 The General Partner is hereby authorized and empowered by all the Limited Partners to prepare, file, and publish either the original or any amended or modified Certificates of Limited Partnership as may be necessary or desirable and each Limited Partner specifically designates and appoints the General Partner for and in his or her behalf as his or her attorney for the exclusive purposes of signing and attesting to such original or amended Certificates of Limited Partnership.

1.4 The purpose of the Partnership shall be as follows: to buy, manage and sell, as appropriate, all real property, including improvements and personal property located thereon, known as the [name or description of property], more particularly described in Exhibit "B."

[Add, if appropriate, Further, the Partnership shall engage in the [alteration and repair of the improvement, and personal property located in the subject real property.]

## 2. NAMES AND PLACE OF BUSINESS

2.1 The name of the Limited Partnership shall be \_\_\_\_\_, LTD.

2.2 The business of the Partnership shall be conducted under that name and under such variations of the name as may be necessary to comply with the laws of other states within which the Partnership may do business or make investments.

2.3 The General Partner shall promptly execute and duly file, with the proper offices in each state in which the Partnership may conduct the activities authorized in this Agreement, one or more certificates as required by the Fictitious Name or Assumed Name Act or similar statute in effect as to each such state in which such activities are so conducted.

2.4 The principal place of business shall be located at [address] Texas, and additional places of business may be located elsewhere.

2.5. The name and address of the General Partner of the Partnership are:

Name

Address

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2.6 There are no other General Partners of this Partnership and no other person or entity has any right to take part in the active management of the business affairs of the Partnership.

2.7 The names and addresses or places of residence of the Limited Partners of this Partnership are set forth in Exhibit "A" attached to this Agreement and by this reference made a part of this Agreement. There are no other Limited Partners to the Partnership other than those listed in the attached Exhibit "A."

### 3. TERM OF PARTNERSHIP

3.1 The Partnership shall commence as of the date of this Agreement and shall continue in existence until [year], unless it is sooner terminated, liquidated, or dissolved as provided below.

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4.1 The capital to be contributed initially to the Partnership by the General Partner and all the Limited Partners shall be cash.

4.2 The initial capital to be contributed by each Partner, General and Limited, shall be the sum set opposite his or her name in the attached Exhibit "A."

4.3 Each partner shall be personally liable to the Partnership for the full amount of his or her initial capital contribution.

4.4 The Limited Partners shall be required to make additional capital contributions to the Partnership, on written request by the General Partner, the Partner's pro rata share (the ownership percentage set opposite the name of each Limited and General Partner in Exhibit "A") of all costs, expenses, or charges with respect to the operation of the Partnership

4.5 [add, if appropriate: and the ownership operation, maintenance, and upkeep of any Partnership property including but not limited to ad valorem taxes, debt amortization (including interest payments), insurance premiums, repairs, professional fees, wages, and utility costs] to the extent such costs, expenses, or charges exceed the income, if any, derived from the Partnership and the proceeds of any loans made to the Partnership.

a. If any Partner fails or refuses to contribute the entire amount of the initial capital called for and/or the additional capital as called for, the General Partner shall be authorized to declare forfeited Partner's capital account and ownership interest as liquidated damages for the failure.

### 5. PROFITS AND LOSSES

5.1 The amount of net profits and net losses of the Partnership to be allocated to and charged against each Partner shall be determined by the percentage set opposite his or her name in Exhibit "A"

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5.2 The term "profits" is hereby defined to mean income or gain of whatsoever kind actually incurred by the Partnership or which, because of generally accepted accounting procedures, must be deemed to have been incurred by the Partnership.

5.3 The term "losses" is hereby defined to mean any deduction, expenditure, or charge actually incurred by the Partnership or which, because of generally accepted accounting procedures, must be deemed to have been incurred by the Partnership.

5.4 Cash, when available, may be distributed by the General Partner to all Partners in the same ratio as profits and losses are shared.

a. Cash distributions from the Partnership may be made by the General Partner to all Partners without regard to the profits or losses of the Partnership from operations; provided, that no cash distributions shall be made that will impair the ability of the Partnership to pay its just debts as they mature.

b. The General Partner shall determine when, if ever, cash distributions shall be made to the Partners, pursuant to the provisions and the tenor of this Agreement.

c. There shall be no obligation to return to the General Partner or the Limited Partners, or to any one of them, any part of their capital contributed to the Partnership, for so long as the Partnership continues in existence.

d. No General or Limited Partner shall be entitled to any priority or preference over any other Partner as to cash distributions.

e. No interest shall be paid to any Partner on the initial contributions to the capital of the Partnership or on any subsequent contributions of capital.

## 6. OWNERSHIP OF PARTNERSHIP PROPERTY

6.1 All real property, including all improvements placed or located thereon, and all personal property acquired by the Partnership shall be owned by the Partnership, such ownership being subject to the other terms and provisions of this Agreement.

a. Each Partner hereby expressly waives the right to require partition of any Partnership property or any part thereof.

## 7. FISCAL MATTERS

7.1 The Partnership's books and records and all required income tax returns shall be kept or made on a calendar year basis.

a. The General Partner shall determine whether the cash or accrual method of accounting is to be used in keeping the Partnership records.

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7.2 The General Partner shall keep at the principal place of business and make available to all Partners at any time during normal business hours, just and true books of account and all other Partnership records.

a. The copying by a Partner, or his designated agent, of any part or all of such records, at the personal expense of that Partner, is specifically authorized.

b. Within not more than ninety (90) days after the close of each calendar year of the Partnership, the General Partner shall furnish to all Partners a year-end balance sheet for the Partnership and a full and detailed financial report on the business operations of the Partnership for and during the entire preceding year.

c. The General Partner shall furnish to all partners their Federal and State income tax forms, including statements of the net distributable income or loss to each Partner from the operation of the Partnership.

d. All of the above duties and services to be performed by the General Partner shall be deemed an expense of the Partnership.

7.3 The General Partner shall receive all monies of the Partnership and shall deposit the same in one or more Partnership banking accounts.

a. All expenditures by the General Partner shall be made by checks drawn against the Partnership banking account.

## 8. MANAGEMENT OF PARTNERSHIP AFFAIRS

8.1 The General Partner shall have sole and exclusive control of the Limited Partnership.

a. Subject to any limitations expressly set forth in this Agreement, the General Partner shall have the power and authority to take such action from time to time as the General Partner may deem to be necessary, appropriate, or convenient in connection with the management and conduct of the business and affairs of the Limited Partnership, including without limitation the power to:

(i) Acquire or dispose of real property (including any interest in real property) for cash, securities, other property, or any combination of them, on such terms and conditions as the General Partner may, from time to time determine (including, in instances where the property is encumbered, on either an assumption or a "subject to" basis),

(2) Finance the Partnership's activities either with the seller of the property or by borrowing money from third parties, all on such terms and conditions as the General Partner deems appropriate. In instances where money is borrowed for Partnership purposes, the General Partner shall be, and hereby is, authorized to pledge, mortgage, encumber, and grant security interest in Partnership property to secure the payment of such loans.

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(3) Acquire, own, hold, improve, manage, and lease the property, either alone or in conjunction with others through partnerships, limited partnerships, joint ventures, or other business associations or entities;

(4) Employ, retain, or otherwise secure or enter into other contracts with personnel or firms to assist in the acquisition, development, improvement, management, and general operation of the Partnership properties, including, but not limited to, real estate brokers or agents, supervisory, development and/or building management agents, attorneys, accountants, and engineers, all on such terms and for such consideration as the General Partner deems advisable; and

(5) Take any and all other action which is permitted under the Texas Limited Partnership Act and which is customary or reasonably related to the acquisition, ownership, development, improvement, management, leasing, and disposition of real, personal, or mixed property.

8.2 The General Partner shall exercise ordinary business judgment in managing the affairs of the Partnership.

a. Unless fraud, deceit, or a wrongful taking shall be involved, the General Partner shall not be liable or obligated to the limited Partners for any mistake of fact or judgment made by the General Partner in operating the business of the Partnership resulting in any loss to the Partnership or its Partners.

b. The General Partner does not, in any way, guarantee the return of the Limited Partners' capital or a profit from the operations of the Partnership.

c. Neither shall the General Partner be responsible to any Limited Partner because of a loss of his or her investment or a loss in operations, unless it shall have been occasioned by fraud, deceit, or a wrongful taking by the General Partner.

d. The General Partner shall devote such attention and business capacity to the affairs of the Partnership as may be reasonably necessary.

(1) In this connection, the parties hereby acknowledge that the General Partner may be the manager or general partner of other partnerships and may continue to manage other partnerships, and may continue to engage in other distinct or related business.

8.3 All Partners recognize that, from time to time, there are practical difficulties in doing business as a Limited Partnership occasioned by outsiders seeking to satisfy themselves regarding the capacity of the General Partner to act for and on behalf of the Partnership, or for other reasons.

a. The Limited Partners hereby specifically authorize the General Partner to acquire all real and personal property, arrange all financing, enter contracts, and complete all other arrangements needed to effect the purposes of this Partnership, either in the General Partner's own name or in the name of a nominee, without having to disclose the existence of this Partnership.

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# PREVIEW

b. If the General Partner decides to run the Partnership business in his own name or in the name of a nominee, the General Partner shall place a written declaration of trust in the Partnership books and records that acknowledges the capacity in which the nominee acts and the name of the Partnership as true or equitable owner.

8.4 The General Partner may be removed by the affirmative vote of [specify percentage] (\_\_\_\_%) in interest, not in number, of the Limited Partners.

a. The written notice of a General Partner's removal shall be served on the General Partner by certified mail.

b. The notice shall set forth the day on which the removal is to be effective, which date shall not be less than thirty (30) days after the service of the notice on the General Partner.

c. On the removal of the General Partner, the Limited Partners shall elect a new General Partner on the vote of [specify percentage] (\_\_\_\_%) in interest, not in number, of the Limited Partners, at a special meeting called for that purpose.

d. The removal of a General Partner shall cause the General Partner's interest in the Partnership to be converted to a Limited Partnership interest but shall not alter or change the rights or responsibilities pursuant to paragraphs 11.2 and 11.3 of this Agreement.

8.5 The General Partner and/or the General Partner's assignees or appointees shall receive a management fee, payable monthly, which shall not exceed [specify percent] (\_\_\_\_%) of the gross revenue, that is, of the total monthly receivables of all general partners of the Partnership.

8.6 The Limited Partners shall not have either the obligation or the right to take part, directly or indirectly, in the active management of the business.

a. No Limited Partner is authorized to do or perform any act or deed in the name of, for, or on behalf of either the General Partner or the Partnership.

b. No Limited Partner is authorized to and shall not be permitted to do any act or deed that will cause the Limited Partner to be classified as a General Partner of the Partnership.

## 9. LIABILITIES

# THANK YOU

9.1 The liability of the General Partner arising from carrying on the business affairs or operations of the Partnership or for the debts of the Partnership is unrestricted.

a. The liability of the Limited Partners with regard to the Partnership in all respects is restricted and limited to the amount of the actual capital contributions that each Limited Partner makes.

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9.2 Nothing in this Agreement shall prevent or act against a loan of funds from the General Partner or a Limited Partner to the Partnership on a promissory note or similar evidence of indebtedness, for a reasonable rate of interest.

a. Any Partner lending money to the Partnership shall have the same rights regarding the loan as would any person or entity making the loan who was not a Partner of the Partnership.

## 10. PROHIBITED TRANSACTIONS

10.1 During the time of organization or existence of this Limited Partnership, neither the General nor the Limited Partners shall do any one of the following:

Use the name of the Partnership, or any substantially similar name, or any trademark or trade name adopted by the Partnership, except in the ordinary course of the Partnership's business;

b. Disclose to any non-partner any of the Partnership business practices, trade secrets, or any other information not generally known to the business community;

c. Do any other act or deed with the intention of harming the business operations of the Partnership;

d. Do any act contrary to the Limited Partnership agreement, except with the prior expressed approval of all Partners;

e. Do any act which would make it impossible to carry on the intended or ordinary business of the Partnership;

f. Confess a judgment against the Partnership;

g. Abandon or wrongfully transfer or dispose of Partnership property, real or personal; or

h. Admit another person or entity as a General or Limited Partner.

10.1 The General Partner shall not use, directly or indirectly, the assets of this Partnership for any purpose other than for carrying on the business of the Partnership, for the full and exclusive benefit of all its Partners.

## 11. RESTRICTIONS ON TRANSFERS

11.1 Except as set forth below, no Limited Partner shall sell, assign, transfer, encumber, or otherwise dispose of any interest in the Partnership without the written consent of the General Partner.

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11.2 In the event a Limited Partner receives a bona fide offer for the purchase of all or a part of his or her interest in the Partnership, the Limited Partner shall either refuse the offer or give the General Partner written notice setting out full details of the offer, which notice shall, among other things, specify the name of the offeror, the percentage of interest in the Partnership covered by the offer, terms of payment, including whether the offer is for cash or credit, and, if on credit, the time and interest rate, as well as any and all other consideration being received or paid in connection with the proposed transaction, as well as any and all other terms, conditions, and details of the offer.

a. Upon receipt of the notice with respect to the offer, the General Partner shall have the exclusive right and option, exercisable at any time during the period of [number] days from the date of the notice, to purchase the interest in the Partnership covered by the offer at the same price and on the same terms and conditions of the offer as set out in the notice.

b. If the General Partner decides to exercise the option, the General Partner shall give written notification of this decision to the Limited Partner desiring to sell, and the sale and purchase shall be closed within [specify length of time] thereafter.

c. If the General Partner does not elect to exercise the option, the General Partner shall notify in writing the other members of the Limited Partnership regarding the terms of the offer. Should any individual Limited Partner or group of Limited Partners decide to exercise the option of purchase, notification of this decision shall be given in writing to the General Partner to be transmitted in writing to the selling Limited Partner within the same period provided above for notification of a General Partner's exercise of the option, and the sale and purchase shall be closed within [specify length of time] thereafter.

d. If none of the Limited Partners elects to exercise this option, the selling Limited Partner shall be so notified in writing by the General Partner and shall be free to sell the interest in the Partnership covered by the offer. The sale, if permitted, shall be made strictly upon the terms and conditions and to the person described in the required notice.

e. Any Assignment made to anyone not already a Partner shall be effective only to give the assignee the right to receive the share of profits to which the assignor would otherwise be entitled, shall not relieve the assignor from liability for additional contributions of capital, shall not relieve the assignor from liability under the provisions of this Partnership Agreement, and shall not give the assignee the right to become a substituted Limited Partner. Neither the General Partner nor the Partnership shall be required to state the tax consequences to a Limited Partner or to a Limited Partner's assignee arising from the assignment of a Limited Partnership interest.

f. The Partnership shall continue with the same basis and capital amount for the assignee as was attributable to the former owner who assigned the Limited Partnership interest.

g. The Partnership interest of the General Partner cannot be voluntarily assigned or transferred except when such an assignment or transfer occurs by operation of law.

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11.3 On the death of a Limited Partner, the General Partner shall have an obligation to purchase from the estate of the deceased Limited Partner, and the estate of the deceased Limited Partner shall have an obligation to sell to the General Partner, the deceased Partner's interest in the Partnership, at the price and on the terms and conditions set forth in this Paragraph.

11.4 The purchase price for the deceased Limited Partner's proportionate interest in the Partnership shall be the deceased Limited Partner's proportionate interest in the fair market value of the Partnership property, determined as provided below, together with the assumption of all liability for any outstanding indebtedness, liabilities, liens, and obligations relating to the Partnership or the Partnership property.

a. Within [number] days after the death of the deceased Limited Partner, the General Partner shall name an appraiser and within [number] days after the death of the deceased Limited Partner the executor or other legal representative of the estate of the deceased Limited Partner shall name an appraiser.

b. If either party fails to name an appraiser within the specified time, the other party may select the second appraiser. The two (2) appraisers so selected shall proceed promptly to determine the fair market value of the Partnership property, taking into consideration any outstanding indebtedness, liabilities, liens, and obligations relating to the Partnership property.

c. The determination of the fair market value of the Partnership property by the two (2) appraisers selected as provided above shall be final and binding on all parties. If the two (2) appraisers so selected are unable to agree on the fair market value of the Partnership property, they shall select a third appraiser whose determination as to fair market value shall be final and binding on all parties.

d. The appraisers shall deliver a written report of their appraisal or the appraisal of the third appraiser, as the case may be, to the General Partner and to the executor or other legal representative of the estate of the deceased Limited Partner.

e. Each party shall pay the fee and expenses of the respective appraiser selected by such party, and if a third appraiser shall be appointed, the fee and expenses of the third appraiser shall be borne one-half (1/2) by the General Partner and one-half (1/2) by the estate of the deceased Limited Partner.

f. During the period between the date of death and the date the purchase price is paid to the estate of the deceased Limited Partner, the General Partner shall contribute the deceased Limited Partner's share of any contribution required to be made to the Partnership under the provisions of this Agreement; provided, however, that the amount of any such payment made by the General Partner during the period between the date of the deceased Limited Partner's death and the date of the appraisers' report shall be deducted from the amount of the purchase price to be paid to the estate of the deceased Limited Partner.

g. The purchase price shall be evidenced by a negotiable promissory note in a principal amount equal to the purchase price of the deceased Limited Partner's interest in the

Partnership as computed as provided in this Agreement and providing for interest at the rate of \_\_\_\_\_ percent (\_\_\_\_%) [per annum payable in [number and frequency] installments, and containing acceleration and other customary clauses.

h. The note shall bear interest from the date of death of the deceased Limited Partner with the first principal and accrued interest payment being due and payable [six (6) months] following the date of death.

i. The General Partner shall have the right to prepay any and all installments of the note at any time with no premium or penalty.

j. On delivery of the note and the assumption by the General Partner of all liability of the deceased Limited Partner for any outstanding indebtedness, liabilities, liens, and obligations relating to the Partnership, the estate of the deceased Limited Partner shall have no further interest in the Partnership or in its business or assets, and the executor or other legal representative of the estate of the deceased Limited Partner shall execute and deliver such deeds, conveyances, and other instruments as may be reasonably necessary to evidence and render fully effective the transfer of the interest of the deceased Limited Partner in the Partnership and its business assets.

k. The interest of the deceased Limited Partner shall be acquired by the General Partner, who shall become a Limited Partner to the extent of such interest.

## 12. TERMINATION OF THE PARTNERSHIP

12.1 The General Partner, effective as of the last day of any calendar year of the Partnership, may voluntarily withdraw from the Partnership as General Partner.

a. Any such withdrawal shall have the effect of terminating the Partnership as of the close of business on that day.

b. The bankruptcy, death, incapacity, or resignation of the General Partner shall result in the termination of the Partnership as of the close of business on the last day of the calendar year in which the event occurs.

12.2 The Partnership may be terminated on any date specified in a notice of termination, signed by the General Partner and by a majority of all the Limited Partners. As used in this Agreement, a majority of the Limited Partners means Limited Partners having in the aggregate a majority of the capital interest of the Limited Partners in the Partnership as of the time the notice of termination is executed.

a. The death or incapacity of a Limited Partner shall have no effect on the life of the Partnership, which shall continue.

12.3 On the termination of the Partnership, regardless of how it is terminated, the affairs of the Partnership shall be wound up by the General Partner.

# PREVIEW

a. If for any reason there is no General Partner, or if the General Partner refuses to serve or is incapable of serving, a majority in interest, not in number, of the Limited Partners may appoint or designate a Trustee in Liquidation who shall serve to wind up the affairs of the Partnership.

b. The Trustee in Liquidation need not be a commercial corporate trustee, need not be bonded, and may be a Limited Partner. Whoever serves to wind up the affairs of the Partnership, the following procedure shall be followed:

c. On termination, the assets of the Partnership shall be applied to payment of the outstanding Partnership liabilities, although an appropriate reserve may be maintained and the amount determined by the General Partner or Trustee in Liquidation for any contingent liability, until that contingent liability is satisfied.

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d. The balance of the reserve, if any, shall be distributed together with any other sum remaining after payment of the outstanding Partnership liabilities to the Partners as their interest appears on Exhibit "A," unless otherwise provided in this Agreement.

e. At the time of the termination of the Partnership, no Partner, either General or Limited, shall be liable to the Partnership for the repayment of any deficit in his or her capital account resulting from the allocation of non-cash items such as depreciation to that Partner's capital account; provided, however, that any deficit resulting from cash withdrawals by the Partner shall be repaid to the Partnership and be available for distribution hereunder.

12.4 Nothing contained in this Agreement shall defeat the right of either a Limited or a General Partner to require and to obtain a court-supervised winding up, liquidation, and dissolution of the Partnership.

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a. No Partner shall be entitled to demand a distribution be made in Partnership property, but the General Partner may make or direct property distributions to be made, using the property's fair market value as of the time of distribution as the basis for making the distribution.

## 13. REPRESENTATIONS AND WARRANTIES OF LIMITED PARTNERS

13.1 Each Limited Partner warrants and represents the following:

a. That he or she recognizes that Section 4(2) of the Securities Act of 1933, as amended, exempts the issue and sale of securities from registration under the Act in transactions not involving any public offering, and that he or she is purchasing the Partnership interest for his or her own account, for investment, and with no present intention of distributing, reselling, pledging, or otherwise disposing of the interest.

b. That he or she is a citizen of the United States of America and is the beneficial owner of the interest standing in his or her name, and that he or she has no intention of reselling the interest to any persons other than residents of the United States of America.

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c. That he or she is a sophisticated investor and the nature and amount of the capital contributions he or she agrees to make hereunder is consistent with his or her investment program, and that he or she has sufficient liquid assets to meet promptly all calls for additional contributions and to absorb the loss of the entire investment in the Partnership.

d. That he or she has been furnished with sufficient written and oral information about the Partnership, the General Partner, and the property to be purchased and developed to allow him or her to make an informed investment decision prior to purchasing an interest in the Partnership, and has been furnished access to any additional information that he or she may require.

e. That he or she is fully familiar with the business proposed to be conducted by the Partnership and with the Partnership's use and proposed use of the proceeds of the sale of the Partnership interests.

f. That the offer and sale of his or her interest in the Partnership have been made in the course of a negotiated transaction involving direct communication between the Limited Partner and the General Partner on behalf of the Partnership.

g. That he or she has either:

(i) had experience in business enterprises or investments entailing risk of a type or to a degree substantially similar to those entailed in an investment in the Limited Partnership; or

(ii) obtained independent financial advice with respect to the investment in the Partnership.

h. That he or she has been advised that the Partnership interest may not be sold, transferred, or otherwise disposed of in the absence of either an effective registration statement covering the interest under the Securities Act of 1933, or an opinion of counsel satisfactory to the Partnership and its counsel that registration is not required under the Securities Act of 1933, and that he or she will have no rights to require registration of the interest under the Securities Act of 1933, and, in view of the nature of the transaction, registration is neither contemplated nor likely.

i. That he or she agrees to hold the General Partner and the Limited Partners or any person controlling the Limited Partnership and their respective successors, assigns, or other controlling persons harmless and to indemnify them against all liabilities, costs, and expenses incurred by them as a result of any sale or distribution by him or her in violation of the Securities Act of 1933.

j. All representations, warranties, and indemnities made by the Limited Partner with reference to the Securities Act of 1933 shall be deemed to be equally applicable in connection with the securities law of the State of Texas or any other state of the United States of America.

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## 14. COMPENSATION OF GENERAL PARTNER

14.1 The General Partner, or his or her assignees, shall be entitled in consideration of the General Partner's expenses and services in the location, purchase, and ultimate sale of the Partnership's property, to be paid in the following minimum amounts:

a. \_\_\_\_\_ percent (\_\_\_\_%) of the gross purchase price of the Partnership's property as described in Exhibit "B" shall be paid to the General Partner at purchase closing.

b. \_\_\_\_\_ percent (\_\_\_\_%) of the gross selling price of the Partnership's property as described in Exhibit "B" shall be due and payable without interest at final sale closing.

14.2 Notwithstanding anything stated in this Agreement to the contrary, it is understood and agreed that the General Partner shall apply as a credit to the General Partner's reimbursement amounts described above any money, compensation, or payment in kind that the General Partner may receive from any source, directly relating to the purchase or sale of Partnership property as described in Section 1.3 during the term of this Agreement.

## 15. LIMITED PARTNERS' RIGHT TO SELL PARTNERSHIP PROPERTY

15.1 The General Partner may be directed to sell property on written instructions executed by Limited Partners owning collectively at least \_\_\_\_\_ percent (\_\_\_\_%) in interest, not in number, in the Partnership.

16.1 This Agreement may be amended or modified by the Partners from time to time only by a written instrument executed by Partners owning collectively at least \_\_\_\_\_ percent (\_\_\_\_%) in interest, not in number, in the Partnership.

16.2 Except, as may otherwise be specifically provided in this Agreement, all notices required or permitted under this Agreement shall be in writing and shall be deemed to be delivered when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the respective addresses set forth in Exhibit "A" or at such other addresses as may have been specified by written notice delivered in accordance with this paragraph.

16.3 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in [County, Texas].

16.4 The parties covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effect and carry out the Partnership created by this Agreement.

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Signed on \_\_\_\_\_

**PREVIEW**  
GENERAL PARTNERS

Name

Address

Date

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LIMITED PARTNERS

Name

Address

Date

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