

CAUSE NO. 2014-2287-3

BAYLOR UNIVERSITY,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	MCLENNAN COUNTY, TEXAS
	§	
THE BAYLOR UNIVERSITY	§	
ALUMNI ASSOCIATION,	§	
	§	
Defendant.	§	74TH JUDICIAL DISTRICT

**PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

BAYLOR UNIVERSITY (hereinafter “Baylor” or “Plaintiff”) files this Motion for Summary Judgment as follows:

**I. BACKGROUND**

The Baylor Alumni Association (“BAA” or “Defendant”) was incorporated in 1978 as an independent, non-profit entity legally separate from Baylor. The charitable purposes of the independent alumni association were

to provide support of benevolent, charitable, and educational undertakings by extending financial and other aid to Baylor University and to students thereof, by generally encouraging sentiments favorable to education and by promoting union of and good fellowship among former students and friends of Baylor University; to coordinate all alumni activities; to serve as the general alumni organization of Baylor University; and to maintain the administrative agency and executive personnel needed to provide for a continuity of alumni activity, interest, and financial support of Baylor University.

Constitution and Bylaws of the Baylor Alumni Association, Art. I § 2<sup>1</sup>; *see also* Articles of Incorporation of Baylor University Alumni Association, Art. 4.<sup>2</sup>

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<sup>1</sup> Attached as Exhibit A and available at <http://www.bayloralumniassociation.com/Assets/6%20baa%20bylaws%20-%20oct.%202010.pdf>; *see also* Defendant’s Original Answer, First Amended Counterclaim, and Request for Disclosure (“Answer”) at I.A.2.

<sup>2</sup> Attached as Exhibit B and available at <http://www.bayloralumniassociation.com/Assets/baa%20articles%20of%20incorporation.pdf>.

Baylor licensed BAA to use certain trademarks owned by Baylor for the purpose of providing products and services to Baylor alumni. To further serve those purposes, Baylor also extended to BAA recognition as the official alumni organization of Baylor and its academic units, as well as permitted BAA to use a building on Baylor's campus. We describe those agreements below.

A dues-paying, membership organization, BAA currently claims only 20,000 members<sup>3</sup>—less than one-eighth of Baylor's estimated 170,000 total living alumni. Its percentage of Baylor alumni continues to decline year after year. Since 1990, Baylor estimates it has graduated 70,000 students, but it estimates that fewer than 4,000 of those—less than six percent—have joined BAA.

Despite BAA's primary purpose of providing financial and other aid to Baylor and its students, the support BAA provided over the years was minimal. For example, in 2012, BAA provided only \$8,381 to Baylor and \$60,000 to students. In sharp contrast, its own personnel and professional fees totaled over \$1.2 million (\$1,207,059). In 2013, BAA publicly announced that it had raised \$1 million in scholarship funds to be donated to Baylor. To date, BAA has not given Baylor any part of this announced gift. (In contrast, Baylor's own scholarship initiative raised substantially over \$100 million in less than three years.)

Although BAA was intended to be self-supporting, Baylor has subsidized BAA financially for years. In 2002, through a proposal for a services agreement, BAA asked Baylor for \$850,000 to serve as vendor to perform the tasks already required by its Articles of Incorporation, Constitution and Bylaws, and agreements with Baylor. Despite being under no obligation to do so, Baylor agreed to enter into a services agreement pursuant to which it paid

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<sup>3</sup> See <https://www.bayloralumniassociation.com/content/faqm/afmviewfaq.asp?faqid=148>.

BAA \$350,000. Finally, in 2008, Baylor ended any financial support for BAA by terminating the services agreement.

Over the years, BAA has focused more on being an “independent voice” of certain Baylor alumni, even though neither that term nor purpose is found in its Articles of Incorporation, Constitution or Bylaws. *See Exhibits A & B.* To the contrary, the Constitution and Bylaws of BAA state: “It shall be the object of the Association to foster a spirit of loyalty, service, and fraternalism among the alumni and former and present students, faculty, or anyone who evidences or has evidenced a genuine interest in Baylor University and to achieve unity of purpose in action in promoting the best interest and support of the University . . . .” *See Exhibit A, Art. I.* BAA has instead criticized repeatedly Baylor’s governing board and administration through its magazine, the *Baylor Line*.

In 2010, Baylor’s President Ken Starr called upon all constituents, including BAA, to join together with unity of purpose and to provide a comprehensive, no-cost, university-based alumni outreach program for all alumni, not just to members of BAA. Two other outside organizations, the Baylor “B” Association and the Baylor Bear Foundation, responded positively to the President’s call and came in-house. BAA, however, refused.

In May 2012, Baylor launched its strategic vision, *Pro Futuris*. One of its five aspirational statements provides: “Baylor will be a community . . . where the dedication of alumni and friends advances Baylor through sustained involvement and philanthropy.” Baylor’s own survey of its alumni indicated that 91 percent considered it important for Baylor, not an outside, independent group, to support and staff alumni outreach that is open and cost-free to all alumni, not just to dues-paying members. Consistent with overwhelming alumni sentiment, Baylor has built up over the years a comprehensive and inclusive alumni and constituent

outreach program that offers its myriad services and programs to all Baylor alumni (the Baylor Alumni Network).

In 2013, Baylor made a final attempt to bring BAA in-house through a Transition Agreement reached between the leadership of both organizations. Under the proposed agreement, the continuation of the *Baylor Line* magazine would have been permitted, while bringing governance of BAA into Baylor. Pursuant to BAA Bylaws, the Transition Agreement required approval of two-thirds of BAA's membership. BAA's Bylaws also required in-person voting, notwithstanding the out-of-state and international presence of alumni. Approximately 1,500 BAA members voted—only 7.5 percent of BAA's claimed membership, and 0.9 percent of Baylor alumni. A substantial majority, but not the required two-thirds super-majority, of voting members favored adopting the Transition Agreement.

After the failure of the Transition Agreement, many of the BAA leadership who supported the Transition Agreement resigned. New leadership was put in place. Thereafter, BAA conducted its own survey of its members regarding the future of the organization. Seventy percent of respondents indicated that they believed BAA should limit itself to the role of a scholarship organization to support Baylor students and cease attempting to provide alumni services. To date, BAA has done nothing to transition into a scholarship organization.

In 2013, after the vote on the Transition Agreement, Baylor terminated its Agreements<sup>4</sup> with BAA. In March 2014, BAA published an article entitled “The Real Story”<sup>5</sup> in the *Baylor Line*, detailing the claimed slights of BAA by Baylor (mostly dating to the President Sloan administration, which ended a decade ago, in 2005). Again, BAA has determined to pursue its

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<sup>4</sup> The agreements at issue in this lawsuit are the 1993 License Agreement, the 1994 Official Recognition Agreement, and the 2013 Agreement to Vacate (collectively “Agreements”). The Agreements are discussed in detail in the next section.

<sup>5</sup> See <http://www.bayloralumniassociation.com/Assets/baylor%20line%20-%20spring%202014.pdf>.

“independent voice” instead of fulfilling its charitable purposes to support Baylor and its students.

For many years, Baylor has been seeking to strengthen and unify its alumni outreach efforts unencumbered by an outside entity that constantly criticizes the University. In order to accomplish this mission, Baylor terminated its Agreements with BAA. When BAA continued to operate as an unauthorized organization using the Baylor name, Baylor initiated this lawsuit seeking a declaration that it properly terminated the Agreements. As discussed below, the Agreements unambiguously and as a matter of law allow Baylor to terminate them at will.

## **II. AGREEMENTS AT ISSUE**

The Agreements at issue in this case are:

- 1) **The 1993 License Agreement** (regarding the trademark and licensing use of “The Baylor Alumni Association” and “Baylor Line”) (“1993 License”), attached as Exhibit C;<sup>6</sup>
- 2) **The 1994 Official Recognition Agreement**, regarding Hughes Dillard Alumni Center (“1994 Recognition”), attached as Exhibit D; and
- 3) **The 2013 Agreement to Vacate** which incorporated the 1994 Recognition (“2013 Agreement to Vacate”), attached as Exhibit E.

**1993 License.** The 1993 License purports to grant to BAA a “perpetual, and fully paid-up”<sup>7</sup> license to use various trademarks and service marks owned by Baylor. *See* Exhibit C, 1993 License at ¶ 2.1. The 1993 License acknowledges that Baylor owns “all right, title, and interest” in the marks “Baylor University Alumni Association” and “Baylor Alumni Association,” as well as “Baylor Line,” but grants BAA exclusive rights of use of these marks (the “Marks”). *Id.* ¶¶ 2.2, 2.4. Paragraph six of the 1993 License gives Baylor the right to terminate the 1993 License

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<sup>6</sup> The Agreements are attached to, cited to, and/or discussed at length in Baylor’s Original Petition and in Defendant’s Answer. They are attached as exhibits to this motion for the convenience of the Court.

<sup>7</sup> It is undisputed that no monetary consideration was actually paid to Baylor by BAA.

upon written notice in the event BAA “fails to comply substantially with any of its obligations.”  
*Id.* ¶ 6.

**1994 Recognition.** The 1994 Recognition recognizes BAA as “the official alumni organization of Baylor University and all of its academic units” and outlines the various purposes of BAA. Exhibit D, 1994 Recognition at § I. The 1994 Recognition acknowledges that Baylor owns Hughes Dillard Alumni Center (“HDAC”), but grants a license to BAA to use HDAC for an “indefinite” term. *Id.* § III. Baylor also has the express ability to terminate the license granted in the event (1) Baylor needs the land on which HDAC was located for its purposes and no other land was reasonably available to Baylor for the purpose for which the land is needed or (2) BAA defaults by ceasing to carry out all of its purposes—set forth in section I. *Id.* §§ III, IV.

**2013 Agreement to Vacate.** In 2012, Baylor began to build a new football stadium (“Stadium”) on its campus. Baylor hired Populous, a worldwide leader in sports stadium architecture, to develop a master plan for the Stadium. HDAC sat in the middle of the new central walkway proposed by Populous to connect the main campus to the Stadium. Baylor notified BAA that Baylor needed the land on which HDAC was located for the Stadium project, and that other property was not reasonably available to it.<sup>8</sup> BAA agreed to move to other space at Baylor’s Robinson Tower, a building on the Baylor campus, for an “indefinite” period, or “until the Association is housed elsewhere.” *See* Exhibit E, 2013 Agreement to Vacate.

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<sup>8</sup> Tom Nesbitt—an attorney in Austin—represented Kurt Dorr (an individual BAA member) in a lawsuit styled *Kurt H. Dorr v. Baylor Alumni Association, et al.*, Case No. 6:13-CV-001977-WSS (W.D. Tex.), in an attempt to stop the removal of HDAC. Both Baylor and BAA were sued by Nesbitt on behalf of Dorr. Dorr, with Nesbitt as his attorney, also sued then BAA President Collin Cox and Judge Elizabeth Coker (immediate past president) in that lawsuit. Ultimately, the suit was dismissed by the Court. Now, Tom Nesbitt is the President of BAA. *See* [https://www.bayloralumniassociation.com/content/who\\_we\\_are/board\\_of\\_direct.asp](https://www.bayloralumniassociation.com/content/who_we_are/board_of_direct.asp).

After the Transition Agreement failed, Baylor sent notice to BAA and terminated the 1993 License, the 1994 Recognition (to the extent it was still in force) and the 2013 Agreement to Vacate.

### **III. SUMMARY JUDGMENT STANDARD OF REVIEW**

Under Rule 166a(a), a party seeking to obtain a declaratory judgment may move for a summary judgment in its favor. Tex. R. Civ. P. 166a(a). Summary judgment is appropriate when the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. See Tex. R. Civ. P. 166a(c); *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995); *Lundstrom v. United Servs. Auto Ass'n*, 192 S.W.3d 78, 84 (Tex. App.—Houston [14th Dist.] 2006, pet. denied). If the movant makes such a showing, then judgment should be rendered in favor of the movant. Tex. R. Civ. P. 166a(c). Furthermore, “[t]he interpretation of an unambiguous contract is a question of law.” *Jacobson v. DP Partners, Ltd. P’ship*, 245 S.W.3d 102, 106 (Tex. App.—Dallas 2008, no pet.).

### **IV. SUMMARY OF ARGUMENT**

Baylor properly terminated the Agreements. The Agreements are indefinite in duration, like employment at will contracts, and therefore terminable at will by either party; no ascertainable event (unrelated to performance) establishes a time period to make the agreements definite in duration; the BAA can terminate at will, so Baylor can do the same; the Agreements’ terms are too vague to be enforced; and the BAA had the ability to change its purpose unilaterally, thereby making its commitments, if any, illusory.

In addition, a very important governance principle prevents enforcement of the Agreements, even if they were otherwise valid. BAA’s efforts to enforce the Agreements violate public policy because they remove from the governing board of Baylor, a non-profit, religiously-

affiliated, educational institution, its fiduciary duty to use its judgment in a matter (alumni relations) that lies at the heart of Baylor's mission. By virtue of the Agreements, BAA seeks to encumber Baylor's fiduciaries from discharging their duties in good faith, with ordinary care, and in a manner the fiduciaries reasonably believe to be in Baylor's best interest. This encumbrance is substantial because of the subject matter, scope, and perceived duration of the Agreements. In short, BAA believes Baylor is here to serve the BAA, when the reality is that BAA was formed to serve Baylor.

## V. AGREEMENTS PROPERLY TERMINATED

Baylor properly terminated the Agreements, and the Agreements therefore cannot support BAA's claims.

1. **Public Policy Violation. It would be a violation of public policy to enforce the Agreements because the Agreements would perpetually encumber, if not eliminate, the appropriate exercise of the fiduciary duties of Baylor's directors and officers in the key management function of alumni relations.**

As a matter of law, the Agreements are unenforceable on public policy grounds. They improperly attempt to bind—in perpetuity—future administrators and regents in the critical management function of alumni relations. Under Texas law, “[a] promise or other term of an agreement is unenforceable on grounds of public policy if legislation provides that it is unenforceable or the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms.” *Fairfield Ins. Co. v. Stephens Martin Paving, LP*, 246 S.W.3d 653, 663 (Tex. 2008) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 178(1)). A court also may “exercise[] its authority to determine and enforce public policy.” *Id.* at 665. This court should do exactly that.

It is against public policy for a President and Board to bind—in perpetuity—future management and directors. See Tex. Const. Art. 1, § 26 (“Perpetuities and monopolies are

contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.”). A wealth of case law supports this bedrock principle. See *Leon Farms Corp. v. Beeman*, 240 S.W.2d 433, 436 (Tex. Civ. App.—El Paso 1951, writ ref’d n.r.e.) (recognizing that a contract that attempts to bind the action of future boards of directors of a corporation as to matters of management is against the public policy of Texas); *Tex. Carbonate Co. v. Phinney*, 307 F.2d 289, 292 (5th Cir. 1962) (same); *Mercury Life & Health Co. v. Hughes*, 271 S.W.2d 842, 845 (Tex. Civ. App.—San Antonio 1954, writ ref’d) (stating that the court is “impressed with appellants’ contention that the contract herein sued upon was void because it took from future directors and future policyholders of Mercury all right to have a voice in the management of the company”); *Midland Cnty. v. Slaughter*, 130 S.W. 612, 614 (Tex. Civ. App. 1910) (holding that the contract was void as against public policy because “it seems perfectly unreasonable that one commissioner’s court, which under our law cannot without re-election continue longer than two years, shall be held to have the power to bind succeeding commissioners’ courts for a period of 40 years”); *Hicks v. Castille*, 313 S.W.3d 874, 881-82 (Tex. App.—Amarillo 2010, pet. denied) (observing that “[h]e would certainly be a poor owner who was required to hold property all his life without the power to sell it” (alteration in original) (quoting *O’Connor v. Thetford*, 174 S.W. 680, 681-82 (Tex. Civ. App.—San Antonio 1915, writ ref’d))); *Boston Athletic Assoc. v. Int’l Marathons, Inc.*, 467 N.E.2d 58, 64-65 (Mass. 1984) (holding contract that perpetually encumbered substantially all of company’s assets void as against public policy).

Here, in 1993 and 1994, the President of Baylor sought to bind Baylor and its Board of Regents *in perpetuity* regarding the management of Baylor’s alumni services. Allowing the Agreements to last *forever* would harm the public and the State of Texas because the

Agreements did not take into account the evolving nature of higher education and how universities would need to adapt in order to serve their growing alumni base. This Court should determine that the Agreements are unenforceable so that the oldest continuously operating university in Texas may be allowed to serve its alumni in what is currently the most effective way possible. Baylor should not be bound forever by the circumstances that existed in 1993 and 1994.

Beyond the perpetual encumbrance, the Agreements also purport to substantially limit fiduciary discretion in other respects. First, the scope of products and services that could be offered pursuant to the Agreements were generally within BAA's discretion, not Baylor's. Second, BAA could modify its own Constitution and Bylaws in such a way as to alter BAA's fundamental purpose. *See* discussion in Section 5 below. Third, BAA seeks to prevent Baylor from providing any products and services directly to its own alumni through its Baylor Alumni Network. (*See* Answer, page 23: "The BAA seeks judgment . . . enjoining Baylor from continuing to operate the Baylor Alumni Network . . ."). BAA's attempts through the Agreements to bind Baylor as to these matters of management and essentially turn them over to BAA's independent control is unenforceable as against public policy.

2. **Indefinite Duration.** The Agreements have an indefinite duration and are therefore terminable at will by either party. The Agreements do not specify a time period, and no determinable events allowing for termination transform the contract into one of definite duration.

The Agreements have an indefinite duration and are therefore terminable at will by either party. "Under Texas law, when a contract 'contemplate[s] continuing performance (or successive performances) and . . . [is] indefinite in duration,' it may be terminated at the will of either party." *Trient P'ners I Ltd. v. Blockbuster Entm't Corp.*, 83 F.3d 704, 708 (5th Cir. 1996) (alteration in original) (quoting *Clear Lake City Water Auth. v. Clear Lake Utils. Co.*, 549

S.W.2d 385 (Tex. 1977)); *see also Fort Worth Indep. Sch. Dist. v. City of Fort Worth*, 22 S.W.3d 831, 841 (Tex. 2000); *War-Pak, Inc. v. Rice*, 604 S.W.2d 498, 505 (Tex. Civ. App.—Waco 1980, writ ref'd n.r.e.) (“As a general rule, when a contract does not specify a time period or does not prescribe conditions for termination, the contract may be terminated by either party at will.”); *Aztec Servs. v. Quintana-Howell Joint Venture*, 632 S.W.2d 160, 162 (Tex. App.—Corpus Christi 1982, writ ref'd n.r.e.). The Agreements do not specify a time period, and the conditions for termination are merely restatements of ordinary contract principles and thus do not limit the duration of the Agreements.

*a. Like employment at-will contracts, the Agreements can be terminated as to future obligations at any time by either party.*

As recognized in *Blockbuster*, both Texas law and Fifth Circuit law disfavor perpetual contracts, and courts “presume[] that [a] contract is terminable at will.” 83 F.3d at 708. In *Blockbuster*, the plaintiff was a licensee of a video rental company. The parties’ license agreement stated that it would “continue indefinitely . . . until terminated in accordance with the provisions hereof.” *Id.* at 709 (alteration in original). As here, the agreement allowed for the termination of the agreement after certain defined events. The plaintiff sought a declaratory judgment against Blockbuster to determine that it could unilaterally terminate the contract. Applying Texas law, the court held that the agreement was terminable at will because it was indefinite in duration. *Id.* at 706.

The 1994 Recognition and the 2013 Agreement to Vacate, like the license agreement in *Blockbuster*, are expressly “indefinite” in duration. The 1993 License recites that it is “perpetual.” As recognized in *Blockbuster*, both Texas law and Fifth Circuit law disfavor perpetual contracts. *See id.* at 708. Courts will not enforce endless contracts unless the “unequivocal language” of the agreement demonstrates that “forever” and “endless” was the true

intent of the parties. *See SHA, LLC v. Northwest Tex. Healthcare Sys., Inc.*, No 07-13-320, 2014 WL 31420, at \*3 (Tex. App.—Amarillo Jan. 3, 2014, no writ). The intent for the contract to go on *forever* must be shown by the “plain and unmistakable import” of the agreement. *Hull v. Quanah Pipeline Corp.*, 574 S.W.2d 610, 610 (Tex. App.—San Antonio 1978, writ ref’d n.r.e.) (involving a pipeline lease in which the lessees had an unlimited option to renew). One usage of the word “perpetual” is woefully insufficient to overcome the presumption against endless contracts.

For example, in *Tracy v. Annie’s Attic, Inc.*, the court held that an agreement which was expressly “everlasting”—which is a primary definition of “perpetual”<sup>9</sup>—was *not legally* perpetual, but was instead indefinite and terminable at will. 840 S.W.2d 527, 538-39 (Tex. App.—Tyler 1992, writ denied). Another Texas federal court has treated “perpetual” as interchangeable with “indefinite.” *See NJ & Assocs., Inc. v. CNA Unisource, Inc.*, No. CIVA 300CV1420H, 2001 WL 515210, at \*3 (N.D. Tex. 2001) (agreeing with defendant’s assertion that contract was terminable at will because its “term is indefinite, or of perpetual duration, and because both state and federal law construe indefinite contracts as terminable at will”). This, of course, is also consistent with the published definitions of “perpetual.”<sup>10</sup>

One reason agreements purporting to last forever are legally disfavored is that they are essentially outright conveyances of the right involved, but do not explicitly say as much.<sup>11</sup> Here, the 1993 License does not have the hallmarks of an “eternal” agreement such that it is effectively

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<sup>9</sup> Websters New Collegiate Dictionary (1981) defines “perpetual” as “(a) continuing forever: EVERLASTING”; The American Heritage Dictionary of the English Language (New College Edition, 1978) defines “perpetual” as “(1) lasting for eternity . . . (2) lasting for an indefinitely long duration . . .”

<sup>10</sup> *See supra* n.6.

<sup>11</sup> And, in Texas, the only agreements Baylor has found that are deemed to be everlasting deal with leases of real property. *See Hull*, 574 S.W.2d at 610; *Haley v. GPM*, 80 S.W.3d 114, 118 (Tex. App.—Amarillo 1980, no writ) (relying on *Hull* and requiring “clear” intent to “create a right of perpetual renewal” of a lease); *Philpot v. Fields*, 633 S.W.2d 546 (Tex. App.—Texarkana 1982, no writ) (same). Baylor has found no cases where the purported consideration, as here, was the rendition of services forever.

a conveyance. Quite the contrary. Instead, BAA agrees (1) it has no ownership or interest in the Marks; (2) to be subject to quality control by Baylor “at all times” in carrying out its obligations; (3) for breach of its obligations, following notice and failure to cure, the 1993 License is terminable by Baylor; and (4) the rights under the 1993 License are not transferable or assignable without Baylor’s consent. Given that other portions of the 1993 License do not support a “forever” assignment—including the ongoing obligation of BAA services to be provided—the clear intent of the Agreements is not “forever” but instead indefinitely long. The Agreements are therefore terminable at will.

*b. Failure to perform does not create an ascertainable event that would define the duration of the contracts.*

Generally, when a contract is indefinite in duration but limits the duration of the contract by the occurrence of an event or events, it is deemed to have a specified term and is not terminable at will. However, a termination provision which is just a recitation of contract law does not create a specified term. *Blockbuster*, 83 F.3d at 709. In that case, Blockbuster argued that the license agreement was definite in duration, and therefore not terminable at will, because it contained a termination provision based on certain events. *Id.* The court determined, however, that these provisions did not change the agreement from indefinite to definite in duration:

We hold that the conditions provided for in the “termination provisions” of the License Agreement [*i.e.*, (1) defaults by either party; (2) the death or incapacity of a person who is one of the Licensee’s partners; (3) the transfer or change of control of the Licensee; and (4) the insolvency of either party] ***are not the kind of determinable events that transform a contract of indefinite duration into one of definite duration.*** . . . Under foundational principles of contract law, the term of any contract is terminable by one party upon a total or material breach by another party. Accordingly, an agreement which is otherwise indefinite in duration and terminable at will cannot be converted into an agreement of definite duration by the mere transcription of such universals within the text of the contract.

*Id.* (emphasis added); *see also Adkins Adjustment Serv., Inc. v. Blumhof*, No. 3:98-CV-2789-H, 2001 WL 456352, at \*5-6 (N.D. Tex. Apr. 2, 2001); *Delta Serv. & Equip.*, 908 F.2d at 9-10; *Flourine on Call, Ltd. v. Fluorogas, Ltd.*, 380 F.3d 849, 855-57 (5th Cir. 2004).<sup>12</sup> The same situation exists here with respect to the 1993 License and the 1994 Recognition.<sup>13</sup> Pursuant to these Agreements, Baylor can expressly terminate on BAA's failure to perform *any* of the various ongoing services it has undertaken. *See* Exhibit C at §6; Exhibit D at § IV. As in *Blockbuster*, this is simply a restatement of ordinary contract principles. In other words, termination for failure to perform is a contractual remedy and does not establish an independent, ascertainable event that can define a termination date. Therefore, the Agreements were properly terminated at will.<sup>14</sup>

**3. BAA is under no obligation to perform. The Agreements are enforceable only to the extent of past performance by BAA; accordingly, in the absence of a promise to perform in the future by BAA, Baylor is at liberty to terminate the Agreements at will.**

The 1993 License and 1994 Recognition call for performance of various undefined ongoing services by BAA and are not supported by previously paid consideration. *It is*

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<sup>12</sup> Further, if a termination provision is not likely to occur (as here), it does not create a specified term:

Moreover, taken as a whole, the conditions contained in the License Agreement's "termination provisions" do not limit the duration of the License Agreement or make its duration determinable in any real or concrete way. **We will not hold that a contract is definite in duration when it (1) expressly states that it will "continue indefinitely," and (2) is confined in time only by "termination provisions" which contain conditions that are likely never to transpire.** If we were thus to hold, Trient could very well be forced by Blockbuster to stay in the video rental and sales business, and operate Superstores, in perpetuity. This is precisely the antithetical result that courts seek to avoid by holding indefinite duration contracts to be terminable at will.

*Blockbuster*, 83 F.3d at 709 (emphasis added) (footnotes omitted).

<sup>13</sup> The 2013 Agreement to Vacate contains no termination provisions. *See* Exhibit E.

<sup>14</sup> BAA may point to the *City of Big Spring* case, but it does not change this result. *See City of Big Spring v. Bd. of Control*, 404 S.W.2d 810, 812 (Tex. 1966). In that case, the contract provided that the City of Big Spring ("City") would provide water to a hospital for as long as the State of Texas ("State") operated the hospital on the site. *Id.* at 811. The promised performance by the State was to pay the City for the water. *Id.* at 815. As a result, the ascertainable event (continued operation of the hospital by the State) that created a definite contract was not related to performance by the State (payment for the water). *Id.* at 815-16. On the other hand, if the City could have terminated the contract for the non-payment for the water by the State, the non-payment would simply be a termination event and not an ascertainable event that defined the duration of the contract. *See id.*

*undisputed that no monetary consideration was paid to Baylor by BAA for the 1993 License and 1994 Recognition.* The only consideration, therefore, is the promise by BAA to perform various services contained in each of the Agreements. The Agreements consist of a series of unilateral offers that are accepted when BAA performs. *See Varegas v. Am. Energy Servs.*, 302 S.W.3d 299, 302 (Tex. 2009) (“A unilateral contract . . . is ‘created by the promisor promising a benefit if the promisee performs. The contract becomes enforceable when the promisee performs.’” (quoting *Plano Surgery Ctr. v. New You Weight Mgmt. Ctr.*, 265 S.W.3d 496, 503 (Tex. App.—Dallas 2008, no pet.))). The 1993 License and 1994 Recognition impose similar service obligations upon BAA that it may simply abandon at any time. For instance, the 1993 License grants a license to BAA as long as it continues to perform *all* of:

- (1) Serve as the general alumni organization of all of Baylor University, including coordination of alumni activities;
- (2) Maintain an administrative office in Waco, Texas;
- (3) Carry out all purposes, objects, and activities set forth in the “Constitution and Bylaws of the Baylor Alumni Association” as now existing or subsequently amended;
- (4) Publish an alumni magazine; and
- (5) Organize and sponsor activities for the Baylor Homecoming on at least an annual basis.

Exhibit C, 1993 License at § 5.1. Similarly, in the 1994 Recognition, Baylor grants a license for use of the HDAC to BAA as long as it continues to perform *all* of:

- (1) Serve as the general alumni organization of all of the academic units of Baylor University, including all of its colleges and schools, and by coordinating the alumni activities of Baylor’s academic units with those of the university in general;
- (2) Maintain an administrative office on Baylor’s Waco campus;
- (3) Carry out all purposes, objectives, objects, and activities set forth in the “Constitution and Bylaws of the Baylor Alumni

Association” as now existing or subsequently amended;

- (4) Publish an alumni magazine; and
- (5) Organize and sponsor activities for annual, university-wide Baylor Homecoming.

Exhibit D, 1994 Recognition at § 1.

BAA could unilaterally decide, at any time, to stop performing these obligations. By ceasing to perform, BAA would effectively unilaterally terminate the Agreements at its will. Under Texas law, when a contract is terminable at will by one party, it is terminable at will by either party. *See East Line & R.R.R. Co. v. Scott*, 10 S.W. 99, 102-04 (Tex. 1888) (“It is very generally, if not uniformly, held, when the term of service is left to the discretion of either party, or the term left indefinite, or determinable by either party, that either may put an end to it at will, and so without cause.”); *Ingram Freezers v. Atchison*, 464 S.W.2d 915, 920 (Tex. App.—Dallas 1971, no writ) (finding because one party to a contract had “the right at any time to terminate the agreement [then the other party] also had the right to terminate the contract at will.”).

Furthermore, “[a] contract must be based upon a valid consideration, in other words, mutuality of obligation.” *Fed. Sign. v. Tex. S. Univ.*, 951 S.W.2d 401, 408 (Tex. 1997). The Texas Supreme Court has noted that “a contract in which there is no consideration moving from one party, or no obligation upon him, lacks mutuality, is unilateral, and unenforceable.” *Tex. Farm Bureau Cotton Ass’n v. Stovall*, 253 S.W. 1101, 1105 (Tex. 1923); *see also Holcombe v. Lorino*, 79 S.W.2d 307, 310 (Tex. 1935) (holding that the agreement “is not enforceable, being a mere unilateral contract, and terminable at the will of either party”); *Fort Worth ISD v. City of Fort Worth*, 22 SW.3d 831, 841 (Tex. 2000) (“[C]ontracts which contemplate continuing performance (or successive performances) and which are indefinite in duration can be terminated

at the will of either party.”) (quoting *Clear Lake City Water Auth. v. Clear Lake Utils. Co.*, 549 S.W.2d 385, 390 (Tex. 1977)).

Only a binding promise is sufficient consideration. The Agreements contain *no* binding promises by BAA because there are no promises made by BAA that are enforceable. The Court cannot force BAA to perform all of the personal service obligations contained in the Agreements because the Agreements themselves allow BAA to abandon its performance obligations. Because BAA thus has the right to terminate the Agreements at will, Texas law holds that Baylor also has the right to terminate the Agreements at will.

**4. Terms Too Vague To Be Enforced. The Agreements fail because key terms and conditions are fatally uncertain.**

The Agreements are also unenforceable because certain of the essential terms are simply too vague to be enforced. A contract is legally binding and enforceable *only* if its terms are sufficiently definite to enable a court to understand and enforce the parties’ obligations. *See Fort Worth ISD*, 22 SW.3d at 846; *T.O Stanley Boot Co. v. Bank of El Paso*, 847 S.W.2d 218, 221-22 (Tex. 1992); *Knowles v. Wright*, 288 S.W.3d 136, 142-43 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). “Whether an agreement fails for indefiniteness is a question of law to be determined by the court.” *Knowles*, 288 S.W.3d at 142. “A lack of definiteness in an agreement may concern the time of performance, the price to be paid, the work to be done, *the service to be rendered* or the property to be transferred.” *Gannon v. Baker*, 830 S.W.2d 706, 709 (Tex. App.—Houston [1st Dist.] 1992, writ denied) (emphasis added). BAA’s service obligations under the Agreements are not sufficiently definite to be enforceable.

For instance, the following provisions of the Agreements are neither definite nor clear and are so vague as to be unenforceable:

- (1) Serve as the general alumni organization of all of Baylor

University, including coordination of alumni activities (1993 License at § 5.1(1)); Serve as the general alumni organization of all of the academic units of Baylor University, including all of its colleges and schools, and by coordinating the alumni activities of Baylor’s academic units with those of the university in general (1994 Recognition at § I(1));

- (3) Carry out all purposes, [objectives], and activities set forth in the “Constitution and Bylaws of the Baylor Alumni Association” as now existing or subsequently amended (1993 License at § 5.1(3)) (1994 Recognition at § I(3));
- (5) Organize and sponsor activities for the Baylor Homecoming on at least an annual basis (1993 License at § 5.1(5)); Organize and sponsor activities for annual, university-wide Baylor Homecoming (1994 Recognition at § I(5)).

Furthermore, the 1994 Recognition also contains the following vague paragraph:

As long as the Baylor Alumni Association maintains the above services on behalf of Baylor University and continually and consistently seeks to enroll graduates as members of the Baylor Alumni Association, Baylor shall consider the Baylor Alumni Association to be “the general alumni organization of all the academic units of Baylor University.”

1994 Recognition at § I. These provisions do not provide any “goal[s] or guideline[s] by which [the defendant could] be expected to measure its progress.” *See Kevin M. Ehringer Enters., Inc. v. McData Servs. Corp.*, 646 F.3d 321, 325-27 (5th Cir. 2011). (holding that the contract at issue—which included a “best efforts” clause—was unenforceable for vagueness under Texas law).

These various terms in the Agreements are so indefinite and vague that it is impossible for the Court to understand and enforce BAA’s obligations. *See id.* Where all material or essential terms are not agreed upon, as here, there is no binding contract, (and there can thus be no breach of contract.) *See T.O. Stanley*, 847 S.W.2d at 222. The Court may not supply these

missing terms, and the Agreements therefore fail for vagueness on an ongoing basis and are terminable at will by either party.<sup>15</sup>

**5. Consideration Based on Illusory Promises. The core purpose of the Agreements is BAA’s charitable purpose to support Baylor. However, BAA is at liberty to unilaterally change its charitable purposes, making the entire arrangement illusory.**

As mentioned above, the Agreements fail because one of the required specific ongoing obligations of BAA is that “at a minimum, [it] shall continue to: carry out all of the purposes, [objectives], and activities set forth in the Constitution and Bylaws of the Baylor Alumni Association as now existing or subsequently amended.” See Exhibit C, 1993 License at § 5.1(3); Exhibit B, 1994 Recognition at § I(3). This ongoing promise is central to the claimed relationship between BAA and Baylor, as described in Article I, Section 2 of BAA’s Constitution and Bylaws:

The purpose of the Association is to provide the support of benevolent, charitable, and educational undertakings by extending financial and other aid to Baylor University and to students thereof, by generally encouraging sentiments favorable

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<sup>15</sup> See the following cases, in which the courts held that the contracts at issue were unenforceable for indefiniteness: *Fort Worth ISD*, 22 S.W.3d at 846 (“In general, a contract is legally binding only if its terms are sufficiently definite to enable a court to understand the parties’ obligations.”); *T.O. Stanley*, 847 S.W.2d at 221-22); *Moore v. Dilworth*, 179 S.W.2d 940, 942 (Tex. 1944); *Borrell v. Williams*, No. 01-13-00099-CV, 2014 WL 1318920, at \*4-8 (Tex. App.—Houston [1st Dist.] April 1, 2014, no pet.); *DKJ Homes, LP v. Kilgo*, No. 03-10-656, 2011 WL 1811435, at \*2-5 (Tex. App.—Austin May 11, 2011, no pet.); *Kevin M. Ehringer Enters.*, 646 F.3d at 325-27; *AMX Corp. v. Pilote Films*, No. 3:04-CV-2035-D, 2007 WL 1695120, at \*14-17 (N.D. Tex. June 5, 2007); *Liberto v. D.F. Stauffer Biscuit Co.*, 441 F.3d 318, 324-25 (5th Cir. 2006); *Farone v. Bag’n Baggage, Ltd.*, 165 S.W.3d 795, 801-02 (Tex. App.—Eastland 2005, no pet.); *COC Servs., Ltd. v. CompUSA, Inc.*, 150 S.W.3d 654, 664-65 (Tex. App.—Dallas 2004, pet. denied); *Meru v. Huerta*, 136 S.W.3d 383, 390-92 (Tex. App.—Corpus Christi 2004, no pet.); *Beal Bank, S.S.B. v. Schleider*, 124 S.W.3d 640, 653-54 (Tex. App.—Houston [14th Dist.] 2003, pet. denied); *Floating Bulk Terminal, LLC v. Coal Logistics Corp.*, No. 14-01-55, 2002 WL 1733670, at \*6 (Tex. App.—Houston [14th Dist.] July 25, 2002, pet. denied); *Connors v. Huey*, No. 05-98-01139, 2001 WL 549126, at \*3-6 (Tex. App.—Dallas May 24, 2001, no pet.); *Glazner v. Haase*, 61 S.W.3d 10, 14-15 (Tex. App.—Texarkana 2000), *rev’d in part on other grounds*, 62 S.W.3d 795 (Tex. 2001); *Tex. Oil Co. v. Tenneco Inc.*, 917 S.W.2d 826, 830-31 (Tex. App.—Houston [14th Dist.] 1994), *rev’d on other grounds*, 958 S.W.2d 178 (Tex. 1997); *Gannon v. Baker*, 830 S.W.2d 706, 709-10 (Tex. App.—Houston [1st Dist.] 1992, writ denied); *Univ. Nat’l Bank v. Ernst & Whiney*, 773 S.W.2d 707, 710 (Tex. App.—San Antonio 1989, no writ); *Dunn v. Pioneer Nat. Gas Co.*, No. 6939, 1980 Tex. App. LEXIS 3214, at \*1-7 (Tex. App.—El Paso Mar. 26, 1980, no writ); *Mesa Agro v. R. C. Dove & Sons*, 584 S.W.2d 506, 511 (Tex. App.—El Paso 1979, writ ref’d n.r.e.); *Bridewell v. Pritchett*, 562 S.W.2d 956, 958 (Tex. App.—Fort Worth 1978, writ ref’d n.r.e.); *Terrell v. Nelson Puett Mortgage Co.*, 511 S.W.2d 366, 369 (Tex. App.—Austin 1974, writ ref’d n.r.e.); *Pine v. Gibraltar Savings Assoc.*, 519 S.W.2d 238, 243-44 (Tex. App.—Houston [1st Dist.] 1974, writ ref’d n.r.e.).

to education and by promoting union of and good fellowship among former students and friends of Baylor University; to coordinate all alumni activities; to serve as the general alumni organization of Baylor University; and to maintain the administrative agency and executive personnel needed to provide for a continuity of alumni activity, interest and financial support of Baylor University. It shall be the subject of the Association to foster a spirit of loyalty, service, and fraternalism among the alumni and former and present students, faculty, or anyone who evidences or has evidenced a genuine interest in Baylor University and to achieve unity of purpose in action in promoting the best interest and support of the University . . . .<sup>16</sup>

Exhibit A, Art. I.2.

Further, Article XVII of BAA's Constitution and Bylaws allows BAA to unilaterally amend these purposes at its will:

These Bylaws may be altered, amended, or repealed; and new Bylaws may be adopted at any annual or special meeting of the members of the Association by a two-thirds (2/3) vote of the members present . . . .

*Id.*, Art. XVII.

While there is some quarrel as to whether BAA has properly carried out these purposes, two things are clear: (1) the Agreements require BAA to carry out all of its purposes as expressed in its Constitution and Bylaws as consideration for the Agreements; and (2) these core purposes (and thus BAA's consideration) as defined in the Constitution and Bylaws may be *amended at will by BAA*, thus giving BAA the unilateral ability to alter essential terms of the Agreements at will.

This unilateral right by BAA to amend the duties and obligations called for under the Agreements renders these promises illusory and the Agreements unenforceable. Once again, an abundance of case law supports this case-dispositive point. *See Flex Enters., LP v. Cisneros*, 442

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<sup>16</sup> Indeed, as the Court knows, BAA has recently claimed that its primary function is to serve as the "independent voice" of Baylor alumni, although that purpose is nowhere found in either its Articles of Incorporation or its Constitution and Bylaws. *See* Exhibits A & B. Indeed, one could easily argue that function is *contrary* to the listed purposes in the current Constitution and Bylaws, since it clearly does *not* "promote union and good fellowship among" Baylor alumni and instead serves as a lightning rod for unpleasantness and acrimony.

S.W.3d 725 (Tex. App.—El Paso 2014, pet. denied); *In re Datamark, Inc.*, 296 S.W.3d 614, 617-18 (Tex. App.—El Paso 2009, orig. proceeding); *Hackberry Creek Country Club, Inc. v. Hackberry Creek Home Owners Assoc.*, 205 S.W.3d 46 (Tex. App.—Dallas 2006, pet. denied). “When illusory promises are all that support a purported bilateral contract, there is not a contract.” *Light v. Centel Cellular Co.*, 883 S.W.2d 642, 645 (Tex. 1994). A promise is illusory if it fails to bind the promisor. For example, a promise is illusory if it is conditioned upon something that is exclusively within the control of the promisor, such as continued employment. *Id.* at 645 n.5. In *Light*, the Texas Supreme Court cited a leading treatise: “if the obligation of a promise is terminable at will, the promise is illusory.” *Id.* (citing E. ALLEN FARNSWORTH, *CONTRACTS* 72-82 (1982)). Because BAA can unilaterally alter, amend, or repeal its Constitution and Bylaws at will, the Agreements are illusory and unenforceable.

In a case similar to this one, involving a dispute and ultimately the separation between a university and its independent alumni association, a New Jersey court held that the university *was* entitled to terminate certain agreements with its alumni association after disaffiliation because (as here) the parties’ continued affiliation was a material term of the agreements. *See Alumni Ass’n of New Jersey Inst. of Tech. v. New Jersey Inst. of Tech.*, No. C-179-08, 2014 WL 917051 (N.J. Super. Ct. Ch. Div. Feb. 28, 2014). The court held that “if the mutually beneficial relationship [between the university and the alumni association] ceased to exist, the responsibilities set forth in [the agreement] would have no further validity.” *Id.* at \*8. The situation here is no different, and the same logic should apply. Thus, the Agreements themselves are not binding on a going-forward basis, and Baylor’s performance thereunder was properly terminated.

## CONCLUSION

Baylor University respectfully requests that the Court grant its Motion for Summary Judgment because, as a matter of law, the Agreements were terminable at will and Baylor properly terminated the Agreements.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to counsel of record, by hand delivery, on the 22nd day of July 2015, as follows:

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Tony L. Visage

# Exhibit A

# Constitution and Bylaws of the Baylor Alumni Association

Amended and Restated, October 22, 2010

## Article I

### Name and Object

**Section 1.** The name of this organization shall be the Baylor Alumni Association.

**Section 2.** The purpose of the Association is to provide the support of benevolent, charitable, and educational undertakings by extending financial and other aid to Baylor University and to students thereof, by generally encouraging sentiments favorable to education and by promoting union of and good fellowship among former students and friends of Baylor University; to coordinate all alumni activities; to serve as the general alumni organization of Baylor University; and to maintain the administrative agency and executive personnel needed to provide for a continuity of alumni activity, interest and financial support of Baylor University.

It shall be the object of the Association to foster a spirit of loyalty, service, and fraternalism among the alumni and former and present students, faculty, or anyone who evidences or has evidenced a genuine interest in Baylor University and to achieve unity of purpose in action in promoting the best interest and support of the University through publications of the Baylor Alumni Association and Baylor University, the Life Endowment Fund, The Dr. and

Mrs. Ira C. Cole Endowment Fund, the Abner V. McCall Endowment Fund, The Baylor Fund, and any other endowment funds which may from time to time be created by the Alumni Association, the Alumni Clubs, and other constituent organizations and special or standing committees.

## Article II Membership

### Section 1. Class of Members.

The corporation shall have three classes of members. The designation of such classes and the qualifications and rights of the members of such classes shall be as follows: (a) Annual membership shall be available to any former student of Baylor University, whether a graduate or not, or any members of the faculty or anyone who evidences or has evidenced a genuine interest in the welfare of the University, upon payment of the annual dues prescribed by the Board of Directors in accordance with Article XIII hereof; (b) Life membership shall be available to any person who is a former student of Baylor University, whether a graduate or not, or any member of the faculty or anyone who evidences or has evidenced a genuine interest in the welfare of the University, upon payment of the life membership dues prescribed by the Board of Directors in accordance with Article XIII hereof; (c)

Associate membership shall be available to any person, partnership, or corporation having a genuine interest in the welfare of Baylor University and desiring to support the Association in its efforts to promote the welfare of Baylor University and its students, upon the payment of annual dues prescribed by the Board of Directors in accordance with Article XIII hereof. Associate members shall not be entitled to vote but shall be entitled to all other membership privileges. During the period of a member's enrollment as a student in Baylor University, that member shall be classified as an associate member.

**Section 2. Qualifications of Members.** The Board of Directors shall have the authority to review the qualifications for membership in each class and to approve or disapprove applications for membership. The Board of Directors may delegate this authority, in whole or in part, to the Executive Committee or to other committees or officers of the Association.

## Article III

### Meetings of Members

#### Section 1. Annual Meetings.

An annual meeting of the members shall be held for the purpose of electing officers and Directors and for the transaction

of such other business as may come before the meeting.

**Section 2. Special Meetings.**

Special meetings of the members may be called by the President or by the Board of Directors.

**Section 3. Place of Meeting.**

The Board of Directors may designate any place in or close to the City of Waco, Texas, as the place of meeting for any annual meeting, so long as such place is reasonably accessible to the members. The Board of Directors may designate any place within the State of Texas as the place of meeting for any special meeting called by the Board of Directors, but if no designation is made or if a special meeting be otherwise called, the place of meeting shall be the office of the Association.

**Section 4. Notice of Meetings.**

Written or printed notice stating the place, day, and hour of any meeting of members shall be mailed to each member entitled to vote at such meetings not less than ten (10) nor more than ninety (90) days before the date of such meeting, by or at the direction of the President or the Board of Directors; such notice shall be published in at least one issue of The Baylor Line distributed prior to the time of such meeting. In the case of a special meeting or when required by statute or by these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice.

**Section 5. Quorum.** The members present at any annual or special meeting for which proper notice has been given shall constitute a quorum at such meeting. The action of a majority of the members present

at any such meeting shall be the action of this Association.

**Section 6. Proxies.** At any meeting of the members, the members shall vote in person only, and not by proxy.

**Article IV**

**Board of Directors**

**Section 1. General Powers.** The affairs of the Association shall be managed by its Board of Directors. Directors shall be annual members or life members of the Association in good standing, except for the Directors from the student body of Baylor University, who need not be members.

**Section 2. Number, Tenure, and Qualifications.** The Board of Directors of the Association shall be composed of the following: 1) As many as thirty (30) but not fewer than twenty-five (25) Directors, each of whom shall reside within and represent a geographical district designated by the Board of Directors ("Regional Directors"); 2) As many as fifteen (15) but not fewer than ten Directors, each of whom shall be a member of and represent key constituent or demographic groups designated by the Board of Directors ("Key Constituent Directors"); 3) Ten Directors appointed by the incoming President of the Association ("At Large Directors"); 4) All Past Presidents of the Association or its predecessor organizations ("Past President Directors"); and 5) The immediate Past President, each officer of the Association, and each member of the Executive Committee who may not otherwise be included in the categories identified above ("Ex-

officio Directors"). The combined number of Regional Directors and Key Constituent Directors shall not exceed forty (40). Regional Directors and Key Constituent Directors shall serve for three years beginning with the first day of June following their election; however, the first Regional Directors and Key Constituent Directors elected under these Bylaws shall be assigned terms of one year, two years, and three years, so that the terms of approximately a third of the Regional Directors and Key Constituent Directors will expire each year. At Large Directors shall serve for one year beginning with the first day of June following their appointment. Ex-officio Directors shall serve for so long as they hold their respective offices. Regional Directors, Key Constituent Directors, At Large Directors, and Ex-officio Directors shall be voting members of the Board. Past President Directors shall serve for life as non-voting members of the Board.

**Section 3. Regional Directors.** From time to time, upon recommendation from the Executive Committee, the Board of Directors shall identify and prescribe the boundaries of geographical districts to be represented by the Regional Directors in such manner as the Board of Directors, in its sole discretion, shall deem to fairly represent the membership of the Association.

**Section 4. Key Constituent Directors.** From time to time, upon recommendation from the Executive Committee, the Board of Directors shall identify and

designate key constituent or demographic groups to be represented by the Regional Directors in such manner as the Board of Directors, in its sole discretion, shall deem to fairly represent the membership of the Association.

**Section 5. Regular Meetings.**

The Board of Directors shall meet at least three times a year on dates selected by the Executive Committee, after proper notice.

**Section 6. Special Meetings.**

By resolution of the Executive Committee a special meeting of the Board of Directors may be called. The person or persons authorized to call special meetings of the Board of Directors may fix any place, either within or without the State of Texas, as the place for holding any special meetings of the Board called by them.

**Section 7. Notice.** Notice of any meeting of the Board of Directors shall be given at least ten days prior thereto by written notice delivered personally or sent by mail, overnight delivery service, facsimile/telecopier transmission or electronic transmission to each Director at the Director's physical address, facsimile/telecopier number, or electronic address as shown by the records of the Association. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed with postage thereon prepaid. If notice is given by overnight delivery service, such notice shall be deemed to be delivered when deposited with the overnight delivery service properly packaged and addressed with delivery cost prepaid or

billed to the Association's account. If notice is given by facsimile/telecopier transmission or electronic transmission, such notice shall be deemed to be delivered on the date of transmission as evidenced by a printed or electronic confirmation that the transmission was successful.

Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at, and the purpose of, any regular or special meeting of the Board shall be specified in the notice or waiver of notice of such meeting; with appropriate notice, as herein defined, meetings may be held by telephone conference call or other appropriate electronic devices.

**Section 8. Quorum.** The members of the Board of Directors attending any regular or special meeting for which appropriate notice has been given as required by these Bylaws shall constitute a quorum for the transaction of business at such meeting.

**Section 9. Manner of Acting.** The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by these Bylaws.

**Section 10. Vacancies.** Any vacancy occurring in the Board of Directors and any directorship

to be filled by reason of increase of Directors shall be filled by nomination of the Nominating Committee approved by the Executive Committee. A director appointed to fill a vacancy shall serve for the unexpired term of his predecessor in office.

**Section 11. Compensation.**

Directors shall receive no compensation for their services, nor shall any Director be reimbursed for any expenses incurred in attending regular or special meetings of the Board.

**Section 12. Informal Action by Directors.**

Any action required by law to be taken at a meeting of Directors, or any action which may be taken at a meeting of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by a majority of the Directors.

**Section 13. Responsibilities of Directors.**

Each Director shall have and accept personal responsibility for performing the following acts during his or her term of office: a) Serving on at least one committee; b) Encouraging and promoting membership in the Association; c) Assisting in the organization and promotion of regular meetings of local Alumni Clubs; d) Reporting to the Association for Publication in The Baylor Line local and regional meetings and other Baylor-related activity; e) Attending the annual meeting of members of the association and all meetings of the Board of Directors; f) Recruiting students for Baylor University; and g) Supporting Baylor University financially and in every other way possible.

## Article V Officers

**Section 1. Officers.** The officers of the association shall be a President, a President-Elect, a Secretary, and a Treasurer. Such officers must be members of the Association in good standing and shall be members of the Executive Committee. No two offices may be held by the same person.

The Board of Directors may elect or appoint an Executive Vice President to serve at the pleasure of the Board and have the authority to perform the duties prescribed, from time to time, by the Board of Directors.

**Section 2. Election and Term of Office.** The President-Elect, Secretary, and Treasurer shall be elected annually by the members at the regular annual meeting of the members of the Association. Each officer shall hold office until his successor has been duly elected and qualified. To be eligible for nomination and election to the office of President-Elect, a person must be a member or have previously served as a member of the Executive Committee. At the conclusion of the term of the President-Elect, the person holding that office shall automatically assume the office of President.

**Section 3. Vacancies.** A vacancy in any office because of death, resignation, disqualification, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

**Section 4. President.** The president shall be responsible for the general direction of the affairs of the Association and shall be the official

representative of the Association. He or she shall preside at all meetings of the members and of the Board of Directors and Executive Committee, and shall be an ex-officio member of all other committees. He or she may sign, with the Secretary or any other proper officer of the Association authorized by the Board of Directors, any deed, mortgage, bond, contract, or other instrument which the Board of Directors has authorized to be executed, except in the cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws or by statute to some other officer or agent of the Association; and in general he or she shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

**Section 5. President-Elect.** The President-Elect shall serve as a member of the Executive Committee and spend his or her term of office learning by observation and participation the duties of the President. He or she may attend all committee meetings and executive briefings and also shall chair the Development, Finance and Investments Committee and the Alumni Council. In the absence of the President, or in the event of his or her inability or refusal to act, the President-Elect shall perform the duties of President. When so acting, the President-Elect shall have all the powers of the President and be subject to all the restrictions upon the President.

**Section 6. Treasurer.** If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine. He or she shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever and deposit all such moneys in the name of the Association in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VIII of these Bylaws; and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him the President or her by the Board of Directors.

**Section 7. Secretary.** The Secretary shall keep the minutes of the meetings of the members and of the Board of Directors and the Executive Committee in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodial of the corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents, the execution of which on behalf of the Association under its seal is duly authorized in accordance with the provision of these Bylaws; keep a register of the post office address of each member which shall be furnished to the Secretary by such member, and

in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors.

**Section 8. Assistant Secretaries and Assistant Treasurers.** The Board of Directors may elect or appoint such other offices, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. If required by the Board of Directors, the Assistant Treasurer shall give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine. The Assistant Treasurers and Assistant Secretaries, in general shall perform such duties as shall be assigned to them by the Treasurer or the Secretary or by the President of the Board of Directors.

## Article VI Committees

**Section 1. Executive Committee.** An Executive Committee shall be composed of the President, the President-Elect, the Secretary, the Treasurer, and the immediate Past President; nine Directors shall be elected by the Board of Directors to the Executive Committee upon the nomination of the President-Elect for terms of three years, three of whom shall be elected each year. If the number of seats on the Executive Committee from the Board of Directors is increased by an

amendment to these Bylaws, the members first elected to those seats by the Board of Directors, who would otherwise serve three-year terms, shall have terms of one, two, or three years, respectively, as determined by the President-Elect who nominates them. The specific responsibilities of the Executive Committee shall include review of these Bylaws, strategic planning, development and assessment of membership and financial development strategies, provision of guidance and direction to all other committees, oversight of conflict of interest issues, supervision of the Association's awards process, and review of The Baylor Line editorial policies. The Executive Committee shall have and exercise the authority of the Board of Directors in the management of the Association at all times except when the Board of Directors or the membership may be meeting. However, the Executive Committee shall not have the authority of the Board of Directors in reference to amending, altering, or repealing the Bylaws; removing the Executive Vice President or any Director or officer of the Association; amending the Articles of Incorporation; adopting a plan of merger or adopting a plan of reorganization; authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the Association; or amending, altering or repealing any resolution of the Board of Directors. A majority of the Executive Committee shall constitute a quorum, and the act

of a majority of the members present at a meeting of which all members had notice and at which a quorum is present shall be the act of the Executive Committee.

**Section 2. Nominating Committee.** A Nominating Committee composed of the President, President-Elect, immediate Past President and no fewer than six other voting members of the Board of Directors shall be appointed by the President-Elect subject to the approval of the Board of Directors. The President-Elect or his designee shall chair the committee. The specific responsibilities of the Nominating Committee shall include nomination of officers, nomination of Directors, and evaluation of Directors' performance. The Nominating Committee shall publish its nominations in The Baylor Line prior to the annual meeting and then submit nominations at the annual meeting for Directors and officers of the Association under the provisions set forth in these Bylaws. Any member of the Association who is current in the payment of dues shall also have the right to submit nominations for officers and for Regional and Key Constituent Directors, provided such nominations shall be submitted in writing to the Nominating Committee at least three months prior to the annual meeting. No nominations may be made from the floor to the annual meeting unless such nominations have been previously submitted in writing as provided herein.

**Section 3. Standing Committees.** The following are established as Standing

Committees of the Association, composed of such members and charged with such duties as provided below or as may be additionally assigned by the President from time to time. In addition to the officers and voting Directors of the Association identified for membership, the President may appoint other members of the Association who are not voting Directors to Standing Committees. All members of Standing Committees shall be entitled to vote on committee business. The Board of Directors may establish staggered terms of more than one year for members of Standing Committees.

**Development, Finance and Investments Committee:** This committee shall be composed of the President-Elect (who shall chair the committee), the Treasurer, and no fewer than seven voting Directors appointed by the President. The specific responsibilities of this committee shall include establishment of the Association's financial objectives, oversight and review of the Association's financial development, quarterly review of the Association's financial statements, budget oversight and recommendation, investment oversight and recommendation, and documentation of the Association's fiscal history and policies.

**Personnel Policies Committee:** This committee shall be composed of the President (who shall chair the committee), the President-Elect, the immediate Past President, and two voting Directors appointed by the President. The specific responsibilities of this committee shall include establishment and oversight of

the Association's compensation philosophy, establishment of personnel management objectives, annual appraisal of the Executive Vice President and the Executive Editor, and, upon request, consultation with the Executive Vice President regarding Association human resource issues.

**Membership, Alumni Chapters and Constituencies Committee:** This committee shall be composed of no fewer than nine voting Directors appointed by the President, one of whom the President shall designate as chair. The specific responsibilities of this committee shall include membership development coordination, establishment of strategic objectives for Baylor Alumni Chapters and other key constituent and demographic groups, and direction of Association efforts to increase members' involvement in their local Baylor Alumni Chapters.

**Programs Committee:** This committee shall be composed of no fewer than nine voting Directors appointed by the President, one of whom the President shall designate as chair. The specific responsibilities of this committee shall include establishment of strategic objectives and supervision of Association programs consistent with the Association's long-range strategies, such as Alumni by Choice, Alumni College, Baylor Alumni Network, Homecoming, Homecoming EXTRA!, Heritage Club, Legacy, Student Alumni Alliance, and Baylor Alumni Travel.

**Communications Committee:** This committee shall be composed of no fewer

than nine voting Directors appointed by the President, one of whom the President shall designate as chair. The specific responsibilities of this committee shall include establishment of annual communications objectives, review of operations and effectiveness of The Baylor Line, and oversight of the Association's Internet strategy.

**Alumni Council:** This committee shall be chaired by the President-Elect and shall be composed of Association members appointed by the President who are Baylor Alumni Chapter leaders and leaders of other key constituent and demographic alumni groups. The Alumni Council shall meet no less frequently than annually and shall be invited on occasion to attend meetings of the Board of Directors. Members of the Alumni Council shall be available for consultation upon request, individually or as a group.

**Past Presidents Council:** This committee shall be chaired by the immediate Past President and shall be composed of all Past Presidents of the Association or its predecessor organizations. The Past Presidents Council shall meet no less frequently than annually and shall serve as a special resource to the officers and Directors of the Association to be consulted by them as required from time to time.

#### **Section 4. Special Committees.**

Other committees not having and exercising the authority of the Board of Directors in the management of the Association may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Except as otherwise

provided in such resolution, members of each committee shall be members of the Association, and the President of the Association shall appoint the members thereof. Any member thereof may be removed by the President whenever, in the President's judgment, the best interests of the Association will be served by such removal.

**Section 5. Terms of Office.**

Each member of a committee, other than the Executive Committee, shall continue as such until May 31 of each year unless otherwise provided herein following appointment and until a successor is appointed, unless the committee shall be sooner terminated, or unless such member shall cease to qualify as a member thereof.

**Section 6. Chairperson.** One member of each committee, other than the Executive Committee and the Budget and Finance Committee, shall be appointed chairperson by the President.

**Section 7. Vacancies.** Vacancies in the membership of any committee including the Executive Committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

**Section 8. Quorum.** Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

**Section 9. Rules.** Each committee may adopt rules for

its own government not inconsistent with these Bylaws or with rules adopted by the Board of Directors.

**Article VII**

**Baylor Alumni Chapters**

**Section 1. Charter.** Baylor Alumni Chapters shall be chartered by the Association on a geographical basis to promote the welfare and progress of the University and to develop a closer fellowship among the Alumni and former students and friends of Baylor University.

**Section 2. Handbook.** Each such Baylor Alumni Chapter shall be provided with the model constitution and handbook for Baylor Alumni Chapters approved by the Association's Board of Directors, which constitution, subject to such revisions as are deemed necessary in the particular Baylor Alumni Chapter, shall constitute the principles under which the Baylor Alumni Chapter shall operate.

**Article VIII**

**Contracts, Checks, Deposits, and Funds**

**Section 1. Contracts.** The Board of Directors may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

**Section 2. Checks, Drafts, etc.** All checks, drafts, or orders for payment of money, notes, or other evidences of indebtedness

issued in the name of the Association shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Treasurer and countersigned by the President of the Association.

**Section 3. Deposits.** All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board of Directors may select.

**Section 4. Gifts.** The Board of Directors may accept on behalf of the Association any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the association.

**Article IX**

**Certificates of Membership**

**Section 1. Certificates of**

**Membership.** The Board of Directors may provide for the issuance of certificates evidencing membership in the Association, which shall be in such form as may be determined by the Board of Directors. Such certificates shall be signed by the President or by the Secretary or an Assistant Secretary and shall be sealed with the seal of the Association. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the Association. If any certificate shall become lost, mutilated, or destroyed, a new certificate may be issued therefor upon such terms and conditions as the

Board of Directors may determine.

**Section 2. Issuance of Certificates.** When a member has paid any dues that may then be required, a certificate of membership shall be issued in his or her name and delivered to him or her by the Secretary, if the Board of Directors shall have provided for the issuance of certificates of membership under the provisions of Section 1 of this Article IX.

#### **Article X**

##### **Books and Records**

The Association shall keep and complete books and records of account and shall also keep minutes of the proceedings of the meetings of its members, Board of Directors and committees having any of the authority of the Board of Directors, and shall keep at the registered or principal office a record giving the names and addresses of the members entitled to vote. All books and records of the Association may be inspected by any member, or his or her agent or attorney, for any proper purpose at any reasonable time.

#### **Article XI**

##### **Audit Committee**

An Audit Committee of non-officer Directors shall be appointed annually by the President. The Audit Committee shall recommend to the membership an Auditor to do the annual audit, review the audit progress and the results of the audit, meet privately with Auditors, and report to the Board of Directors the results of the audit. After the completion of the audit and the report to the

Board of Directors, the Association shall publish an Annual Audit Report.

#### **Article XII**

##### **Fiscal Year**

The fiscal year of the Association shall begin on the first day of June and end on the last day of May in each year.

#### **Article XIII**

##### **Dues**

**Section 1. Annual Dues.** The dues for an annual member and for an association member shall be set by the Board of Directors. A student enrolled in Baylor University may become an annual member of the Association for the year immediately following such graduation by the payment of dues that shall be set by the Board of Directors.

**Section 2. Life Membership.** The endowment contribution for a life membership, or for life memberships for married couples, shall be set by the Board of Directors.

**Section 3. Default and Termination of Membership.** When any regular or association member of the Association shall be in default in the payment of dues for a period of two months after the date on which such dues become payable, such membership shall be considered terminated, and the names of such member shall be stricken from the rolls of the Association.

#### **Article XIV**

##### **Procedure**

All meetings held by the Association Membership, the Board of Directors, the Executive Committee, and the committees of the Association

shall be governed by Robert's Rules of Order, Newly Revised.

#### **Article XV**

##### **Seal**

The Board of Directors shall provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the Association.

#### **Article XVI**

##### **Waiver of Notice**

Whenever any notice is required to be given under the provisions of the Texas Non-profit Corporation Act or under the provisions of the Articles of Incorporation or the Bylaws of this Association, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

#### **Article XVII**

##### **Amendments to the Bylaws**

These Bylaws may be altered, amended, or repealed; and new Bylaws may be adopted at any annual or special meeting of the members of the Association by a two-thirds (2/3) vote of the members present, but only if the nature and extent of the proposed amendments shall be included in the notice of the call of said meeting. No amendments may be offered unless they have been submitted to the Board of Directors or Executive Committee for their review and recommendation prior to said meeting and in sufficient time to meet the notification and publication requirements of Article III.

# Exhibit B

AMENDMENTS ATTACHED

FILED  
In the Office of the  
Secretary of State of Texas

ARTICLES OF INCORPORATION

AUG 11 1978

OF

*Lana Seigman*

BAYLOR UNIVERSITY ALUMNI ASSOCIATION Deputy Director, Corporation Division

We, the undersigned natural persons of the age of eighteen ,  
(18) years or more, at least two (2) of whom are citizens of  
the State of Texas, acting as incorporators of a corporation under  
the Texas Non-Profit Corporation Act, do hereby adopt the following  
Articles of Incorporation for such corporation:

ARTICLE ONE

The name of the corporation is Baylor University Alumni  
Association.

ARTICLE TWO

The corporation is a nonprofit corporation.

ARTICLE THREE

The period of its duration is perpetual.

ARTICLE FOUR

The purposes for which the corporation is organized are the  
support of benevolent, charitable, and educational undertakings  
by extending financial and other aid to Baylor University and to  
students thereof, by generally encouraging sentiments favorable  
to education and by promoting union of and good fellowship among  
former students of Baylor University, and to coordinate all alumni  
activities; to serve as the general alumni organization of Baylor  
University, and to maintain the administrative agency and executive  
personnel needed to provide for a continuity of alumni activity

and interest. In general, to carry out any other activity in connection with the foregoing and to have and exercise all of the powers conferred by the laws of Texas upon non-profit corporations formed under the Texas Non-Profit Corporation Act and to do any and all other things hereinbefore set forth to the same extent as natural persons might or could do.

#### ARTICLE FIVE

The street address of the initial registered office of the corporation is Student Union Building, Baylor University, 1000 South Fifth Street, Waco, Texas, and the name of its initial registered agent at such address is Raymond Vickrey.

#### ARTICLE SIX

The number of directors constituting the initial board of directors of the corporation is eight (8), and the names of the persons who are to serve as the initial directors are:

James F. Cole	Alexandria, Louisiana
Dorothy B. Kronzer	Houston, Texas
A. Sam Waldrop	Abilene, Texas
Wm. R. Crocker	Austin, Texas
Roger Edens	Waco, Texas
Wesley D. Bates	Norman, Oklahoma
P. Oswin Chrisman	Dallas, Texas
James O. Price	Fort Worth, Texas

#### ARTICLE SEVEN

The name of each incorporator is:

James F. Cole	Alexandria, Louisiana
Dorothy B. Kronzer	Houston, Texas
A. Sam Waldrop	Abilene, Texas
Wm. R. Crocker	Austin, Texas
Roger Edens	Waco, Texas
Wesley D. Bates	Norman, Oklahoma
P. Oswin Chrisman	Dallas, Texas
James O. Price	Fort Worth, Texas

ARTICLE EIGHT

In the event that the corporation should be dissolved, its properties shall be given to Christian organizations or institutions providing or supporting higher education, each of which shall have at the time, a valid and subsisting exemption from federal taxation issued by the Internal Revenue Service.

IN WITNESS WHEREOF, we have hereunto set our hands, this the 30<sup>th</sup> day of April, 1976.

James F. Cole  
James F. Cole

Dorothy B. Kronzer  
Dorothy B. Kronzer

A. Sam Waldrop  
A. Sam Waldrop

Wm. R. Crocker  
Wm. R. Crocker

Roger Edens  
Roger Edens

Wesley D. Bates  
Wesley D. Bates

F. Oswin Chrisman  
F. Oswin Chrisman

James O. Price  
James O. Price

ARTICLES OF AMENDMENT  
TO THE  
ARTICLES OF INCORPORATION  
OF  
BAYLOR UNIVERSITY ALUMNI ASSOCIATION

Pursuant to the provisions of Article 4.03 of the Texas Non-Profit Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation which, (1) narrows its stated purposes to be "exclusively" charitable and educational as originally intended and as followed in practice, and (2) to specify that recipients of assets on dissolution, if ever, must qualify under U.S.C.A. §501(c)(3), also as originally intended.

1. The name of the corporation is Baylor University Alumni Association.

2. The following amendment to the Articles of Incorporation was adopted by the corporation on October 26, 1979:

Article Four of the Articles of Incorporation is hereby amended so as to read as follows:

ARTICLE FOUR

"The purposes for which the corporation is organized are exclusively charitable and educational and to be accomplished by extending financial and other aid to Baylor University and to students thereof, by generally encouraging sentiments favorable to education and by promoting union of and good fellowship among former students of Baylor University, and to coordinate all alumni activities; to serve as the general alumni organization of Baylor University, and to maintain the administrative agency and executive personnel needed to provide for a continuity of alumni activity and interest. In general, to carry out any other activity in connection with the foregoing and to have and exercise all of the powers conferred by the laws of Texas upon non-profit corporations formed under the Texas Non-Profit Corporation Act and to do any and all other things herein before set forth to the same extent as natural persons might or could do."

Article Eight of Incorporation is hereby amended so as to read as follows:

ARTICLE EIGHT

"In the event that the corporation should be dissolved, its properties shall be given to Christian organizations or institutions providing or supporting higher education, each of which shall have at the time, a valid and subsisting exemption from federal taxation issued by the Internal Revenue Service pursuant to Section 501(c)(3) of the Internal Revenue Code or its then counterpart."

3. The amendment was adopted at a meeting of the board of directors held on October 26, 1979, and received the vote of a quorum of the directors in office, there being no members having voting rights in respect thereof.

Dated: October 26, 1979

Baylor University Alumni Association

By Samuel G. Howard, Jr.  
President

and Wm. Albrecht  
Secretary

STATE OF TEXAS  
COUNTY OF TRAVIS

I, Joy Moden, a Notary Public,  
do hereby certify that on this 31 day of October, 1979,  
personally appeared before me Wm. R. Crocker, being duly sworn  
and declared that he is the Secretary of the Baylor University  
Alumni Association, executing the foregoing document, that he  
signed the foregoing statement in the capacity therein set  
forth, and that the statements therein contained are true. In  
witness whereof, I hereunto set my hand and seal the day and  
year above written.

Joy Moden  
Notary Public In and For  
Travis County, Texas  
My commission expires 8-5-81

(Seal)

STATE OF TEXAS  
COUNTY OF HARRIS

I, Robert A. Waller, a Notary Public,  
do hereby certify that on this 6th day of November, 1979,  
personally appeared before me Vernon G. Garrett, being duly  
sworn and declared that he is the President of the Baylor  
University Alumni Association, executing the foregoing  
document, that he signed the foregoing statement in the  
capacity therein set forth, and that the statements therein  
contained are true. In witness whereof, I hereunto set my  
hand and seal the day and year above written.

Robert A. Waller  
Notary Public In and For Harris  
County, Texas  
My commission expires 8-7-3-81

(Seal)

# Exhibit C

**LICENSE AGREEMENT  
BETWEEN BAYLOR UNIVERSITY  
AND  
THE BAYLOR UNIVERSITY ALUMNI ASSOCIATION**

This License Agreement is between Baylor University (hereinafter referred to as LICENSOR), a Texas non-profit corporation with its principal office in Waco, Texas 76798, and Baylor University Alumni Association (hereinafter referred to as LICENSEE), a Texas non-profit corporation having an address of P.O. Box 97116, Waco, Texas 76798-7116. In consideration of the mutual promises contained in this Agreement, LICENSOR and LICENSEE agree as follows:

**1. BACKGROUND**

1.1 Baylor University was chartered as an institution of higher education in or around 1845 by the Republic of Texas, and was incorporated under the laws of the State of Texas in or around 1886. Since its founding, Baylor University has operated an educational institution, offering a wide range of educational services, and related services and products.

1.2 In connection with its business, LICENSOR has adopted and used, and licensed others to use, various trademarks and service marks, many of which include the word BAYLOR (hereinafter referred to as the "BAYLOR Marks"). Through providing high quality services and products over the years, LICENSOR has built up enormous goodwill and reputation in the BAYLOR Marks, and the public widely recognizes such marks as a symbol of quality. The BAYLOR Marks are valuable assets of LICENSOR. It is expressly agreed and acknowledged that the essence of this Agreement is founded on the goodwill associated with the BAYLOR Marks and the value of that goodwill in the minds of the consuming public.

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## **2. LICENSE GRANT**

2.1 LICENSOR grants to LICENSEE a perpetual and fully paid-up license to use the following names and marks:

(1) BAYLOR UNIVERSITY ALUMNI ASSOCIATION and BAYLOR ALUMNI ASSOCIATION for alumni association services and collateral products; and

(2) THE BAYLOR LINE for audio, video, printed or electronic publications.

(The marks licensed under this paragraph are hereinafter referred to as the "Licensed Marks"). The license may be terminated only as provided in section 6 below.

2.2 The right of LICENSEE provided herein to use the marks BAYLOR UNIVERSITY ALUMNI ASSOCIATION and BAYLOR ALUMNI ASSOCIATION shall be sole and exclusive. For so long as LICENSEE publishes a magazine entitled THE BAYLOR LINE, the right of LICENSEE provided herein to use THE BAYLOR LINE as a mark for magazines shall be sole and exclusive. LICENSOR reserves the non-exclusive right to use THE BAYLOR LINE and to license others to use THE BAYLOR LINE mark for products or services except for magazines.

2.3 All use of the Licensed Marks shall inure to the benefit of LICENSOR.

2.4 LICENSEE acknowledges that ownership of all right, title, and interest to the Licensed Marks remains vested solely in LICENSOR, and LICENSEE disclaims any ownership right or interest therein or the goodwill derived therefrom.

## **3. ROYALTIES**

3.1 Except as provided in the following paragraph, the license provided in this agreement is fully paid-up.

3.2 All collateral products bearing the mark BAYLOR UNIVERSITY ALUMNI ASSOCIATION or BAYLOR ALUMNI ASSOCIATION sold by a third party (e.g. a manufacturer) to LICENSEE are subject to a royalty at the then-standard rate in effect at the time of the sales (currently 7.5 % at the time of this agreement) payable to

LICENSOR. LICENSOR shall donate all such royalty payments to LICENSEE in consideration for services it performs for LICENSOR.

3.3 The parties contemplate that, as in the past, LICENSEE may from time to time sell certain specialty items bearing other marks of LICENSOR (such as BAYLOR or BU) to be produced exclusively for sale or other distribution by LICENSEE. When such arrangements are made, LICENSOR shall donate royalty payments on such items to LICENSEE in further consideration for services it performs for LICENSOR.

#### 4. REGISTRATION

LICENSOR may, at its sole option and expense, apply to register any of the Licensed Marks. LICENSEE shall provide to LICENSOR free of cost such information and materials as are reasonably necessary to prepare any such applications.

#### 5. QUALITY CONTROL

5.1 Because of the long relationship between LICENSOR and LICENSEE, and LICENSEE'S history of providing high quality services and products under the Licensed Marks, LICENSOR has come to trust and rely on LICENSEE to maintain such quality. It is agreed that the previous quality of services and products of LICENSEE were acceptable and reasonable. LICENSEE agrees that it shall at all times maintain the quality of the services and products provided by LICENSEE at a reasonable level. At a minimum, LICENSEE shall continue to:

- (1) Serve as the general alumni organization of Baylor University, including coordination of alumni activities;
- (2) Maintain an administrative office in Waco, Texas;
- (3) Carry out all of the purposes, objects, and activities set forth in the "Constitution and Bylaws of the Baylor Alumni Association" as now existing or subsequently amended;
- (4) Publish an alumni magazine;

(5) Organize and sponsor activities for the Baylor Homecoming on at least an annual basis.

5.2 Upon written request, LICENSEE shall furnish to LICENSOR free of cost a sample of any product for LICENSOR'S inspection. LICENSOR shall have two weeks from receipt of such sample to notify LICENSEE in writing of any objection by LICENSOR to the sale or distribution of such products. In the absence of such written notice by LICENSOR, LICENSEE may deem the sample approved and sell or distribute such products. LICENSOR'S approval of any product or service shall not be unreasonably withheld.

5.3 LICENSOR shall have the right to ascertain whether the services and products offered or sold under this License Agreement are of an acceptable and reasonable level of quality, and LICENSEE shall cooperate in LICENSOR'S exercise of this right. LICENSOR shall not be unreasonable in making this determination.

5.4 If LICENSOR finds that the quality of any service or product being offered or sold under this License Agreement is not reasonable and is unacceptable to LICENSOR, it shall specifically notify LICENSEE in writing of the changes which LICENSOR deems necessary to attain an acceptable and reasonable level of quality. LICENSEE agrees that upon such notice, it shall make such reasonable changes within a reasonable period of time and shall thereafter maintain an acceptable and reasonable level of quality.

5.5 LICENSEE agrees to make proper use of the Licensed Marks in accordance with accepted trademark practice.

**6. TERMINATION**

6.1 In the event LICENSEE fails to substantially comply with any of its obligations owed to LICENSOR under this License Agreement, LICENSOR may serve on LICENSEE a written notice of default, specifying the nature of the default and what is reasonably and specifically required to remedy the default. If a default is not cured within a reasonable time (not to exceed 120 calendar days) after service of the notice of default, LICENSOR may then immediately give written notice of its termination of this License Agreement.

6.2 In the event of termination of this License Agreement, LICENSEE shall have 90 days to phase out and discontinue all use of the Licensed Marks, and thereafter shall not use said marks, or any other name or mark including (or confusingly similar to) the word BAYLOR.

**7. NON-ASSIGNABILITY**

The license granted herein to LICENSEE shall not be assignable or transferable except with the prior written consent of LICENSOR which consent shall not be unreasonably withheld. Subject to the preceding sentence, this License Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**8. INDEMNITY/HOLD HARMLESS**

8.1 LICENSEE agrees that it is wholly responsible for all services and products offered and sold by it under the Licensed Marks, and that LICENSOR shall have no liability for any such services and products.

8.2 LICENSEE indemnifies and holds harmless LICENSOR and the officers, ~~employees and agents thereof, from any claims, demands, causes of action, and~~  
~~damages, including reasonable attorneys' fees, caused by or arising out of use of the~~  
~~Licensed Marks, or workmanship, material or design of any service or product offered~~

by LICENSEE under the Licensed Marks, including without limitation, claims or actions for product liability and patent or copyright infringement.

## **9. STATUS OF PARTIES**

9.1 This License Agreement is not intended to create, and may not be interpreted or construed as creating, a partnership, joint venture, agency, employment, master and servant, or similar relationship between LICENSOR and LICENSEE, and no representation to the contrary is binding upon LICENSOR.

9.2 In fact, the parties agree and acknowledge that LICENSEE is completely independent from LICENSOR, and except for LICENSEE'S obligations to properly use the Licensed Marks and maintain an acceptable and reasonable level of quality as defined above, LICENSOR has no control over LICENSEE. For example, it is understood that LICENSEE is an independent "voice" of alumni of Baylor University, and the positions taken by LICENSEE (editorial and otherwise) which may be contrary to the administration of the University or its Board of Regents shall not be alleged by LICENSOR to constitute insufficient quality and shall not be grounds for LICENSOR'S termination of this License Agreement.

## **10. MISCELLANEOUS**

10.1 LICENSOR and LICENSEE intend all provisions of this License Agreement to be enforced to the fullest extent permitted by law. If, however, any provision of this License Agreement is held to be illegal, invalid, or unenforceable under present or future law, such provision is fully severable and this License Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof, and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance.

10.2 This License Agreement is made in the State of Texas and for all purposes is governed by and construed in accordance with the laws of Texas.

10.3 This License Agreement supersedes all prior agreements or purported agreements, oral or written, between the parties relative to the matters contained herein. It expressly supersedes the "License Agreement" executed by the Executive Vice President of Licensee on April 10, 1989.

10.4 This License Agreement may not be altered, amended, or rescinded, nor may any of its provisions be waived, except by an instrument in writing signed by both LICENSOR and LICENSEE or, in the case of an asserted waiver, by the party against whom the waiver is sought to be enforced.

11. **EFFECTIVE DATE**

This License Agreement is effective as of the 3<sup>rd</sup> day of September, 1993.

EXECUTED by LICENSOR and LICENSEE in duplicate copies, each of which shall be deemed an original.

**BAYLOR UNIVERSITY**

By: [Signature]  
Name: Herbert B. Reynolds  
(Typed or Printed)  
Title: President  
Date: September 3, 1993

**BAYLOR UNIVERSITY ALUMNI ASSOCIATION**

By: [Signature]  
Name: Art Coltharp  
(Typed or Printed)  
Title: President  
Date: September 3, 1993

# Exhibit D

**OFFICIAL RECOGNITION AND LICENSE AGREEMENT  
BETWEEN BAYLOR UNIVERSITY AND THE BAYLOR  
UNIVERSITY ALUMNI ASSOCIATION FOR AN ON-CAMPUS  
ALUMNI CENTER**

**I.  
OFFICIAL RECOGNITION OF THE BAYLOR UNIVERSITY ALUMNI  
ASSOCIATION**

Baylor University ("Baylor") hereby recognizes the Baylor University Alumni Association ("Baylor Alumni Association") as the official alumni organization of Baylor University and all of its academic units.

In consideration for this recognition, the Baylor Alumni Association hereby agrees to support the purpose and goals of Baylor University as expressed in its original charter and to:

- (1) Serve as the general alumni organization of all of the academic units of Baylor University, including all of its colleges and schools, and by coordinating the alumni activities of Baylor's academic units with those of the university in general;
- (2) Maintain an administrative office on Baylor's Waco campus;
- (3) Carry out all of the purposes, objectives, objects, and activities set forth in the "Constitution and Bylaws of the Baylor Alumni Association" as now existing or subsequently amended;
- (4) Publish an alumni magazine; and
- (5) Organize and sponsor activities for an annual, university-wide Baylor Homecoming.

As long as the Baylor Alumni Association maintains the above services on behalf of Baylor University and continually and consistently seeks to enroll graduates as members of the Baylor Alumni Association, Baylor shall consider the Baylor Alumni Association to be "the general alumni organization of all the academic units of Baylor University."

**II.  
GRANT OF LICENSE**

Baylor University ("Baylor") hereby grants to the Baylor University Alumni Association ("Baylor Alumni Association") an exclusive license to occupy for its exclusive use a building on the Waco campus of Baylor for the purposes set forth in Section I above.

**III.  
EXCLUSIVE USE OF HUGHES-DILLARD ALUMNI CENTER**

The Baylor Alumni Association presently occupies a building on the Baylor campus known as the Hughes-Dillard Alumni Center. The license granted to the Baylor Alumni Association by this agreement includes the exclusive right to occupy and use the Hughes-Dillard Alumni Center building, including its driveways and parking lot, and the land on

which they are located. The Baylor Alumni Association's exclusive right to occupy and use the Hughes-Dillard Alumni Center is for an indefinite term. Baylor may terminate the Baylor Alumni Association's right to use the Hughes Dillard Alumni Center only in the event that Baylor University needs the land on which the center is located for its purposes and no other land is reasonably available to Baylor for the purpose for which the land is needed. Should the Baylor Alumni Association's right to use the Hughes-Dillard Alumni Center be so terminated by Baylor, Baylor shall provide the Baylor Alumni Association with another building on the Baylor campus, the size, condition, quality of construction, and location of which is approximately the same as the size, condition, quality of construction, and location of the Hughes-Dillard Alumni Center.

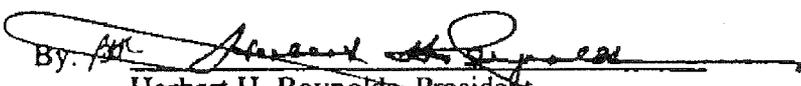
**IV.  
TERM OF LICENSE**

The term of the license granted by Baylor to the Baylor Alumni Association under Section II of this agreement is indefinite and may be terminated by Baylor only in the event the Baylor Alumni Association defaults by ceasing to carry out in good faith all of the purposes set forth under Section I above. Baylor shall give the Baylor Alumni Association written notice of the default, specifying the nature of the default and what is reasonably and specifically required to remedy the default. If the Baylor Alumni Association fails to cure the default within 120 calendar days and service of the notice of default, Baylor may immediately terminate the recognition granted in Section I and the license granted in Section II of this agreement by giving the Executive Vice President of the Baylor Alumni Association written notice of immediate termination.

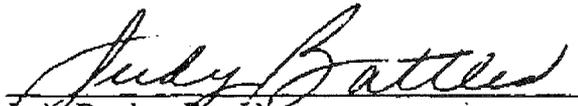
**IV.  
EFFECTIVE DATE**

This license is effective May 27, 1994.

This agreement is executed at Waco, Texas this 27<sup>th</sup> day of May, 1994.  
BAYLOR UNIVERSITY

By:   
Herbert H. Reynolds, President

BAYLOR UNIVERSITY ALUMNI ASSOCIATION

By:   
Judy Battles, President

# Exhibit E

**AGREEMENT BETWEEN  
BAYLOR UNIVERSITY AND BAYLOR ALUMNI ASSOCIATION  
TO VACATE HUGHES DILLARD ALUMNI CENTER**

This Agreement is entered voluntarily by Baylor University (Baylor), a Texas non-profit corporation and private institution of higher education, and Baylor Alumni Association (the Association), a Texas non-profit corporation. The purpose of this Agreement is to have the Association vacate the Hughes Dillard Alumni Center and its premises in exchange for certain commitments by Baylor contained herein.

WHEREAS, Baylor and the Association entered the 1994 Official Recognition and (Building) License, and

WHEREAS, Section III of the 1994 Official Recognition and (Building) License provides the Association exclusive use of the Hughes Dillard Alumni Center under the terms and conditions stated in the 1994 Official Recognition and (Building) License, and

WHEREAS, Baylor asserts that it needs the Hughes Dillard Alumni Center and the property on which it is located for the purposes of connecting the Baylor Stadium to the Baylor Campus to provide an on-campus football experience (Baylor Stadium Project), and

WHEREAS, Baylor and the Association are in negotiations to create a new relationship that would provide for a new corporation, the Baylor Line Corporation, and a Baylor Alumni Advisory Board internal to Baylor (Transition Agreement), and

WHEREAS, the Association is willing to support Baylor's Stadium Project and to vacate the Hughes Dillard Alumni Center and its premises voluntarily,

NOW THEREFORE BE IT RESOLVED:

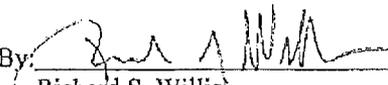
1. The Association agrees to vacate Hughes Dillard Alumni Center and its premises by July 3, 2013.
2. Baylor agrees:
  - a. To pay the costs of the move of the Association from Hughes Dillard Alumni Center to Robinson Tower, and the related storage costs for an indefinite term. Such term will be at least until the latter of (i) full implementation of the Transition Agreement or (ii) the Association is housed elsewhere, unless agreed otherwise. Furthermore, Baylor agrees to pay the moving costs of the Association if the Association must move from Robinson Tower to another building at Baylor or in Waco.
  - b. To provide the Association interim space in Robinson Tower for an indefinite term free of charge. Such term will be at least until the latter of (i) full implementation of the Transition Agreement or (ii) the Association is housed elsewhere, unless agreed otherwise. Baylor and the Association have agreed to

Robinson Tower because Baylor's Vice President for Constituent Engagement is located in Robinson Tower.

- c. If the Transition Agreement is approved and implemented, to provide space for the Baylor Line Corporation in the same building as the appropriate Baylor vice president (probably the Vice President for Communications and Marketing and Chief Marketing Officer), unless otherwise agreed by Baylor and the Baylor Line Corporation.
- d. If the Transition Agreement is approved and implemented, to (i) provide space for the internal Baylor Alumni Advisory Board to meet in the same building as the appropriate Baylor vice president with responsibility for the Baylor Alumni Network (probably the Vice President for Constituent Engagement), and (ii) to name a conference room in which to meet the "Baylor Alumni Advisory Board Conference Room," unless either or both commitments are otherwise agreed by Baylor and the Baylor Alumni Advisory Board.

Executed this 31st day of May, 2013, by duly authorized representatives of Baylor University and Baylor Alumni Association.

**BAYLOR UNIVERSITY**

By:   
Richard S. Willis  
Chair, Board of Regents

By: \_\_\_\_\_  
Kenneth Winston Starr  
President

**BAYLOR ALUMNI ASSOCIATION**

By: \_\_\_\_\_  
Elizabeth E. Coker  
President, Board of Directors

By: \_\_\_\_\_  
Collin J. Cox  
President-Elect, Board of Directors

By: \_\_\_\_\_  
Jeff Kilgore  
Executive Vice President and CEO

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Robinson Tower because Baylor's Vice President for Constituent Engagement is located in Robinson Tower.

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**BAYLOR UNIVERSITY**

By: \_\_\_\_\_  
Richard S. Willis  
Chair, Board of Regents

By: Kenneth Winston Starr  
Kenneth Winston Starr  
President

**BAYLOR ALUMNI ASSOCIATION**

By: Elizabeth E. Coker  
Elizabeth E. Coker  
President, Board of Directors

By: \_\_\_\_\_  
Collin J. Cox  
President-Elect, Board of Directors

By: Jeff Kilgore  
Jeff Kilgore  
Executive Vice President and CEO

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Executed this 31st day of May, 2013, by duly authorized representatives of Baylor University and Baylor Alumni Association.

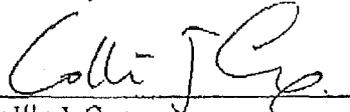
**BAYLOR UNIVERSITY**

**BAYLOR ALUMNI ASSOCIATION**

By: \_\_\_\_\_  
Richard S. Willis  
Chair, Board of Regents

By: \_\_\_\_\_  
Elizabeth E. Coker  
President, Board of Directors

By: \_\_\_\_\_  
Kenneth Winston Starr  
President

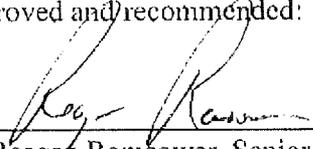
By:   
Colin J. Cox  
President-Elect, Board of Directors

By: \_\_\_\_\_  
Jeff Kilgore  
Executive Vice President and CEO

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Another signature page next

Approved and recommended:

By:

  
Reagan Ramsower, Senior Vice President  
for Operations and Chief Financial  
Officer

ATTEST:

By:

  
Marsha J. Duckworth  
Assistant Secretary