



## Office of the Secretary of State

### CERTIFICATE OF FILING OF

Heroes of Midlothian Foundation  
File Number: 801744208

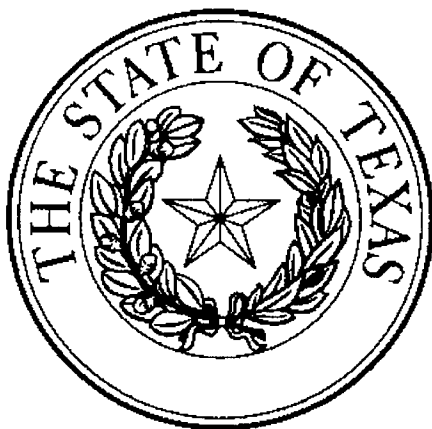
The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 02/28/2013

Effective: 02/28/2013



A handwritten signature in black ink, appearing to read "John Steen".

John Steen  
Secretary of State

**CERTIFICATE OF FORMATION**

**OF**

**HEROES OF MIDLOTHIAN FOUNDATION**

**FILED**  
In the Office of the  
Secretary of State of Texas

**FEB 28 2013**

**Corporations Section**

I, the undersigned natural person of the age of eighteen (18) years or more, acting as organizer under the Texas Business Organizations Code, do hereby adopt this Certificate of Formation for the entity referenced herein:

**ARTICLE ONE**

Name of Entity

The name of the entity is Heroes of Midlothian Foundation (the "Corporation").

**ARTICLE TWO**

Type of Entity

The Corporation shall be a Texas nonprofit corporation. The Corporation shall not authorize or issue capital stock. The Corporation's activities shall be supported by funds raised through solicitation and other prescribed methods.

**ARTICLE THREE**

Duration

The period of duration of the Corporation is perpetual.

**ARTICLE FOUR**

Purpose

The Corporation is organized and shall be operated for exclusively charitable, scientific, religious, educational, and other purposes as set forth in and within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

Within the scope of the foregoing purpose, but not by way of limitation thereof, the Corporation is organized and shall be operated for the primary purposes of (1) the advancement of education by providing educational assistance and resources, scholarship assistance, and educational grants to graduates of any high school within the Midlothian Independent School District; and (2) the erection and/or maintenance of a public monument honoring the past and present military, law enforcement, fire protection, and/or other public service rendered by individuals in the Midlothian, Texas area.

Notwithstanding other language or provisions herein, the purposes of the Corporation will not further any specified purpose to more than an insubstantial degree other than those described in Section 501(c)(3) of the Code.

In furtherance of the foregoing purpose, the Corporation shall have and may exercise all powers permitted to a Texas nonprofit corporation set forth in the Texas Business Organizations Code, as amended, or the corresponding provisions of any successor law (the "TBOC").

## ARTICLE FIVE

### Dividends and Other Distributions

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its directors, trustees, officers, or other private persons; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation, to make payments and distributions in furtherance of one or more of the purposes set forth in this Certificate of Formation, reimburse or pay expenses in furtherance of one or more such purpose, indemnify the directors, officers, and employees of the Corporation with respect to actions taken in their capacities as such, and maintain insurance covering its directors, officers, and employees in their capacities as such to the extent permitted or required hereunder, under the TBOC and under the Code.

## ARTICLE SIX

### Registered Office and Agent

The street address of the Corporation's initial registered office is 2200 Ross Avenue, Suite 2200, Dallas, Texas 75201. The name of its initial registered agent at such office is Scott K. Koelker.

## ARTICLE SEVEN

### Organizer

The name of the organizer is Scott K. Koelker, and the address of the organizer is 2200 Ross Avenue, Suite 2200, Dallas, Texas 75201.

## ARTICLE EIGHT

### Membership

The Corporation shall have no members.

## ARTICLE NINE

### Board of Directors

Subject to the provisions and limitations of this Certificate of Formation, the Board of Directors of the Corporation (the "Board") shall be the governing body of the Corporation and shall direct and govern the affairs of the Corporation and the disposition of its property. An action required to be taken, or that may be taken, at a meeting of the Board or a committee may be taken without a meeting if a written consent, stating the action to be taken, is signed by the number of directors or committee members necessary to take such action at a meeting where all directors or committee members are present and voting. The number of directors shall be determined by resolution of the Board, but no decrease in the number of directors shall have the effect of shortening the term of any incumbent director and in no event shall the number of directors be less than three (3). The number of directors constituting the initial Board shall be five (5), and the names and addresses of such directors are as follows:

<u>Name</u>	<u>Address</u>
Scott K. Koelker	2200 Ross Ave., Suite 2200, Dallas, Texas 75201
Bryan Rury	750 High Knoll Midlothian, Texas 76065
Randy Rexroat	3940 Alpha Way Midlothian, Texas 76065
Ashley B. Davis	408 Westview Terrace Midlothian, Texas 76065
M. Shane Hill	1911 Shoreline Drive Mesquite, Texas 75149

## ARTICLE TEN

### Dissolution

In the event the Corporation is dissolved, all liabilities and obligations of the Corporation shall be paid, satisfied, and discharged. If the assets of the Corporation are insufficient to pay, satisfy, or discharge all of such liabilities and obligations, the Corporation shall apply its assets so far as they will go to the just and equitable payment of such liabilities and obligations.

Assets held by the Corporation upon condition requiring return, transfer, or conveyance, which condition occurs by the reason of the dissolution of the Corporation, shall be returned, transferred, or conveyed in accordance with such requirements.

The remaining assets of the Corporation shall be distributed for one or more tax-exempt purposes set forth in Code Section 501(c)(3) to an organization or organizations described in Code Section 501(c)(3) as of the time of the distribution. Any assets not so distributed shall be distributed by a district court of the county in which the principal office of the Corporation is then located to one or more organizations described in Code Sections 501(c)(3), 170(c)(1), or 170(c)(2), in such manner as would best accomplish the general purpose for which the Corporation was organized, as determined in the sole judgment of the court. No director or officer of the Corporation, nor any private

individual, will be entitled to share in the distribution of assets of the Corporation upon its dissolution.

## ARTICLE ELEVEN

### Powers

In furtherance of the purpose of the Corporation, the Corporation shall have and may exercise all powers permitted to a Texas nonprofit corporation under the TBOC.

## ARTICLE TWELVE

### Limitation on Activities

Notwithstanding any other provision of this Certificate of Formation, the Corporation shall not carry on, conduct, engage, participate, or intervene in (a) any activity or transaction not permitted to a corporation exempt from federal income taxation under Code Sections 501(a) and 501(c)(3) or by a corporation contributions to which are deductible under Code Section 170(c)(2), or (b) any activity or transaction that would result in the loss of the Corporation's tax-exempt status as provided in Code Sections 501(a) and 501(c)(3). The use, directly or indirectly, of any part of the Corporation's assets in connection with any such activity or transaction is hereby expressly prohibited.

## ARTICLE THIRTEEN

### Investments

From time to time, the Board may engage investment counsel, trust corporations, or banks possessing trust powers and confer on any such advisor full power and authority to purchase or otherwise acquire stocks, bonds, securities, and other investments on behalf of the Corporation, and to sell, transfer, or otherwise dispose of any of the Corporation's assets and properties at such time and for such consideration as such advisor may deem appropriate. The Board also may confer on any such advisor such other powers with respect to the Corporation's investments as the Board may deem appropriate and may authorize any such advisor to hold title to any of the Corporation's assets and properties in its own name or in the name of a nominee. In the case of an action taken by the Board, the directors of the Corporation shall have no liability whatsoever with respect to any action taken or omitted by any such advisor

provided the advisor was selected with due care by the Board. The Board may remove or replace any such advisor if it deems such action appropriate or necessary.

## ARTICLE FOURTEEN

### Political Activities

No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation except as provided by Code Section 501(h), and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of, or in opposition to, any candidate for public office.

## ARTICLE FIFTEEN

### Private Foundation Status

Notwithstanding any other provision of this Certificate of Formation, if the Corporation is, or is deemed to be, a private foundation as described in Code Section 509(a), then the Corporation shall make distributions at such time and in such manner as not to subject it to tax under Code Section 4942; the Corporation shall not engage in any act of self-dealing which would be subject to tax under Code Section 4941; the Corporation shall not retain any excess business holdings which would subject it to tax under Code Section 4943; the Corporation shall not make any investments that would subject it to tax under Code Section 4944; the Corporation shall not make any taxable expenditures that would subject it to tax under Code Section 4945; and the Corporation shall in all other respects comply with the rules applicable to private foundations as set forth in the Code.

## ARTICLE SIXTEEN

### Indemnification and Insurance

*Section 16.1.* The term "Indemnified Person" means any person who (1) is or was a director, an officer, or member of any committee of the Corporation, or (2) while serving in a capacity described in (1), also served at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, administrator, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other

enterprise. The term "Proceeding" means any threatened, pending, or completed action, suit, or other proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or other proceeding, and any inquiry or investigation that could lead to such an action, suit, or other proceeding.

*Section 16.2.* The Corporation shall indemnify any Indemnified Person to the fullest extent that a corporation may grant indemnification to a person serving in such capacity under the TBOC, as the same exists or may hereafter be amended. Such right shall be a contract right and shall include the right to be paid by the Corporation for reasonable expenses (as determined in good faith by the Board) incurred in defending any Proceeding in advance of its final disposition to the maximum extent permitted by Section 8.104 of the TBOC, as the same exists or may hereafter be amended. For the avoidance of doubt, this Article requires the payment or reimbursement permitted under Section 8.104 of the TBOC and thereby authorizes such payment or reimbursement after the Corporation receives the materials described in Sections 8.104(a)(1) and 8.104(a)(2) of the TBOC. If a claim for indemnification or advancement of expenses hereunder is not paid in full by the Corporation within 90 days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expenses of prosecuting such claim. It shall be a defense to any such action that such indemnification or advancement of costs of defense are not permitted under the TBOC, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including the Board, any committee thereof, or special legal counsel) to have made its determination prior to the commencement of such action that indemnification of, or advancement of costs of defense to, the claimant is permissible under the circumstances nor an actual determination by the Corporation (including the Board, any committee thereof, or special legal counsel) that such indemnification or advancement is not permissible shall be a defense to the action or create a presumption that such indemnification or advancement is not permissible. The Corporation additionally may indemnify any Indemnified Person to such further extent as is permitted by law and may indemnify any other person, including a present or former employee or agent of the Corporation, to the fullest extent permitted by law.

*Section 16.3.* The rights of Indemnified Persons set forth in this Article shall not be exclusive of any other right which such Indemnified Persons may have or hereafter acquire relating to the subject matter hereof.



*Section 16.4.* To the full extent permitted by the TBOC, as amended from time to time, the Corporation may purchase and maintain insurance on behalf of any Indemnified Person, present or former employee or agent of the Corporation against any liability asserted against him or her or incurred by him or her in such a capacity or arising out of his or her status as such a person, whether or not the Corporation would have the power to indemnify him or her against that liability pursuant to the applicable provisions of the TBOC.

## **ARTICLE SEVENTEEN**

### **Limitation on Liability**

A director of the Corporation shall not be liable to the Corporation for monetary damages for an act or omission in the director's capacity as a director, except that this Article does not eliminate or limit the liability of a director to the extent the director is found liable for: (a) a breach of a director's duty of loyalty to the Corporation; (b) an act or omission not in good faith that constitutes a breach of duty of the director to the Corporation or an act or omission that involves intentional misconduct or a knowing violation of the law; (c) a transaction from which a director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or (d) an act or omission for which the liability of a director is expressly provided by an applicable statute.

Neither the amendment nor repeal of this Article, nor the adoption of any provision of this Certificate of Formation or the Bylaws inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise, prior to such amendment, repeal or adoption of any inconsistent provision. If the TBOC or any successor law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the TBOC, or any successor law, as so amended from time to time.

**ARTICLE EIGHTEEN**

**Amendments**

This Certificate of Formation may be amended and restated, or a new Certificate of Formation may be adopted, by a two-thirds vote of the directors present in person or by proxy, at a meeting of the directors at which a quorum is present.

**ARTICLE NINETEEN**

**Indemnification of Organizer**

The Corporation shall indemnify, save, and hold harmless the undersigned organizer of the Corporation from and against any and all loss, cost, damage, expense (including, without limitation, attorneys' fees and expenses) or liability caused by, resulting from, or arising out of any action taken or authorized by the organizer of the Corporation in respect of the formation of the Corporation in what the organizer deemed to be in or not opposed to the best interests of the Corporation.

EXECUTED by the undersigned organizer on this 26 day of February 2013.

  
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SCOTT K. KOELKER, ORGANIZER

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