

**CERTIFICATE OF FORMATION
OF
PECAN STREET PROJECT, INC.**

A Texas Nonprofit Corporation

I, the undersigned natural person of the age of 18 years or more, citizen of the State of Texas, acting as the organizer of a nonprofit corporation under Chapter 22 of the Texas Business Organizations Code (the “TBOC”), do hereby adopt the following Certificate of Formation for the corporation:

ARTICLE I.

The filing entity being formed is a nonprofit corporation. The name of the corporation is Pecan Street Project, Inc. (the “Corporation”).

ARTICLE II.

The street address of the initial registered office of the Corporation is 721 Barton Springs Rd., Austin, Texas 78704-1194, and the name of its initial registered agent at such address is Austin Energy, Attn: General Manager.

ARTICLE III.

The full and complete management and control of the Corporation shall be vested in the Board of Directors, the number of which shall be subject to change from time to time as provided in the Bylaws of the Corporation, but which number shall never be less than three individuals.

The initial Board of Directors shall consist of seven members. The name and mailing address of each initial director who is to serve until his or her successor is elected and qualified are as follows:

Name	Address
Roger Duncan	c/o Austin Energy 721 Barton Springs Rd. Austin, Texas 78704-1194
Randi Shade	c/o Austin City Hall 301 W. 2nd St. 2nd Floor Austin, Texas 78701

Name	Address
Jose Beceiro	c/o The Greater Austin Chamber of Commerce 210 Barton Springs Road, Suite 400 Austin, Texas 78704
James D. Marston	c/o Environmental Defense Fund 44 East Avenue, Suite 304 Austin, Texas 78701
Thomas F. Edgar	c/o The University of Texas at Austin 1 University Station C0400 Austin, Texas 78712-0231
Isaac Barchas	c/o IC ² Institute The University of Texas at Austin 3925 West Braker Lane Austin, Texas 78759
W. Brewster McCracken (<i>ex officio, non-voting member</i>)	3616 Far West, Suite 117-231 Austin, Texas 78731

ARTICLE IV.

The Corporation shall not have members.

ARTICLE V.

The purpose for which the Corporation is organized exclusively for charitable, scientific and educational purposes as allowed by Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), and applicable regulations thereunder. Subject to the foregoing, the Corporation will promote social welfare, lessen the burdens of Government and conduct scientific research in connection with establishing Austin, Texas as America’s clean energy laboratory for developing clean, cost effective and efficient methods of energy production and delivery. The Corporation will accomplish this by, among other things, conducting and facilitating research aimed at designing and testing a sustainable business model that relies on locally produced, user-managed, clean energy.

ARTICLE VI.

The Corporation shall have all of the powers, duties, authorizations and responsibilities as provided for nonprofit corporations in the TBOC; *provided, however*, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that

is inconsistent with activities of an organization described in Section 501(c)(3) of the Code, or as a corporation contributions to which are deductible under Section 170(a)(1) of the Code by virtue of being charitable contributions as defined in Section 170(c)(2) of the Code.

ARTICLE VII.

The Corporation shall have no power to take any action that would be inconsistent with the requirements for tax exemption under Section 501(c)(3) of the Code and related regulations, rulings, and procedures. The Corporation shall have no power to take any action prohibited by the TBOC. Regardless of any other provision in this Certificate of Formation or state law, the Corporation shall be subject to the following provisions:

(1) The Corporation shall not engage in activities or use its assets in manners that are not in furtherance of one or more exempt purposes, as set forth above and defined by the Code and related regulations, rulings, and procedures, except to an insubstantial degree.

(2) The Corporation shall not serve a private interest other than one that is clearly incidental to an overriding interest.

(3) The Corporation shall not devote more than an insubstantial part of its activities or resources to attempting to influence legislation by propaganda or otherwise, except as allowed by the Code and related regulations, rulings, and procedures.

(4) The Corporation shall not participate in or intervene in any political campaign on behalf of or in opposition to any candidate for public office. The prohibited activities include the publishing or distributing of statements and any other direct or indirect campaign activities.

(5) The Corporation shall not permit any part of the net earnings of the Corporation to inure to the benefit of any private entity or individual, except for reasonable compensation as set forth in Article XI below.

(6) The Corporation shall not carry on an unrelated trade or business, except as a secondary purpose related to the Corporation's primary, exempt purpose.

ARTICLE VIII.

The Corporation shall indemnify any person who was, is, or is threatened to be made a named defendant or respondent in litigation or other proceedings because the person is or was a director or officer of the Corporation or other person related to the Corporation in accordance with the provisions of the TBOC. As provided by the bylaws, the Board of Directors shall have the power to define the requirements and limitations for the corporation to indemnify directors, officers and other persons related to the Corporation.

ARTICLE IX.

To the fullest extent permitted by applicable law, no director of the Corporation shall be liable to the Corporation for monetary damages for an act or omission in the director's capacity as a director of the Corporation, except that this Article shall not eliminate or limit the liability of a director of the Corporation to the extent the director is found liable for:

- (1) A breach of such director's duty of loyalty to the Corporation;
- (2) 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;
- (3) A transaction from which such director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of such director's office; or
- (4) An act or omission for which the liability of such director is expressly provided for by statute.

Any repeal or amendment of this Article by the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or amendment. In addition to the circumstances in which a director of the Corporation is not personally liable as set forth in the foregoing provisions, a director shall not be liable to the Corporation to such further extent as permitted by any law hereafter enacted, including without limitation, any subsequent amendments of the TBOC.

ARTICLE X.

This Certificate of Formation may be amended only by the affirmative vote of a majority of all of the members of the Board of Directors, except that Article V may be amended only by the affirmative vote of all the members of the Board of Directors and no amendment shall authorize the Board of Directors to conduct the affairs of the Corporation in any manner or for any purpose contrary to the provisions of Section 501(c)(3) of the Code, or any successor provision.

ARTICLE XI.

The Corporation is organized for non profit purposes. No part of the net earnings of the Corporation shall inure to the benefit of any director or officer of the Corporation, or any private individual, except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes (and no director or officer of the Corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets as set out in Article XII hereof).

ARTICLE XII.

Upon the dissolution of the Corporation, the Board of Directors shall, after paying or making provision for payment of all of the liabilities of the Corporation, distribute such assets for exempt purposes as contemplated under Section 501(c)(3) of the Code and related regulations, rulings, and procedures. Without limiting the generality of the foregoing, the Corporation may distribute such assets to federal, state or local government bodies for a public purpose, or to such other eligible organization or organizations (as hereinafter defined) as the Board of Directors shall determine exclusively in furtherance of exempt purposes under Section 501(c)(3) of the Code. Any such assets not so disposed shall be disposed of by the Probate Court of the county in which the principal office of the Corporation is then located, exclusively for such purposes, or to such eligible organization or organizations as said court shall determine. For purposes of this Article, "eligible organization" or "eligible organization or organizations" shall refer to an organization or organizations exempt from federal income taxation as an organization described in Section 501(c)(3) of the Code or as a corporation contributions to which are deductible under Section 170(a)(1) of the Code by virtue of being charitable contributions as defined in Section 170(c)(2) of the Code.

ARTICLE XIII.

Any action which may be taken or which is required by law or the Certificate of Formation or Bylaws of the Corporation to be taken at meeting of the Corporation's directors, or an action that may be taken at a meeting of the directors or a committee, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the number of directors or committee members necessary to take that action at a meeting at which all of the directors or committee members were present and voted; the written consent bears the date of the signature of each director or committee member who signs the consent; and, if the written consent is signed by less than all of the directors or committee members, the written consent is delivered to the Corporation within 60 days after the date of the earliest dated signature by hand or by certified or registered mail, return receipt requested.

ARTICLE XIV.

The name and address of the organizer is:

Name

Steven M. Tyndall

Address

Baker Botts L.L.P.
1500 San Jacinto Center
98 San Jacinto
Austin, Texas 78701-4039

ARTICLE XV.

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

IN WITNESS WHEREOF, I have set my hand hereunto as of this ____ day of August, 2009, subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Steven M. Tyndall