

RESOLUTION NO. 20201112-AHFC004

WHEREAS, the Austin Housing Finance Corporation (AHFC) was created by the City of Austin in accordance with Chapter 394 of the Texas Local Government Code for the public purpose and function, among others, of providing a means to finance the cost of residential developments that will provide decent, safe, and sanitary housing at affordable prices for residents of the City of Austin; and

WHEREAS, Chapter 22 of the Texas Business Organization Code (Code), authorizes the creation and organization of nonprofit corporations which may act as a duly constituted affiliate of a Texas housing finance corporation to aid and assist the housing finance corporation in the performance of one or more of its functions; and

WHEREAS, AHFC desires to further its public purposes and functions by creating a related, affiliated nonprofit corporation and instrumentality named AHFC Espero Non-Profit Corporation (Non-Profit Corporation), appointing and maintaining its board of directors, and otherwise exercising control over the Non-Profit Corporation, its dissolution, and its assets; and

WHEREAS, AHFC is creating the Non-Profit Corporation to serve as general partner of a limited partnership (or managing member of a limited liability company) (the Owner) created under the laws of the State of Texas, which will construct and operate a multifamily development (Development) of approximately 171 units of affordable

multifamily rental housing located at or near 1934 Rutland Drive, Austin, Texas 78758. The Development will be known as the Espero Austin at Rutland Apartments; and

WHEREAS, it is expected that AHFC or an affiliated entity will ground lease the land for the Development to the Owner under the terms of a ground lease; and

WHEREAS, AHFC desires that the Non-Profit Corporation have and exercise all of the powers prescribed by the Code; and

WHEREAS, AHFC desires that the Non-Profit Corporation's Certificate of Formation and By-Laws be in the form and be executed, approved, and filed in the manner prescribed by this Resolution; and

WHEREAS, the Board of Directors desires to authorize and approve the Certificate of Formation and By-Laws of the Non-Profit Corporation, appoint the board of directors and president of the Non-Profit Corporation, and take other actions with respect to the Non-Profit Corporation; **NOW, THEREFORE**,

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE
AUSTIN HOUSING FINANCE CORPORATION:**

Section 1. The Board of Directors finds, determines, recites, and declares that it is wise, expedient, necessary, and advisable that the Non-Profit Corporation be formed. The Board of Directors therefore approves the creation and organization of the Non-Profit Corporation under the provisions of the Code as a duly constituted affiliate, nonprofit

corporation, and instrumentality of AHFC. The Board of Directors authorizes the Non-Profit Corporation to aid, assist, and act on its behalf and for the benefit of AHFC in the performance of its functions to develop, construct, and acquire, affordable housing in Austin; to participate as general partner or managing member of the Owner, which will own the Development and ground lease the land for the Development from AHFC or an affiliated entity; to serve as general contractor (by itself or through an affiliate) for the construction of the Development; to promote, develop, and maintain the Development as decent, safe, and sanitary housing at affordable rental rates for a period of at least 40 years; to ensure to the maximum extent possible and to the extent of the Non-Profit Corporation's percentage of ownership; to achieve the public purpose and functions of AHFC; and to perform the other purposes described in the Non-Profit Corporation's Certificate of Formation.

Section 2. The Board of Directors approves the Certificate of Formation of the Non-Profit Corporation in substantially the form attached as **Exhibit "A"** and authorizes the incorporator of the Non-Profit Corporation to file such Certificate of Formation with the Secretary of State of the State of Texas in the manner provided by law.

Section 3. The Board of Directors appoints the initial board of directors of the Non-Profit Corporation, with their terms of office to expire at the time indicated.

<u>Name</u>	<u>Term Expires</u>
J. Rodney Gonzales	December 5, 2023
Rosie Truelove	December 5, 2023
Rebecca Giello	December 5, 2023

J. Rodney Gonzales is appointed as the President of the Non-Profit Corporation. Other officers will be appointed as provided in the By-Laws.

Section 4. The Board of Directors approves the By-Laws of the Non-Profit Corporation in substantially the form attached as **Exhibit "B"** and authorizes the President of the Non-Profit Corporation to execute and file them in the corporate records in the manner provided by law.

Section 5. The Board of Directors finds, determines, recites, and declares that any note, bond, loan, debt, or other obligation of the Non-Profit Corporation is not an indebtedness, liability, general or moral obligation or pledge of the faith or credit of the State of Texas, the City of Austin, AHFC, or any other political subdivision or governmental unit, nor does any such note, bond, loan, debt or other obligation constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction or an agreement, obligation, or indebtedness of AHFC, the City of Austin, the State of Texas within the meaning of AHFC's Articles of Incorporation, the City Charter, or of any constitutional or statutory provision whatsoever.

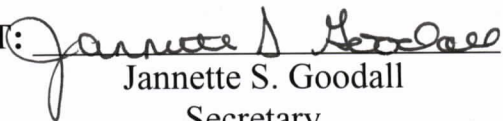
Section 6. The Board of Directors finds, determines, recites, and declares that it is the purpose, intent, and desire of AHFC in approving the creation of the Non-Profit Corporation and the form of its Certificate of Formation and By-Laws, that such actions and the Non-Profit Corporation hereby authorized comply with the requirements of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations and Internal Revenue

Service rulings promulgated thereunder and the rulings issued pursuant thereto, such that the Non-Profit Corporation is determined to be a constituted nonprofit corporation acting as an asset of AHFC pursuant to the provisions of the Code and Chapter 394 of the Texas Local Government Code.

Section 7. This Resolution takes effect immediately upon its passage and approval by the Board of Directors.

ADOPTED: November 12, 2020

ATTEST:


Jannette S. Goodall
Secretary

Form 202
(Revised 05/11)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: \$25



This space reserved for office use.

Certificate of Formation
Nonprofit Corporation

Article 1 – Entity Name and Type

The filing entity being formed is a nonprofit corporation. The name of the entity is:

AHFC ESPERO NON-PROFIT CORPORATION

Article 2 – Registered Agent and Registered Office

(See instructions. Select and complete either A or B and complete C.)

☐ A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

☒ B. The initial registered agent is an individual resident of the state whose name is set forth below:

Mandy

First Name

M.I.

DeMayo

Last Name

Suffix

C. The business address of the registered agent and the registered office address is:

1000 East 11th Street, 2nd Floor

Street Address

Austin

City

TX

State

78702

Zip Code

Article 3 – Management

The management of the affairs of the corporation is vested in the board of directors. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of members or until their successors are elected and qualified are as follows:

A minimum of three directors is required.

Director 1				
J. Rodney		Gonzales		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
1000 East 11th Street, 2nd Floor	Austin	TX	78702	USA
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 2				
Rosie		Truelove		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
1000 East 11th Street, 2nd Floor	Austin	TX	78702	USA
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 3				
Rebecca		Giello		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
1000 East 11th Street, 2nd Floor	Austin	TX	78702	USA
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

OR

☐ The management of the affairs of the corporation is to be vested in the nonprofit corporation's members.

Article 4 – Membership

(See instructions. Do not select statement B if the corporation is to be managed by its members.)

- ☐ A. The nonprofit corporation shall have members.
- ☒ B. The nonprofit corporation will have no members.

Article 5 – Purpose

(See instructions. This form does not contain language needed to obtain a tax-exempt status on the state or federal level.)

The nonprofit corporation is organized for the following purpose or purposes:

AHFC Espero Non-Profit Corporation is established to aid Austin Housing Finance Corporation (AHFC), an instrumentality of the City of Austin, in its essential governmental functions and duties to foster affordable rental housing for low and very low-income households in the City of Austin, specifically through the construction of a new multifamily rental housing development located at or near 1934 Rutland Drive, Austin, Texas 78758 (Development).

The sole purposes of AHFC Espero Non-Profit Corporation are (i) to serve as general partner of Espero Austin at Rutland, LP, a Texas limited partnership (Limited Partnership), and in connection therewith, to own, hold, sell, dispose of or otherwise deal with its partnership interest in the Limited Partnership, and (ii) to serve as general contractor for the construction of the Development.

AHFC Espero Non-Profit Corporation may engage in any lawful act or activity and exercise any power permitted to a limited partnership organized under the laws of the State of Texas that is related or incidental to and necessary, convenient, or advisable for the accomplishment of the foregoing purposes.

The following text area may be used to include any additional language or provisions that may be needed to obtain tax-exempt status.

The nonprofit corporation is formed pursuant to Chapter 22 of the Texas Business Organizations Code (Nonprofit Corporations). The nonprofit corporation is directed by the AHFC, in accordance with Chapter 394 of the Texas Local Government Code (Housing Finance Corporations in Municipalities and Counties), which authorizes the nonprofit corporation to assist and act on behalf of the AHFC and the City of Austin and to engage in activities that promote the purpose for its creation. The nonprofit corporation may be organized and operated exclusively for one or more charitable purposes as defined by Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, or any successor federal tax code.

The Development that the nonprofit corporation is being formed to act as the general partner of is a limited partnership that will develop and construct and operate a multifamily development of approximately 171 rental units in Austin, Travis County, Texas. A minimum of 171 units will be reserved for households with yearly household incomes at or below 60% of Austin's Median Family Income (MFI), including 117 units for households with yearly household incomes at or below 50% MFI, and 27 units affordable to households with incomes at or below 30% MFI.

Supplemental Provisions/Information

(See instructions.)

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

The attached addendum includes additional articles (Articles 6 through 17) and is incorporated herein by reference.

Organizer

The name and address of the organizer:

Rosie Truelove

Name

1000 East 11th Street, 2nd Floor

Austin

TX

78702

Street or Mailing Address

City

State

Zip Code

Effectiveness of Filing (Select either A, B, or C.)

A. ☒ This document becomes effective when the document is filed by the secretary of state.

B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: _____

Signature of organizer

Rosie Truelove

Printed or typed name of organizer

Addendum

Article 6

The nonprofit corporation is a nonprofit corporation formed under the laws of the State of Texas, and is related to, affiliated with, and an instrumentality of, AHFC.

Article 7

The period of the nonprofit corporation's duration is perpetual.

Article 8

The nonprofit corporation is organized and will be operated solely for the following purposes: (i) aiding, assisting, and acting on behalf of AHFC, in the performance of its essential governmental functions, to promote the common good and general welfare of AHFC on behalf of and for the benefit of the general public, the City of Austin, and the State of Texas; (ii) fostering affordable housing in Austin, Travis County, Texas, by causing approximately 171 rental housing units, located at or near 1934 Rutland Drive, Austin, Texas, to be known as Espero Austin at Rutland Apartments, to be occupied by persons and families with incomes that do not exceed the allowable amounts stated in the Land Use Restriction Agreement between the limited partnership (Limited Partnership) and the Texas Department of Housing and Community Affairs, and other agreements of the Limited Partnership which restrict tenant incomes, adjusted for household size; (iii) serving as the general partner of the Limited Partnership which will acquire, construct, own and operate the Espero Austin at Rutland Apartments subject to a ground lease, and performing all obligations and duties as general partner under the Limited Partnership agreement, including the incurrence of all debts and obligations contemplated under the Limited Partnership agreement; (iv) serving as the general contractor for the construction of the Espero Austin at Rutland Apartments; (v) promoting, developing, encouraging and maintaining the Espero Austin at Rutland Apartments as decent, safe, and sanitary housing at affordable prices; and (vi) ensuring to the maximum extent possible that the Espero Austin at Rutland Apartments helps to achieve the public purposes and functions of the AHFC.

The nonprofit corporation may not: (a) engage directly or indirectly, in any business or activity other than the acquisition, development, construction, ownership and operation of the Espero Austin at Rutland Apartments, acting as the general partner of the Limited Partnership, and as the general contractor for the construction of the Espero Austin at Rutland Apartments, (b) incur or assume any indebtedness for the acquisition, construction, ownership, operation or disposition of the Espero Austin at Rutland Apartments, other than indebtedness incurred or assumed in carrying out the nonprofit corporation's obligations or rights as the general partner of the Limited Partnership, or (c) violate or fail to maintain the nonprofit corporation's identity as an entity separate from any other person or entity; and, provided further, the nonprofit corporation may perform any and all lawful activities which may be reasonably necessary, useful or desirable for the furtherance, accomplishment, fostering, or attaining any of the foregoing purposes, either directly or indirectly, and either alone or in conjunction or cooperation with others, such as corporations, firms, associations, trusts, institutions, foundations, or governmental bureaus, departments or agencies.

Article 9

Powers

The activities of the nonprofit corporation and the application of the funds and assets of the nonprofit corporation are limited to the purposes stated herein, but the nonprofit corporation expressly : (i) has and may exercise all of the rights, powers, privileges, authority, and functions given by the general laws of the State of Texas to nonprofit corporations incorporated under the Code; and (ii) has all other powers of a like or different nature not prohibited by law which are available to nonprofit corporations in the State of Texas and which are necessary or useful to enable the nonprofit corporation to perform the purposes for which it is created, including the power to issue bonds, notes or other obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created.

Article 10

Board of Directors

All powers of the nonprofit corporation are vested in a Board of Directors (the Board) consisting of three persons. The initial directors of the nonprofit corporation (each a Director and collectively the Directors) are those persons named in Article 3. Each such person resides in the State of Texas and each is an employee of the City of Austin. Each initial Director will serve for a term expiring December 5, 2023. Subsequent Directors must be appointed to the Board of the nonprofit corporation by the Board of Directors of AHFC. Except as provided in this Articles 10, each Director must serve for the term provided in the By-Laws. Any Director may be removed from office at any time, with or without cause, by the Board of Directors of AHFC. The number of Directors may only be increased or decreased by an amendment to this Certificate of Formation and may never be decreased to less than 3.

To be qualified to serve as a Director, a person must be an employee of AHFC or the City of Austin and be at least 18 years old. AHFC must designate the president of the nonprofit corporation. AHFC may appoint the number of ex-officio, non-voting members of the Board that is desired. All other matters pertaining to the internal affairs of the nonprofit corporation are governed by the By-Laws of the nonprofit corporation, so long as such By-Laws are not inconsistent with this Certificate of Formation or the laws of the State of Texas.

Article 11

Limitation on Liability of Directors

To the fullest extent permitted by Texas statutes, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits broader limitation than permitted prior to such amendment), a Director is not liable to the nonprofit corporation for monetary damages for an act or omission in the Director's capacity as a Director. Any repeal or amendment of this Article 11 by the Directors is prospective only and does not adversely offset any limitation on the personal liability of a Director existing at the time of such repeal or amendment.

Article 12

Restrictions and Requirements

Regardless of any other provisions of this Certificate of Formation or the laws of the State of Texas, the nonprofit corporation may not (i) permit any part of the net earnings of the nonprofit corporation to inure to the benefit of any private interest or private individual (except that reasonable compensation may be paid for personal services rendered to or for the nonprofit corporation in effecting one or more of its purposes); (ii) devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; or (iii) participate in, or intervene in (in each case either directly or indirectly), political campaigns on behalf of or in opposition to any candidate for public office. Any income earned by the nonprofit corporation after payment of reasonable expenses, debt and establishing a reserve with respect to the Espero Austin at Rutland Apartments accrues only to the benefit of AHFC, unless AHFC otherwise directs in accordance with the Texas Local Government Code.

No note, bond, loan, debt, or other obligation of the nonprofit corporation is an indebtedness, liability, general or moral obligation, or pledge of the faith or credit of the State of Texas, the City of Austin, AHFC, or any other political subdivision or governmental unit, nor may any such note, bond, loan, debt, or other obligation constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction or an agreement, obligation, or indebtedness of AHFC, the City of Austin, or the State of Texas within the meaning of AHFC's Articles of Incorporation or By-Laws, the City Charter, or of any constitutional or statutory provision whatsoever.

AHFC, at all times, has an unrestricted equal right to receive any income earned by the nonprofit corporation, exclusive of amounts needed by the nonprofit corporation to cover reasonable expenditures and reasonable reserves for future activities. The nonprofit corporation must conduct its affairs and activities so as to insure that upon its dissolution full legal title to all property of the nonprofit corporation with respect to which such indebtedness was incurred will vest in AHFC.

Article 13

Amendment to Certificate of Formation and By-Laws

This Certificate of Formation and the By-Laws of the nonprofit corporation, may at any time and from time to time be amended so as to make any changes therein and add any provisions thereto which might have been included in the Certificate of Formation or the By-Laws in the first instance. Any such amendment is effected in either of the following manners: (i) the Board of the nonprofit corporation files with the Board of Directors of AHFC an application in writing seeking permission to amend the Certificate of Formation or the By-Laws, specifying in such application the amendment proposed to be made, the Board of Directors of AHFC shall consider such application and, if it by appropriate resolution duly finds and determines that it is wise, expedient, necessary, or advisable that the proposed amendment be made and authorizes the same to be made, and approves the form of the proposed amendment, then the Board of the nonprofit corporation may amend the Certificate of Formation or the By-Laws by adopting such amendment at a meeting of the Board of the nonprofit corporation and, in the case of amendments to the Certificate of Formation, delivering articles of amendment to the Secretary of State, or (ii) the Board of Directors

of AHFC may, at its sole discretion, and at any time, alter or change the structure, organization, programs, or activities of the nonprofit corporation (including the power to terminate the nonprofit corporation), subject to any limitations on the impairment of contracts entered into by the nonprofit corporation, by adopting amendments to the Certificate of Formation or the By-Laws of the nonprofit corporation at a meeting of the Board of Directors of AHFC and in the case of amendments to the Certificate of Formation, delivering articles of amendment to the Secretary of State.

Article 14

Dissolution of the Corporation

If the Board of the nonprofit corporation or the Board of Directors of AHFC determines by resolution that the purposes for which the nonprofit corporation was formed have been substantially met and all debts and obligations incurred by the nonprofit corporation have been fully paid or otherwise provided for, the Board of the nonprofit corporation shall request the Board of Directors of AHFC to execute and deliver Articles of Dissolution to the Secretary of State which states those facts and declares the nonprofit corporation dissolved in accordance with the requirements of the Code. In the event of dissolution or liquidation of the nonprofit corporation, at any time and for any reason, all of the funds, properties and assets, including full legal title to all property of the nonprofit corporation, must vest in and be conveyed to AHFC unless AHFC otherwise directs in accordance with the Local Government Code.

Article 15

AHFC Approval

On _____, 2020 the Board of Directors of AHFC duly adopted AHFC Resolution No. _____-AHFC___ approving the creation of the nonprofit corporation and the forms of this Certificate of Formation and the initial By-Laws.

Article 16

Construction

All references in this Certificate of Formation to statutes, regulations or other sources of legal authority refer to the authorities cited, or their successors, as they may be amended from time to time.

Article 17

Incorporator

The name and street address of the incorporator, who resides within the state and is an employee of the City, is:

Name:

Rosie Truelove

Address:

City of Austin
Neighborhood Housing & Community
Development Department
1000 East 11th Street, 2nd Floor
Austin, Texas 78702

**BY-LAWS OF THE
AHFC ESPERO NON-PROFIT CORPORATION**

ARTICLE 1. NAME.

The name of the corporation is the AHFC Espero Non-Profit Corporation (Corporation).

ARTICLE 2. PURPOSE AND DUTIES

Section 1. Purpose. The Corporation is organized and may only be operated for the following purposes: (i) aiding, assisting, and acting on behalf of Austin Housing Finance Corporation (AHFC), in the performance of its essential governmental functions, to promote the common good and general welfare of AHFC on behalf of and for the benefit of the general public, the City of Austin, and the State of Texas; (ii) fostering affordable housing in Austin, Travis County, Texas, by causing approximately 171 rental housing units, located at or near 1934 Rutland Drive, Austin, Texas, to be known as Espero Austin at Rutland Apartments, to be occupied by persons and families with incomes that do not exceed the allowable amounts stated in the Land Use Restriction Agreement between the limited partnership (Limited Partnership) and the Texas Department of Housing and Community Affairs, and other agreements of the Limited Partnership which restrict tenant incomes, adjusted for household size; (iii) serving as the general partner of the Limited Partnership which will acquire, construct, own, and operate the Espero Austin at Rutland Apartments subject to a ground lease, and performing all obligations and duties as general partner under the Limited Partnership agreement, including the incurrence of all debts and obligations contemplated under the Limited Partnership agreement; (iv) serving as the general contractor for the construction of the Espero Austin at Rutland Apartments; (v) promoting, developing, encouraging, and maintaining the Espero Austin at Rutland Apartments as decent, safe, and sanitary housing at affordable prices; and (vi) ensuring to the maximum extent possible that the Espero Austin at Rutland Apartments helps to achieve the public purposes and functions of the AHFC.

Notwithstanding the foregoing paragraph, the Corporation may not: (a) engage directly or indirectly, in any business or activity other than the acquisition, development, construction, ownership, and operation of the Espero Austin at Rutland Apartments, acting as the general partner of the Limited Partnership, and as the general contractor for the construction of the Espero Austin at Rutland Apartments, (b) incur or assume any indebtedness for the acquisition, construction, ownership, operation, or disposition of the Espero Austin at Rutland Apartments, other than indebtedness incurred or assumed in carrying out the Corporation's obligations or rights as the general partner of the Limited Partnership, or (c) violate or fail to maintain the Corporation's identity as an entity separate from any other person or entity; and, provided further, the Corporation may perform any and all lawful activities which may be reasonably necessary, useful, or desirable for the furtherance, accomplishment, fostering, or attaining any of the foregoing purposes, either directly or indirectly, and either alone or in conjunction or cooperation with others, such as corporations, firms, associations, trusts, institutions, foundations, or governmental bureaus, departments or agencies.

Section 2. Duties. The Corporation must keep correct and complete books and records of accounts and shall also keep minutes of all proceedings of its Board of Directors. All books and records of the Corporation may be inspected by any director or director's agent or attorney for any proper purpose during regular business hours of the Corporation's principal office. No notice of regular meetings of the Board is required other than a resolution of the Board stating the time and place of meetings.

ARTICLE 3. MEMBERSHIP

Section 1. Board of Directors. The property and affairs of the Corporation are managed and controlled by a Board of Directors (the Board) and, subject to the restrictions imposed by law, the Certificate of Formation and these By-Laws, the Board exercises all of the powers of the Corporation.

(A) The Board consists of 3 directors, each of whom must be appointed by the board of directors of the AHFC. The Board is comprised of one class. Any director may be removed from office by the board of directors of AHFC for cause or at will.

(B) Directors serve for a term as approved by the board of directors of AHFC or until their successor is duly elected and qualified provided that the initial term of the directors is determined by the Certificate of Formation.

(C) Vacancies in the Board, including vacancies to be filled by an increase in the number of directors, must be filled by the board of directors of AHFC for terms of no more than 3 years.

(D) An individual Board member may not act in any official capacity except through the formal and noticed action of the entire Board.

Section 2. Action & Duties of the Board.

(A) A majority of the number of directors then in office constitutes a quorum for the transaction of business at any meeting of the Board. The directors present at a duly called or held meeting at which a quorum is present may leave the meeting so that less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of directors required to constitute a quorum. If a quorum is present at any time during a meeting, a majority of the directors present may adjourn and reconvene the meeting one time without further notice.

(B) Directors must exercise ordinary business judgment in managing the affairs of the Corporation. In acting in their official capacity as directors of this Corporation, directors must act in good faith and take actions they reasonably believe to be in the best interests of the Corporation and that are not unlawful. In all other instances, the Board may not take any action that they should reasonably believe would be opposed to the Corporation's best interests or would be unlawful. A director is not liable if, in the exercise of ordinary care, the director acts in good faith relying on written financial and legal statements provided by an accountant or attorney retained by the Corporation, AHFC, or the City of Austin.

(C) The Board must try to act by consensus. However, the vote of a majority of directors present and voting at a meeting at which a quorum is present is sufficient to constitute the act of the Board of Directors unless the act of a greater number is required by law or the By-Laws. A director who is present at a meeting and abstains from a vote is not considered to be present and voting for the purpose of determining the decision of the Board. For the purpose of determining the decision of the Board, a director who is represented by a proxy in a vote is considered present.

(D) A director may vote by proxy executed in writing by the director. No proxy is valid after 3 months from the date of its execution.

(E) Action that is required to be taken, or may be taken, at a meeting of the directors of the Board may be taken without a meeting if a written consent, stating the action to be taken, is signed by the number of directors necessary to take that action at a meeting at which all of the directors are present and voting. The consent must state the date of each director's signature. Prompt notice of the taking of an action by the directors without a meeting by less than unanimous written consent must be given to each director who did not consent in writing to the action.

Section 3. *Compensation of Directors.* Directors may not receive salaries from the Corporation for their services. The Board may adopt a resolution providing for payment to directors of a fixed sum and expenses of attendance, if any, for attendance at a meeting of the Board. A director may serve the Corporation in any other capacity and receive compensation for those services. Any compensation that the Corporation pays to a director must be commensurate with the services performed and reasonable in amount.

Section 4. *Removal of Directors.* The board of directors of AHFC may remove a director from the Board at any time, with or without cause.

ARTICLE 4. OFFICERS AND DUTIES OF OFFICERS

Section 1. *Titles and Terms of Office.* The officers of the Corporation are a president, a vice president, a secretary, and a treasurer. The Board may create additional officer positions, define the authority and duties of each such position, and elect or appoint persons to fill the positions. Any two or more offices may be held by the same person, except the offices of president and secretary. Any officer elected or appointed by the Board may be removed by the Board or by resolution of the board of directors of AHFC, with or without cause. The president may only be removed by the board of directors of AHFC. Removal of an officer must be without prejudice to the contract rights, if any, of the officer. An officer's term may not exceed 3 years.

Section 2. *President.* The president is the chief executive officer of the Corporation. The president supervises and controls all of the business and affairs of the Corporation. The president presides at all meetings of the Board. The president may execute any deeds, mortgages, bonds, contracts, or other instruments that the Board has authorized to be executed. However, the president may not execute instruments on behalf of the Corporation if this power is expressly delegated to another officer or agent of the Corporation by the Board, the Certificate of Formation,

the By-Laws, or statute. The president must perform other duties prescribed by the Board and all duties incident to the office of president.

Section 3. *Vice President.* The vice president has such powers and duties as may be assigned by the Board and exercises the powers of the president during that officer's absence or inability to act. Any action taken by the vice president in the performance of duties as the president is conclusive evidence of the absence or inability to act of the president at the time such action was taken. The vice president shall perform other duties as assigned by the president or the Board.

Section 4. *Treasurer.* The treasurer:

(A) has charge and custody of and is responsible for all funds and securities of the Corporation;

(B) receives and gives receipts for moneys due and payable to the Corporation from any source;

(C) deposits all moneys in the name of the Corporation in banks, trust companies, or other depositories as provided in these By-Laws or as directed by the Board or president.

(D) writes checks and disburses funds to discharge obligations of the Corporation. Funds may not be drawn from the Corporation or its accounts for greater than \$5,000 without the signature of both the president or vice president and the signature of the treasurer;

(E) maintains the financial books and records of the Corporation;

(F) prepares financial reports at least annually;

(G) performs other duties as assigned by the president or by the Board;

(H) if required by the Board, gives a bond for the faithful discharge of his or her duties in an amount and with surety as determined by the Board; and,

(I) performs all duties incident to the office of treasurer.

Section 5. *Secretary.* The secretary:

(A) keeps the minutes of all meetings of the Board in books provided for this purpose;

(B) attends to the giving and serving of all notices on behalf of the Corporation;

(C) takes minutes of the meetings of the Board and keep the minutes as part of the corporate records;

(D) attests to the signature of any officer of the Corporation on all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments or documents of the Corporation, whenever attestation is required by law or otherwise;

(E) keeps a register of the mailing address of each director, officer, and employee of the Corporation;

(F) performs duties as assigned by the Board or president; and

(G) performs all duties incident to the office of secretary.

ARTICLE 5. PARLIAMENTARY AUTHORITY

The rules contained in the current edition of Robert's Rules of Order govern the Board in all cases to which they are applicable, except when inconsistent with these By-Laws or with special rules of order which the Board or the AHFC board of directors may adopt.

ARTICLE 6. CERTIFICATE OF FORMATION AND BY-LAWS

Section 1. *Amendments to Certificate of Formation and By-Laws.*

(A) The Certificate of Formation may at any time and from time to time be amended, provided that the Board files with the AHFC board of directors a written application requesting the AHFC board of directors approve such amendment to the Certificate of Formation, specifying in such application the amendment or amendments proposed to be made and explaining the necessity of such amendment(s). If the AHFC board of directors by appropriate resolution finds and determines that it is advisable that the proposed amendment(s) be made, authorizes the same to be made, and approves the form of the proposed amendment(s), the Board must proceed to amend the Certificate of Formation as provided in the Act. The Certificate of Formation may also be amended at any time by the AHFC board of directors at its sole discretion by adopting an amendment to the Certificate of Formation of the Corporation by resolution of the AHFC board of directors and delivering the Articles of Amendment to the Secretary of State as provided in the Act.

(B) These By-Laws may be amended by majority vote of the Board and such amendment is effective after it has been ratified by the AHFC board of directors.

Section 2. *Interpretation of By-Laws.* These By-Laws and all the terms and provision contained herein must be liberally construed to give effect to the purposes set forth herein. If any word, phrase, clause, sentence, paragraph, section, or other part of these By-Laws, or the application thereof to any person or circumstance is ever held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of these By-Laws and the application of such word, phrase, clause, sentence, paragraph, section, or other part of these By-Laws to any other person or circumstance os not affected thereby.

ARTICLE 7. GENERAL PROVISIONS

Section 1. *Principal Office.* The principal office of the Corporation is located at 1000 East 11th Street, Suite 200, Austin, Texas 78702. The Corporation must have and continuously maintain in the State of Texas a registered office, and a registered agent whose business office is identical with such registered office, as required by the Act. The registered office may be, but need not be, identical with the principal office for the Corporation, and the address of the registered office may be changed from time to time by the Board, pursuant to the requirements of the Act.

Section 2. *Fiscal Year.* The fiscal year for the Corporation is from October 1st of a given year through September 30th of the following year.

Section 3. *Notice and Waiver of Notice.* Whenever any additional notice is required to be given to a director under the provisions of the Certificate of Formation or these By-Laws, such notice is deemed sufficient if given by depositing same in a post office box in a stamped addressed envelope to the person entitled to the notice at their last known address or as it appears in the books of the Corporation, if to a holder of corporate bonds, and such notice is deemed to have been given on the day of such mailing.

Section 4. *Resignations.* Any director or officer may resign at any time. Such resignation must be made in writing and takes effect at the time specified in the writing, or, if no time is specified, at the time of its receipt by the president or secretary. The acceptance of a resignation is not necessary to make it effective, unless expressly provided for in the resignation.

Section 5. *Organizational Control.* The board of directors of AHFC may, at its sole discretion, and at any time, alter or change the structure, organization, programs or activities of the Corporation (including the power to terminate the Corporation), subject to any limitation in the Act on the impairment of contracts entered into by the Corporation.

Section 6. *Dissolution of the Corporation.* Upon dissolution of the Corporation, title to or other interests in any real or personal property owned by the Corporation at such time vests in AHFC. Any prior acts and instruments performed or executed by the Board or officers of the Corporation in its name and on its behalf are hereby ratified and confirmed.

ADOPTED this ____ day of _____ 2020.

AHFC ESPERO NON-PROFIT CORPORATION

By: _____
Name: J. RODNEY GONZALES
President

ATTEST:

Name:
Vice President