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## RESOLUTION

**WHEREAS**, Council of the City of Austin (Council) created and organized the Austin Housing Public Facility Corporation (Corporation) under the provisions of the Public Facility Corporation Act, Chapter 303 of the Texas Local Government Code, as amended, (Act), for the purpose of assisting the City in financing, refinancing, owning, or providing public facilities; and

**WHEREAS**, the Corporation, an entity legally acting for and on behalf of the Corporation (either or both Issuer), or both is or are authorized to provide for the acquisition and construction of multifamily housing developments, and to provide for the issuance of revenue bonds (Bonds) for this purpose; and

**WHEREAS**, Libertad Austin at Gardner, LP is a limited liability company organized under the laws of the State of Texas; and

**WHEREAS**, the term “Borrower” means Libertad Austin at Gardner, LP and/or one of its subsidiaries, affiliates, or related corporations or entities; and

**WHEREAS**, the Borrower has advised the Issuer that it is considering proceeding with the acquisition, construction, and/or improvement of a multi-family development described in Exhibit A (Development) within the City and within the jurisdiction of the Issuer; and

**WHEREAS**, the Borrower has advised the Issuer that a contributing factor which would further induce the Borrower to proceed with providing for the

22 acquisition, construction, and/or improvement of the Development would be a  
23 commitment and agreement by the Issuer to consider issuing bonds; and

24 **WHEREAS**, the Borrower has proposed to the Issuer that the Borrower will  
25 be further induced to proceed with providing for the acquisition, construction, and/or  
26 improvement of the Development if the Issuer will make such commitment and  
27 agreement and adopt this Resolution; and

28 **WHEREAS**, all or a portion of the expenditures relating to the Development  
29 (Expenditures) have been paid within 60 days prior to the passage of this Resolution  
30 or will be paid on or after the passage of this Resolution; and

31 **WHEREAS**, the Issuer reasonably expects, based upon information supplied  
32 by the Borrower, upon which it is reasonable and prudent for the Issuer to rely, to  
33 reimburse the Borrower or persons acting on its behalf for the Expenditures with the  
34 proceeds of the Bonds; and

35 **WHEREAS**, the Issuer declares that this Resolution, in accordance with its  
36 provisions, constitutes the agreement of the Issuer to issue the Bonds in such  
37 aggregate principal amount, now estimated not to exceed \$30,000,000, as is actually  
38 required to finance and pay for the acquisition, construction, and/or improvement of  
39 the Development; and

40 **WHEREAS**, the Issuer finds, considers, and declares that the issuance of the  
41 Bonds in the amount identified above and for the purpose identified above will be

appropriate and consistent with the objectives of the Act, and that the adoption of this Resolution constitutes: (i) an inducement to the Borrower to proceed with providing for the acquisition, construction and/or improvement of the Development, (ii) the taking of affirmative official action by the Issuer, acting by and through its Board of Directors, towards the issuance of the Bonds, and that such action is similar to the adoption of a bond resolution/within the meaning of Section 1.103-8(a)(5) of the Federal Treasury Regulations, and (iii) the declaration of the intention of the Issuer, in accordance with the provisions of Section 1.150-2 of the Federal Treasury Regulations, to reimburse the Expenditures for the Development at such time as the Bonds are issued; **NOW, THEREFORE,**

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF AUSTIN HOUSING PUBLIC FACILITY CORPORATION THAT:**

Section 1. The Issuer agrees as follows:

(a) To consider adopting a bond resolution or bond resolutions prepared by its Bond Counsel, McCall, Parkhurst & Horton L.L.P., Dallas, Texas, when requested by the Borrower, authorizing the issuance of Bonds pursuant to the Act, and to issue the Bonds, subject to the requirements of the Act and the Corporation's bylaws, the execution of the appropriate agreements or contracts described in (b), below, and the sale of the Bonds under terms and conditions satisfactory to the Issuer and the Borrower, to finance and pay for the acquisition, construction, and/or improvement of the Development, including amounts sufficient to pay the fees, expenses, and

64 costs in connection with such issuance, including an amount adequate to reimburse  
65 the Issuer for its administrative and overhead expenses and costs with respect to the  
66 Bonds and the Development, with the Bonds to be payable from payments by the  
67 Borrower to the Issuer and/or to a corporate trustee in such sums as are necessary to  
68 pay the principal of, interest on, and redemption premium, if any, together with the  
69 paying agents' and trustee's fees on, the Bonds, as and when the same becomes due  
70 and payable.

71 (b) Prior to the issuance of the Bonds, when requested by the Borrower, to  
72 enter into such loan agreement, installment sale agreement, lease, and/or any other  
73 appropriate contracts or agreements between the Issuer and the Borrower as are  
74 mutually acceptable in all respects to the Issuer and the Borrower, under which the  
75 Borrower will be obligated to make payments to the Issuer and/or to a corporate  
76 trustee in such sums as are necessary to pay the principal of, interest on, and  
77 redemption premium, if any, together with the paying agents' and trustee's fees on,  
78 the Bonds, as and when the same becomes due and payable, and with such payments  
79 also to be sufficient to defray the Issuer's administrative, overhead, and other  
80 expenses and costs with respect to the Bonds and the Development.

81 (c) To take, or cause to be taken, such other action, and to execute such  
82 additional contracts and agreements mutually agreeable to the parties in all respects,  
83 when requested by the Borrower as may be required in accordance with the Act and

84 this Resolution to cause the issuance of the Bonds and to obtain an allocation of state  
85 volume cap for the Bonds.

86 Section 2. Subject to the provisions of Section 3 of this Resolution, by the  
87 acceptance of this Resolution and proceeding with the Development, the Borrower  
88 agrees that it will (i) fully indemnify and hold the Issuer harmless from any and all  
89 damages, losses, and reasonable expenses, including attorneys' fees, arising at any  
90 time from or with respect to the Bonds and the Development (except those resulting  
91 from gross negligence or willful misconduct of the Issuer), and (ii) pay or reimburse  
92 the Issuer for all reasonable and necessary out-of-pocket expenses, including  
93 attorneys' fees and expenses and the fees and expenses of other consultants, which  
94 the Issuer may incur at the request of the Borrower arising from the performance or  
95 attempted performance by the Issuer of its obligations hereunder.

96 Section 3. Nothing contained in this Resolution may be interpreted as to bind the  
97 Issuer to issue any bonds. The Issuer has the authority, without cause, not to issue  
98 bonds.

99 Section 4. Subject to the provisions of Section 3 of this Resolution, the adoption of  
100 this Resolution constitutes the acceptance of the Borrower's proposal that it be  
101 further induced to proceed with providing for the acquisition, construction, and/or  
102 improvement of the Development, and this proposal and acceptance constitutes an

103 agreement between the Issuer and the Borrower in accordance with the provisions  
104 of this Resolution.

105 Section 5. The Issuer reasonably expects, based upon information supplied by the  
106 Borrower, upon which it is reasonable and prudent for the Issuer to rely, to reimburse  
107 the Expenditures with the proceeds of the Bonds.

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110 **ADOPTED:** \_\_\_\_\_, 2022 **ATTEST:** \_\_\_\_\_  
111 Myrna Rios  
112 City Clerk  
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