

**CERTIFICATE OF FORMATION
OF
KILLEEN PUBLIC FACILITY CORPORATION**

WE, THE UNDERSIGNED natural persons, not less than three (3) in number, each of whom is at least 18 years of age and a citizen of the State of Texas (the “State”), and each of whom is a member of the City Council of the City of Killeen, Texas (the “City”), acting as incorporators of a public instrumentality, constituted authority, and public, nonprofit corporation (the “Corporation”) pursuant to the Texas “Public Facility Corporation Act”, Chapter 303, Texas Local Government Code, as amended (the “Act”), with the approval of the City Council of the City (the “Governing Body”), as evidenced by the resolution (the “Resolution”) attached hereto as Exhibit A and made a part of this Certificate of Formation for all purposes, do hereby adopt the following Certificate of Formation for the Corporation:

**ARTICLE ONE
NAME**

The name of the Corporation is the “Killeen Public Facility Corporation”.

**ARTICLE TWO
AUTHORIZATION**

The Corporation is a nonprofit public corporation.

**ARTICLE THREE
DURATION**

Subject to the provisions of Article Thirteen hereof, the period of duration of the Corporation is perpetual.

**ARTICLE FOUR
PURPOSE AND LIMITATIONS**

(a) The Corporation is organized exclusively for the purpose of assisting the City in providing a public facility in the form of a mixed income apartment complex at approximately 1900 Veteran’s Memorial Drive in Killeen, Texas through a public private partnership with the NRP Group, all pursuant to the Act. The Corporation shall have and possess the broadest possible powers to accomplish such goal. The Corporation is further authorized to acquire an interest in any partnership or other entity in order to accomplish any of the above purposes. The Corporation is a public corporation, a constituted authority, and a public instrumentality within the meaning of the Act, the United States Treasury Department, the rulings of the Internal Revenue Service prescribed and promulgated pursuant to sections 103 and 141 of the Internal Revenue Code of 1986, as amended, and the Corporation is authorized to act on behalf of the City as provided in this Certificate of Formation.

The Corporation will not advertise or hold out to the public in any manner that it is a state or national bank, trust company or depository institution, or that it is authorized to conduct banking or trust business.

(b) The Corporation is not authorized to issue “bonds” as defined and permitted by the Act. Notwithstanding the foregoing, the Corporation may enter into any contracts and agreements, and incur such other obligations, as permitted under the Act, without first receiving Governing Body approval.

(c) In the fulfillment of its corporate purpose, the Corporation shall have and may exercise the powers described in paragraph (a) of this Article, together with all of the other powers granted to the corporations that are incorporated under the Act and to the extent not in conflict with the Act, the Corporation shall additionally have and may exercise all of the rights, powers, privileges, authorities, and functions given by the general laws of the State to nonprofit corporations under the Texas Nonprofit Corporation Law, Chapter 22 of the Texas Business Organizations Code, as amended, or any other applicable laws of the State.

(d) The Corporation shall have the purposes and powers permitted by the Act, but the Corporation does not have, and shall not exercise the powers of sovereignty of the City, including the power to tax, eminent domain, and police power. However, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practice and Remedies Code, as amended), the Corporation is a governmental unit, and its actions are governmental functions.

(e) No bonds or other obligations, contracts, or agreements of the Corporation are or shall ever be deemed to be or constitute the contracts, agreements, bonds, other debt instruments, or other obligations or the lending of credit, or a grant of the public money or things of value, of, belonging to, or by the State, the City, or any other political corporation, subdivision or agency of the State, or a pledge of the faith and credit of any of them. Any and all of such contracts, agreements, bonds, other debt instruments, and other obligations, contracts and agreements shall be payable solely and exclusively from the revenues and funds received by the Corporation from the sources authorized by the Act and from such other sources as may be otherwise lawfully available and belonging to the Corporation from time to time.

(f) The Governing Body, in its sole discretion, may alter the Corporation's structure, name, organization, programs, or activities, consistent with the Act and subject to limitations provided by law relating to the impairment of contracts entered into by the Corporation.

ARTICLE FIVE FINANCING

(a) The Corporation shall not sell or deliver any bonds.

(b) In the exercise of the powers of the Corporation, the Corporation may enter into any lease or other agreements as authorized by the Act that are necessary and appropriate to the fulfillment of the public purpose of the Corporation.

ARTICLE SIX MEMBERS

The Corporation has no members and is a nonstock corporation.

ARTICLE SEVEN AMENDMENTS

This Certificate of Formation may be amended at any time as provided in the Act, to make any changes and add any provisions which might have been included in the Certificate of Formation in the first instance. The Governing Body may, at its sole discretion, and at any time, amend this Certificate of Formation and alter or change the structure, name, organization, programs or activities of the Corporation, or terminate or dissolve the Corporation (subject to Article Thirteen and the provisions of the Act, and subject to any limitation provided by the constitutions and laws of the impairment of contract entered into by the Corporation) by a resolution adopting the certificate of amendment or certificate of termination at a

meeting of the Governing Body, and delivering a certificate of amendment or certificate of termination to the Secretary of State, as provided in the Act. A restated certificate of formation may be filed with the Secretary of State as provided in the Act.

ARTICLE EIGHT ADDRESS

The street address of the initial registered office of the Corporation is 101 N. College Street, Killeen, Texas 76541, and the name of its initial registered agent at that address is City Manager Kent Cagle.

ARTICLE NINE BOARD OF DIRECTORS

(a) The affairs of the Corporation shall be managed by a board of directors which shall be composed of the Mayor and Councilmembers of the City (the “Board of Directors”). Each director’s term will be coterminous with their term as Mayor or as a Councilmember of the City. Any director shall cease to be a director at the time he or she ceases to be a member of the Governing Body. Directors are removable by the Governing Body under the same terms, conditions, and procedures as required for the removal of members of the Governing Body. A majority of the entire membership of the Board of Directors, including any vacancies, is a quorum. The Board of Directors shall conduct all meetings within the boundaries of the City.

(b) The number of initial directors of the Corporation is [eight (8)]. The names and street addresses of the persons who are to serve as the initial directors are as follows:

| Names | Addresses |
|------------------|--|
| Jose L. Segarra | 101 N. College Street, Killeen, Texas 76541 |
| Shirley Fleming | 101 N. College Street, Killeen, Texas 76541 |
| Jim Kilpatrick | 101 N. College Street, Killeen, Texas 76541 |
| Debbie Nash-King | 101 N. College Street, Killeen, Texas 76541 |
| Steve Harris | 101 N. College Street, Killeen, Texas 76541 |
| Ken Wilkerson | 101 N. College Street, Killeen, Texas 76541 |
| Rick Williams | 101 N. College Street, Killeen, Texas 76541 |
| Mellisa Brown | 101 N. College Street, Killeen, Texas 76541 |

(c) The directors shall serve without compensation, but they shall be reimbursed for their actual expenses incurred in the performance of their duties as directors.

(d) The Board of Directors shall elect a president, vice president, secretary, and any other officers that the Corporation considers necessary, to serve as executive officers of the Corporation, as more specifically provided in the Corporation's Bylaws. The City Manager shall serve as an Assistant Secretary to the Corporation.

(e) Any director or officer may resign at any time, and a successor shall be appointed in accordance with the procedures set forth in the Bylaws.

ARTICLE TEN BYLAWS

The initial Bylaws of the Corporation shall be adopted by the Board of Directors and shall, together with this Certificate of Formation, govern the initial affairs of the Corporation until and unless amended in accordance with the provisions of the Act and this Certificate of Formation. The Bylaws and each amendment and repeal of the Bylaws must be approved by the Governing Body by a resolution.

ARTICLE ELEVEN INCORPORATORS

The name and street address of each incorporator are as follows:

| Names | Addresses |
|------------------|---|
| Jose Segarra | 101 N. College Street, Killeen, Texas 76541 |
| Debbie Nash-King | 101 N. College Street, Killeen, Texas 76541 |
| Steve Harris | 101 N. College Street, Killeen, Texas 76541 |

ARTICLE TWELVE GOVERNING BODY APPROVAL

(a) The City has specifically authorized the Corporation by a resolution to act on its behalf to further the public purposes stated in this Certificate of Formation, and the City has by the resolution attached hereto as Exhibit A, approved this Certificate of Formation. A copy of the resolution is on file among the permanent public records of the City and the Corporation. As set forth in Article Seven hereof, the Governing Body, in its sole discretion, may alter the Corporation's structure, name, organization, programs, or activities, consistent with the provisions of the Act.

(b) The City is the Corporation's "Sponsor" (as defined by the Act) and has caused this Corporation to be created. The City's principal office address is 101 N. College Street, Killeen, Texas 76541, and the Corporation's principal office address is 101 N. College Street, Killeen, Texas 76541.

ARTICLE THIRTEEN DISSOLUTION

- (a) The duration of the Corporation is perpetual.
- (b) The Governing Body, by written resolution, may authorize and direct the dissolution of the Corporation. However, the Corporation shall not be dissolved, and its business shall not be terminated, by act of the Governing Body or otherwise, so long as the Corporation shall be obligated to pay any bonds or any other debt obligation.
- (c) No action shall be taken pursuant to paragraph (a) of this Article or pursuant to paragraph (b) of Article Fourteen of this Certificate of Formation, in any manner or at any time that would impair any contract, lease, right, or other obligation executed, granted, or incurred by the Corporation prior to such action.

ARTICLE FOURTEEN MISCELLANEOUS

- (a) All properties owned by the Corporation shall be held for the use and benefit of the public on a nondiscriminatory basis.
- (b) No dividends shall ever be paid by the Corporation, and no part of its net earnings remaining after payment of its expenses and other obligations shall be distributed to or inure to the benefit of its directors or officers, or any individual, private firm, or private corporation or association, except in reasonable amounts for services rendered and expenses incurred.
- (c) If, after the close of any fiscal year, the Board of Directors shall determine that sufficient provision has been made for the full payment of all current and future expenses and needs of the Corporation, together with all amounts payable on the contracts, agreements, bonds, notes, and other obligations of the Corporation, and that all of the terms, provisions, and covenants therein have been met, then any net earnings derived from sources thereafter accruing in connection with public facilities financed or refinanced pursuant to the Act may be provided to the City.
- (d) If the Corporation ever should be dissolved when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or rights thereto shall not be transferred to private ownership, but shall be transferred and delivered to the City after satisfaction of debts and claims.
- (e) No part of the Corporation's activities shall consist of the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in any political campaign of or in opposition to any candidate for public office.

ARTICLE FIFTEEN DIRECTOR LIABILITY; INDEMNIFICATION

- (a) To the fullest extent permitted by State law, as the same exist or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits broader limitations than permitted prior to such amendment), a member of the Board of Directors shall not be liable, or shall be liable only to the extent provided in this Certificate of Formation, to the Corporation for monetary damages for an act or omission in the director's capacity as a director. Any repeal or amendment of this

Article shall be prospective only, and shall not adversely affect any limitation on the personal liability of a member of the Board of Directors existing at the time of such repeal or amendment.

(b) The Corporation may indemnify any director, officer, employee or agent or former director, officer, employee or agent of the Corporation for expenses and costs, including attorney's fees, actually or necessarily incurred by the person in connection with any claim asserted against the person, by action in court or other forum, by reason of such person having been a director, officer, employee or other agent, except that the Corporation may not provide indemnity in a matter if the director, officer, employee, or agent is guilty of negligence or misconduct in relation to the matter.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Formation as of _____, 2020.

By: _____
Name: Jose L. Segarra _____
Incorporator

By: _____
Name: Debbie Nash King _____
Incorporator

By: _____
Name: Steve Harris _____
Incorporator

EXHIBIT A

Approving Resolution of the City

DRAFT