

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2

was created and organized under the provisions of the Texas Housing Finance Corporations Act, Chapter 394, Local Government Code, V.T.C.A. (Act), for the purpose of providing a means of financing the costs of residential ownership and development that will provide decent, safe and sanitary housing for persons of low and moderate income at prices they can afford; and

WHEREAS, Diamond Forty-Two, LLC is a limited liability company under the laws of the State of Texas; and

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

Page 1 of 6

23 construction and/or improvement of the Project would be a commitment and agreement
24 by the Issuer to issue Bonds; and

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

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

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

36 **WHEREAS**, the Issuer declares that this Resolution shall, in accordance with
37 its provisions, constitute the agreement of the Issuer to issue the Bonds in such
38 aggregate principal amount, now estimated not to exceed \$21,000,000, as is actually
39 required to finance and pay for the acquisition, construction and/or improvement of the
40 Project; and

41 **WHEREAS**, the Issuer finds, considers, and declares that the issuance of the
42 Bonds in the amount identified above and for the purpose identified above will be
43 appropriate and consistent with the objectives of the Act, and that the adoption of this

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

53 **BE IT RESOLVED BY THE BOARD OF DIRECTORS OF**
54 **AUSTIN HOUSING FINANCE CORPORATION THAT:**
55

56 **Section 1.** The Issuer agrees as follows:

- 57 (a) To adopt a bond resolution or bond resolutions prepared by its Bond Counsel,
58 McCall, Parkhurst & Horton L.L.P., Dallas, Texas, when requested by the
59 Borrower, authorizing the issuance of Bonds pursuant to the Act, and to issue
60 the Bonds, subject to the requirements of the Act, the execution of the
61 appropriate agreements or contracts described in (b), below, and the sale of
62 the Bonds under terms and conditions satisfactory to the Issuer and the
63 Borrower, to finance and pay for the acquisition, construction and/or
64 improvement of the Project, including amounts sufficient to pay the fees,
65 expenses, and costs in connection with such issuance, including an amount

adequate to reimburse the Issuer for its administrative and overhead expenses and costs with respect to the Bonds and the Project, with the Bonds to be payable from payments by the Borrower to the Issuer and/or to a corporate trustee in such sums as are necessary to pay the principal of, interest on, and redemption premium, if any, together with the paying agents' and trustee's fees on, the Bonds, as and when the same shall become due and payable.

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

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

86 with the Act and this Resolution to cause the issuance of the Bonds and to
87 obtain an allocation of state volume cap for the Bonds.

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

98 **Section 3.** Nothing contained in this Inducement Resolution shall be interpreted as to
99 bind the Issuer to issue any bonds. The Issuer shall have the authority, without cause,
100 not to issue the bonds.

101 **Section 4.** Subject to the provisions of Section 3 of this Resolution, the adoption of
102 this Resolution constitutes the acceptance of the Borrower's proposal that it be further
103 induced to proceed with providing for the acquisition, construction and/or
104 improvement of the Project, and this proposal and acceptance shall constitute an
105 agreement between the Issuer and the Borrower in accordance with the provisions of
106 this Resolution.

Section 5. With respect to this inducement resolution and because the Borrower will have to comply with federal and State of Texas rent control requirements in the event the Borrower is awarded Low Income Housing Tax Credits, the Issuer, to the extent the Borrower is awarded Low Income Housing Tax Credits, waives its Affordable Rent requirements set forth in the Issuer's Rules.

Section 6. The Issuer reasonably expects (based upon information supplied by the Borrower, upon which it is reasonable and prudent for the Issuer to rely) to reimburse the Expenditures with the proceeds of the Bonds.

ADOPTED: _____, 2019

ATTEST: _____
Jannette S. Goodall
Secretary