

FILED
In the Office of the
Secretary of State of Texas
DEC 10 1998
Corporations Section

ARTICLES OF INCORPORATION

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

I.

The name of this Corporation is Austin-Bergstrom Landhost Enterprises, Inc.

II.

1. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. The Corporation has no members and is a nonstock corporation. It is organized under Article 717s, Vernon's Annotated Texas Civil Statutes, as amended (the "Act") for public purposes. The sponsor of the Corporation is the City of Austin, Texas, 124 W. Eighth Street, Austin, Texas 78701. The City of Austin, Texas, has specifically authorized the Corporation to act on its behalf to further the public purpose set forth in these Articles of Incorporation, and the City Council of the City of Austin, Texas, has duly approved these Articles of Incorporation.

2. The specific and primary purposes of this Corporation are:

(a) To render financial or other assistance to the City of Austin, Texas, or any successor public entity or assignee public entity which succeeds to the functions of the City of Austin, Texas (collectively herein referred to as the "Political Subdivision"), by financing, acquiring, constructing, improving, remodeling, leasing and selling buildings, building improvements, fixtures, equipment, facilities, improvements for electrical, water, sewer, parking, site development, furnishings, improvements, transportation, communications and any other public purposes, and any other real or personal property for the benefit of the Political Subdivision which constitute "public facilities" as defined by the Act.

(b) To acquire by lease, purchase, installment purchase, or otherwise real or personal property which constitute "public facilities" as defined by the Act, or any interest therein, to enter into contracts for services or for other purposes; to construct, reconstruct, modify, add to, and to improve or otherwise acquire or equip buildings, structures or improvements which constitute "public facilities" as defined by the Act, and (by sale, installment sale, lease, sublease, leaseback, gift or otherwise) make any part or all of any such real or personal property, or improvements, available to or for the benefit of the public or the Political Subdivision.

(c) To promote the common good and general welfare of the Political Subdivision area and the inhabitants thereof by providing the real and personal property as hereinabove described.

(d) To borrow the necessary funds to pay the cost of financing, refinancing, acquiring, constructing, replacing, establishing, improving, maintaining, equipping and operating such real and personal properties, facilities and improvements for the herein described purposes, the indebtedness for which borrowed money may, but need not, be evidenced by securities of the Corporation of any kind or character issued at any one or more times, which may be either unsecured or secured by any mortgage, trust, deed, pledge, encumbrance or other lien upon any part or all of the properties and assets at any time then or thereafter owned or acquired by this Corporation.

(e) To conduct its business and affairs so that the Political Subdivision will have a beneficial interest in the Corporation.

(f) To receive limited or conditional gifts or grants in trust, inter vivos, or by way of testamentary devises, bequests or grants in trust, or otherwise, funds of all kinds including property, both real and personal, and mixed, whether principal or income, tangible or intangible, present or future, vested or contingent, in order to carry on the purposes of the Corporation.

Subject to the provisions of Article IV of these Articles of Incorporation, the specific purpose of the Corporation is to finance the acquisition, construction and equipping of, and provide for the operation of, a hotel to be located at Austin-Bergstrom International Airport and other lodging facilities, and to do all things necessary or convenient to the provision of such hotel and other lodging facilities, their economic and beneficial financing, use and maintenance in the State of Texas in order to promote the health, safety and general welfare of the residents of the State, to increase their commerce and industry, to promote their economic development and to advance the efficiency of the citizens of the State and surrounding areas. Specific objectives of the Corporation include the financing of a hotel to be located at Austin-Bergstrom International Airport and other lodging facilities through the sale of revenue indebtedness of the Corporation ("Project Debt") which Project Debt shall not constitute an indebtedness of nor a charge against the full faith, credit or taxing powers of the State or any of its agencies (including, without limitation, the Political Subdivision) or any other political subdivision of the State. Upon the retirement or defeasance of any Project Debt issued by the Corporation, all property provided by such Project Debt, and any additions thereto, will be conveyed by the Corporation to the Political Subdivision for a public purpose or upon the direction of the Political Subdivision, to another agency or political subdivision of the State for a public purpose.

3. The affairs of the Corporation shall be managed by a Board of Directors. The number of directors, constituting the initial Board of Directors, shall be three (3), one of whom shall be the Director of Financial Services of the City of Austin or designee thereof, one of whom shall be the Executive Director of the Aviation Department of the City of Austin or designee thereof, and one of whom shall be the Chairperson of the Airport Advisory Board of the City of Austin or designee. An appointment of an individual to the designated position and qualification to serve at that position shall be deemed to be an appointment of such individual to the Board of Directors of the Corporation. When an individual no longer fills the designated position, such

individual shall be deemed to have resigned from the Board of Directors of the Corporation. Should an individual in the designated position resign from the Board of Directors while still filling the designated position, the unexpired term may be filled by appointment of an otherwise qualified individual not a member of the City Council of the Political Subdivision (the "Governing Board"). The names and addresses of the initial Board of Directors are

1. Betty Dunkerley, C P.A., Director, Financial Services Department, 124 W. Eighth Street, Austin, Texas, 78701.
2. Charles E. Griffith, III, Executive Director, Aviation Department, 3600 Manor Road, Austin, Texas, 78723.
3. Worth Kilcrease, Chair, Airport Advisory Board, 3600 Manor Road, Austin, Texas, 78723.

Notwithstanding anything herein to the contrary, the Governing Board has the power to remove any director for cause or without cause, and to appoint a successor for the remainder of the removed director's term. No amendment shall be made to the provisions of this paragraph without the approval of the Governing Board.

4. In addition to the foregoing, the Corporation shall have, and shall be entitled to exercise, all the powers of every kind lawfully available to a nonprofit public benefit corporation organized under the laws of the State of Texas; provided, however, that the Corporation shall not have the power to, and shall not, do any act or conduct any activity, plan, scheme, design or course of conduct which in any way conflicts with Sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986, as amended, and regulations promulgated pursuant to such sections as they now exist or as they may hereafter be amended (collectively, the "Code").

III.

The name of the Corporation's initial registered agent and address in the State of this Corporation's initial registered office for service of process is:

Charles E. Griffith, III, Executive Director, Aviation Department, 3600 Manor Road, Austin, Texas, 78723

IV.

The Corporation is not a Corporation organized for profit. The Corporation is organized and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its directors, officers, employees, agents or other private shareholders or persons except that the Corporation shall be authorized to pay reasonable compensation for services rendered and to make reasonable payments in furtherance of its charitable purposes. No substantial part of the

activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. Notwithstanding any other provision of these articles, the Corporation shall not carry on any activities not permitted to be carried on (i) by a Corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code or (ii) by a Corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code. Upon the dissolution of the Corporation, all of the Corporation's assets shall be distributed (1) to the Political Subdivision or its successor for a public purpose or (2) at the direction of the Political Subdivision, to another agency or political subdivision of the State of Texas for a public purpose or (3) at the direction of the Political Subdivision for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code. The provisions of this Article IV shall supersede any contrary provisions of these Articles of Incorporation.

V.

The property of this Corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of this Corporation shall ever inure to the benefit of any director, officer, employee or member thereof or to the benefit of any private person

VI.

The duration of the Corporation shall be perpetual.

VII

These Articles of Incorporation may be amended only with the written approval of the Governing Board.

IN WITNESS WHEREOF, the undersigned, being the incorporator of this Corporation, has executed these Articles of Incorporation, this 10th day of December, 1998.

Susan Lee Voss

Susan Lee Voss
6907 Capital of Texas Highway North
Suite 240
Austin, Texas 78731

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed

Susan Lee Voss

Susan Lee Voss

STATE OF TEXAS)

)

COUNTY OF TRAVIS)

BEFORE ME THE UNDERSIGNED AUTHORITY on this 10th day of December 1998, personally appeared SUSAN LEE VOSS, who, being by me first duly sworn, declared that she is the person who signed the foregoing document as an incorporator, and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal as of the date hereinabove written.

(SEAL)

Corliss A. Franklin
Notary Public in and for the State of Texas

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CERTIFICATE OF RESOLUTION

THE STATE OF TEXAS)
) ss.
COUNTY OF TRAVIS)

I, the undersigned officer of the City of Austin (the "Sponsor") do hereby make and execute this Certificate for the benefit of all persons interested in the validity of all actions and proceedings of the Sponsor. I do hereby certify as follows:

1. I am the duly chosen, qualified and acting officer of the Sponsor for the office shown beneath my signature, and in such capacity I am familiar with the matters contained in this Certificate.

2. The Members of the City Council of the Sponsor convened its meeting on December 9, 1998, and the roll was called of the duly constituted acting Members of the City Council, to-wit.

- Kirk Watson Council Member/Mayor
Jackie Goodman Council Member/Mayor Pro Tem
Gustavo Garcia Council Member
Beverly Griffith Council Member
Willie Lewis Council Member
Daryl Slusher Council Member
Bill Spelman Council Member

and all of said members were present except -0- thus constituting a quorum Whereupon, among other business the following was transacted at said meeting a written

RESOLUTION OF THE CITY OF AUSTIN APPROVING THE ARTICLES OF INCORPORATION AND BYLAWS OF THE AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC ; APPROVING THE PURPOSES AND ACTIVITIES OF THE AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC., APPROVING THE APPOINTMENT OF THE INITIAL BOARD OF DIRECTORS FOR THE AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.; APPROVING THE ISSUANCE OF AIRPORT HOTEL REVENUE BONDS IN ONE OR MORE SERIES BY THE AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC., TO FINANCE THE CONSTRUCTION, RENOVATION AND IMPROVEMENT OF A HOTEL AT AUSTIN-BERGSTROM INTERNATIONAL AIRPORT; AGREEING TO ACQUIRE THE AUSTIN-BERGSTROM

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LANDHOST ENTERPRISES, INC.'S INTEREST IN SUCH AIRPORT HOTEL UPON THE
RETIREMENT OF ALL OF SUCH CORPORATION'S OBLIGATIONS INCURRED IN
CONNECTION THEREWITH;
AND APPROVING CERTAIN AMENDMENTS TO THE FACILITIES LEASE

was introduced for the consideration of said City Council. It was then duly moved and seconded that said Resolution be adopted and, after due discussion, said motion, carrying with it the adoption of said Resolution, prevailed and carried by a vote of 7 ayes, 0 nays and 0 abstentions.

1. The attached and following is a true, correct and complete copy of said Resolution, the original of said Resolution is on file in the official records of the Sponsor, and said Resolution has not been amended and is in full force and effect.

2. The members of the City Council referred to in paragraph 2 above were the duly qualified and acting members of the City Council of the Sponsor, and each member of the City Council received notice of the meeting of the Sponsor in accordance with the requirements of Chapter 551, Texas Government Code.

3. Written notice of the date, hour, place and subject of the meeting of the City Council Members of the Sponsor was posted on a bulletin board located at a place convenient to the public for at least 72 hours preceding the scheduled time of such meeting; such place of posting was readily accessible to the general public at all times from such time of posting until the scheduled time of such meeting; and such meeting was open to the public as required by law at all times during which the Resolution and the subject matter thereof were discussed, considered and formally acted upon, all as required by Chapter 551, Texas Government Code

WITNESS MY HAND AND THE OFFICIAL SEAL OF THE CITY OF AUSTIN, this
___ day of December, 1998.

[SEAL]

By Betty G. Brown
Betty G Brown
Deputy City Clerk

**RESOLUTION OF THE CITY OF AUSTIN
APPROVING THE ARTICLES OF INCORPORATION AND BYLAWS OF THE
AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.; APPROVING THE
PURPOSES AND ACTIVITIES OF THE AUSTIN-BERGSTROM LANDHOST
ENTERPRISES, INC.; APPROVING THE APPOINTMENT OF THE INITIAL BOARD OF
DIRECTORS FOR THE AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.;
APPROVING THE ISSUANCE OF AIRPORT HOTEL REVENUE BONDS IN ONE OR
MORE SERIES BY THE AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC., TO
FINANCE THE CONSTRUCTION, RENOVATION AND IMPROVEMENT OF A HOTEL
AT AUSTIN-BERGSTROM INTERNATIONAL AIRPORT; AGREEING TO ACQUIRE
THE AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.'S INTEREST IN SUCH
AIRPORT HOTEL UPON THE RETIREMENT OF ALL OF SUCH CORPORATION'S
OBLIGATIONS INCURRED IN CONNECTION THEREWITH; AND APPROVING
CERTAIN AMENDMENTS
TO THE FACILITIES LEASE**

WHEREAS, Article 717s, Vernon's Annotated Texas Civil Statutes, as amended (the "Act"), authorizes and empowers the City of Austin, Texas (the "Sponsor") to create a nonprofit public facilities corporation to finance public facilities (as such term is defined in the Act), and to acquire, construct, rehabilitate, renovate, repair, equip, furnish or place in service public facilities; and

WHEREAS, the Sponsor desires to authorize and approve the creation of the Austin-Bergstrom Landhost Enterprises, Inc. (the "Issuer"), a nonprofit public facilities corporation, for the specific purpose of financing a portion of the costs of constructing, renovating and improving a certain airport building into a hotel, as described in the Facilities Lease Agreement dated as of June 4, 1998 (as amended from time to time, the "Facilities Lease Agreement") by and between the Sponsor and Landmark Hospitality, LP (the "Developer"), located at Austin-Bergstrom International Airport (the "Project"), and to assume all of the Developer's right, title, duties, obligations and interests in the Facilities Lease Agreement, and

WHEREAS, the Act further authorizes the Issuer to issue its bonds for the purpose of defraying all or part of the cost of any public facility, and to enter into agreements related to the construction, renovation and improvements to any public facility; and

WHEREAS, the Sponsor desires that the Issuer issue its limited obligation revenue bonds hereinafter described and use the proceeds of the sale thereof to finance the construction, renovation and improvement of the Project; and

WHEREAS, the Project is a public facility within the boundaries of the Sponsor; and

WHEREAS, in order to provide funds for the Issuer to finance the costs of constructing, renovating and improving the Project, the Issuer proposes to issue its Airport Hotel Revenue Bonds in the aggregate initial principal amount of not to exceed \$45,000,000 (the "Bonds"), pursuant to and in accordance with a resolution duly adopted by the Board of Directors of the Issuer; and

WHEREAS, in order to accommodate such financing, the City will enter into a First Amendment to the Facilities Lease Agreement amending and supplementing certain provisions contained in the Facilities Lease Agreement; and

WHEREAS, this City Council has been presented with and has examined the Articles of Incorporation and Bylaws for the Issuer and the First Amendment to the Facilities Lease Agreement, and the City Council finds that the form and substance of such Articles of Incorporation, Bylaws and First Amendment to the Facilities Lease Agreement are satisfactory, and finds that it is in the best interest of the public and the Sponsor and assists in carrying out the public purpose of the Issuer and of the Act to authorize and approve the incorporation of the Issuer, to approve of the issuance of the Bonds by the Issuer and to approve of the execution and delivery of the First Amendment to the Facilities Lease Agreement, and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN THAT:

4. The Sponsor hereby authorizes and approves of the incorporation of the Issuer, and hereby approves the Articles of Incorporation and Bylaws of the Issuer substantially in the forms presented to the City Council, the forms, terms and provisions of such Articles of Incorporation and Bylaws being hereby authorized and approved. The Issuer is being created for the specific purpose of issuing the Bonds to finance the construction, renovation and improvement of the Project, and to assume all of the Developer's rights, title, interest, duties and obligations under the Facilities Lease Agreement. The initial Board of Directors set forth in Article II of the Articles of Incorporation is hereby approved.

5. The Sponsor hereby approves the issuance by the Issuer of the Bonds in one or more series in the aggregate principal amount of not to exceed \$45,000,000. The interest rate on any senior Bonds issued by the Issuer shall not exceed 7.99% per annum, and the interest rate on each series of Bonds subordinate to the senior Bonds shall not exceed the maximum interest rate permitted by Article 717k-2, Vernon's Texas Civil Statutes. The Issuer shall apply the proceeds of such Bonds to finance the costs of constructing, renovating and improving the Project, to fund capitalized interest with respect to the Bonds, to fund a reserve fund for one or more series of the Bonds and to pay for costs of issuing the Bonds. Upon the expiration of the Facilities Lease Agreement, the Sponsor hereby agrees to accept all of the Issuer's rights and title in the Project, including any improvements thereon.

6. The Sponsor hereby consents to and approves the execution and delivery by the Issuer of an Assignment and Assumption Agreement with the Developer substantially in the

forms presented to the City Council, the forms, terms and provisions of such Assignment and Assumption Agreement being hereby authorized and approved

7 The actions and obligations authorized in Paragraphs 2 and 3 of this Resolution shall be subject to and conditioned upon the receipt by the Issuer, on or before the date of delivery of the Bonds to the purchasers thereof (the "Closing Date"), of (a) the approving opinion of the Attorney General of the State of Texas and evidence of registration of the Bonds by the Comptroller of Public Accounts of the State of Texas; (b) the purchase price for the Bonds; (c) finalization of all documents to the satisfaction of the Corporation, and (d) such opinions, evidences, certificates, instruments or other documents as shall be requested by the Issuer's Counsel or by Bond Counsel to evidence due performance or satisfaction by the Sponsor, the Issuer and the Developer at or prior to such time of all agreements then be performed and all conditions then to be satisfied by it.

5. The Sponsor hereby approves the amendments and supplements to the Facilities Lease Agreement contained in the First Amendment to the Facilities Lease Agreement, substantially in the form presented to the City Council, the forms, terms and provisions of such First Amendment to the Facilities Lease Agreement being hereby authorized and approved, and the Director of Aviation of the Sponsor is hereby authorized and directed to execute and deliver such First Amendment to the Facilities Lease Agreement on behalf of the Sponsor, with such changes therein as the Director of Aviation may approve, such approval to be conclusively evidenced by such execution thereof.

6. The officers, employees and agents of the Sponsor, and each of them, shall be and each is expressly authorized, empowered and directed from time to time and at any time to do and perform all acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the Sponsor all certificates, financing statements, instruments and other papers, whether or not herein mentioned, as they may determine to be necessary desirable in order to carry out the terms and provisions of this Resolution and of the Bonds to be issued by the Issuer, as well as the terms and provisions of the Assignment and Assumption Agreement, the First Amendment to the Facilities Lease Agreement, the Articles of Incorporation and the Bylaws, hereby authorized and approved, such determination to be conclusively evidenced by the performance of such acts and things and the execution of any such certificate, financing statement, instrument or other paper.

7. The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by Chapter 551, Texas Government Code, and the Act.

8. This Resolution shall take effect and be in full force and effect upon and after its passage.

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