

CERTIFICATE OF FORMATION
OF
PLANO PARKING FACILITIES

We, the undersigned natural persons, each of whom is over the age of eighteen (18) years, and each of whom is a resident and qualified voter of the City of Plano, Texas (the “City”) and a citizen of the State of Texas, acting as organizers of a corporation under the provisions of Subchapter D of Chapter 431, Texas Transportation Code (the “Act”), Chapter 394, Texas Local Government Code (the “TLGC”), and the Texas Business Organizations Code (“BOC”), do hereby adopt the following Certificate of Formation for such corporation.

ARTICLE ONE
ENTITY NAME AND TYPE

Section 1.1

The name of the corporation is Plano Parking Facilities (the “Corporation”).

Section 1.2

The Corporation is a nonprofit local government corporation. The Organizers have been authorized by the City to execute this Certificate of Formation.

ARTICLE TWO
REGISTERED OFFICE AND REGISTERED AGENT

The street address of the initial registered office of the Corporation is 1520 K Avenue, 3rd Floor, Plano, Texas 75074-6232, and the name of the initial registered agent at such address is Peter Braster.

ARTICLE THREE
DURATION

The period of duration of the Corporation shall be perpetual.

ARTICLE FOUR
MEMBERSHIP

The Corporation shall have no members and no stock.

ARTICLE FIVE
PURPOSE AND AUTHORITY

Section 5.1

The Corporation is organized and operated for the purpose of aiding, assisting, and acting on behalf of the City and the performance of its governmental functions to promote the common good

and general welfare of the City, including, without limitation, financing, constructing, owning, managing, and operating public parking garages (the “Facilities”) on behalf of the City, and to perform such other governmental purposes of the City as may be determined from time to time by the City Council of the City (the “City Council”). Subject to applicable state law and any contractual obligations of the City or the Corporation, the City may discontinue participation in the activities of the Corporation, or a non-participating unit of local government, business, or individuals may join in the activities of the Corporation, under procedures established in the Bylaws of the Corporation (the “Bylaws”).

Section 5.2

The Corporation is formed pursuant to the provisions of the Act as it may now or hereafter be amended, the BOC, and the TLGC, which authorizes the Corporation to assist and act on behalf of the City and to engage in activities in the furtherance of the purposes for its creation.

Section 5.3

In order to carry out the above-stated purposes, the Corporation shall have all those powers set forth in the Act, the TLGC, and the BOC, as such laws now exist or as it may hereafter be amended.

Section 5.4

The Corporation shall have all other powers of alike or different nature not prohibited by law which are available to nonprofit corporations in Texas and which are necessary or useful to enable the 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; provided, however, that the Corporation shall not issue any bond, certificate, note or other obligation evidenced by an instrument without the prior written consent of the City or as otherwise allowed by the Bylaws.

Section 5.5

The Corporation, with the prior written consent of the City or as may be provided by the Bylaws, shall have the follow powers to carry out the purposes of the Corporation, by and through its directors:

- (a) appoint an Executive Director and employ persons to carry out the purposes of the Corporation;
- (b) issue debt or enter into and administer other contractual obligations to carry out the purposes of the Corporation;
- (c) own, lease, maintain and dispose of real and person property; and
- (d) contract with other political subdivisions and units of governments.

Section 5.6

The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Subdivision (3) Section 101.001, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental and not proprietary functions for all purposes, including for purposes of the Texas Tort Claims Act, Section 101.001, et seq., Texas Civil Practice and Remedies Code. The Corporation shall have the power to acquire land in accordance with the Act as amended from time to time.

Section 5.7

References herein to the consent or written consent of the City shall refer to an ordinance, resolution, or order of the governing body of the City.

ARTICLE SIX
MANAGEMENT

Section 6.1

The Corporation is a nonprofit corporation and the management of its affairs is vested in its board of directors pursuant to Section 22.201 of the BOC subject to the oversight of the City and as otherwise provided in the Bylaws. The Board shall independently manage and operate the Facilities in accordance with all applicable laws and documents, including this Certificate, the Bylaws, the effective Operating Agreement, and such other documents directed by the City as same may be amended from time to time.

Section 6.2

The board of directors shall be elected in the manner set forth in the Bylaws of the Corporation. The number of directors may be increased or decreased from time to time by amendment to the Bylaws of the Corporation, but in no event shall there be less than three (3) directors, and no decrease shall have the effect of shortening the term of any incumbent director. The number of directors constituting the initial board of directors shall be five (5) and their names and addresses are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Mark Israelson	P.O. Box 860358 Plano, Texas 75086-0358
Peter Braster	P.O. Box 860358 Plano, Texas 75086-0358
Jack Carr	P.O. Box 860358 Plano, Texas 75086-0358
Denise Tacke	P.O. Box 860358 Plano, Texas 75086-0358
Jason Gregorash	P.O. Box 860358 Plano, Texas 75086-0358

ARTICLE SEVEN
LIMITED LIABILITY OF DIRECTORS

Section 7.1

A director of the Corporation shall not be personally liable to the Corporation for monetary damages for an act or omission in the director’s capacity as a director, except that this ARTICLE SEVEN does not eliminate or limit the liability of a director of the Corporation to the extent the director is found liable for:

- (i) a breach of the director's duty of loyalty to the Corporation;
- (ii) an act or omission not in good faith that constitutes a breach of duty of the director to the Corporation or an act or omission not in good faith that involves intentional misconduct or a knowing violation of the law;
- (iii) a transaction from which the director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or,
- (iv) an act or omission for which the liability of a director is expressly provided by an applicable statute.

The foregoing elimination of liability to the Corporation shall not be deemed exclusive of any other rights, limitations of liability, or indemnity to which a director may be entitled under any other provision of the Certificate of Formation or Bylaws of the Corporation, contract or agreement, vote of directors, principle of law, or otherwise.

Section 7.2

If Chapter 7 of the BOC or any other statute of the State of Texas is amended hereafter to authorize the further elimination or limitation of the liability of directors of the Corporation, then the liability of a director of the Corporation shall be limited to the fullest extent permitted by the statutes of the State of Texas, as so amended, and such elimination or limitation of liability shall be in addition to, and not in lieu of, the limitation on the liability of a director of the Corporation provided by the foregoing provisions of this ARTICLE SEVEN.

Section 7.3

Any repeal of or amendment to this ARTICLE SEVEN shall be prospective only and shall not adversely affect any limitation on the liability of a director of the Corporation existing at the time of such repeal or amendment.

Section 7.4

To the extent permitted by applicable law, the foregoing limitation of liability set forth in this ARTICLE SEVEN shall extend to the Corporation's officers. This provision shall in no way limit or relieve a director (or officer, as applicable) for federal excise taxes under Chapter 42 of the Code.

ARTICLE EIGHT OPERATION AND TERMINATION

Section 8.1

The Corporation is organized and operated exclusively for the purposes set forth under ARTICLE FIVE of this Certificate of Formation. It is to be operated in such a way that it does not result in the accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain.

Section 8.2

Notwithstanding Section 8.1 and further notwithstanding Section 431.107 of the Act, entitling the City at all times to have the right to equally receive the income earned by the Corporation, any

income earned by the Corporation after payment of reasonable expenses, reasonable reserves for future activities, debt, establishment of a capital reserve, and establishment of a reserve for other legal obligations of the Corporation shall be retained by the Corporation and applied as a credit to the charges to the City for the operation and maintenance of the Facilities, or distributed to the City in a manner to be determined by the Board in accordance with the provisions of the Bylaws of the Corporation.

Section 8.3

If the Board determines by resolution that the purposes for which the Corporation was formed have been substantially met and all bonds or notes issued by and all obligations incurred by the Corporation or on behalf of the Corporation have been fully paid, the Board shall execute a Certificate of Termination which states such facts and declares the Corporation terminated in accordance with the requirements of Section 394.026 of the Texas Local Government Code, or with applicable law then in existence.

Section 8.4

Subject to any restrictions contained in applicable state law, if the City considers and approves a resolution or ordinance directing the Board to proceed with the termination of the Corporation, the Board shall promptly proceed with the termination of the Corporation. The failure by the Board to promptly proceed with the termination of the Corporation in accordance with this Section 8.4 shall be deemed a cause for the removal from office of any or all of the directors as permitted by the Bylaws.

Section 8.5

Upon termination of the Corporation the assets and any remaining liabilities of the Corporation shall be distributed to the City.

Notwithstanding the foregoing, the City may direct an allocation of assets and liabilities contrary to this Section 8.5 provided such direction is not contrary to applicable state law and is not prohibited for an organization exempt under Section 501(c)(3) of the Code.

ARTICLE NINE INDEMNIFICATION

The Corporation may indemnify a person who was, is, or is threatened to be made a named defendant or respondent in litigation or other proceedings because the person is or was an officer or other person related to the Corporation as provided by the provisions of the BOC governing indemnification. As provided in the Bylaws, the directors shall have the power to define the requirements and limitations for the Corporation to indemnify officers or others related to the Corporation.

ARTICLE TEN APPROVAL OF CERTIFICATE OF FORMATION BY CITY

Resolution No. ___ approving the form and substance of this Certificate of Formation was adopted by the City Council of the City of Plano, Texas, on _____, 2021.

ARTICLE ELEVEN
ORGANIZERS

The name and address of the organizers of the Corporation is:

<u>NAME</u>	<u>ADDRESS</u>
Mark Israelson	P.O. Box 860358 Plano, Texas 75086-0358
Jason Gregorash	P.O. Box 860358 Plano, Texas 75086-0358
Denise Tacke	P.O. Box 860358 Plano, Texas 75086-0358

IN WITNESS WHEREOF, I have hereunto set my hand, this ____ day of _____, 2021.

ORGANIZERS:

Mark Israelson

Jason Gregorash

Denise Tacke

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Before me, a notary public, on this ____ day of _____, 2021, appeared **Mark Israelson, Jason Gregorash, and Denise Tacke**, known to me to be the persons whose names are subscribed to the foregoing document and, being by me first duly sworn, declared that the statements contained therein are true and correct.

Notary Public, State of Texas