

**BYLAWS**  
**OF**  
**HEROES OF MIDLOTHIAN FOUNDATION**

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**ARTICLE ONE**

**1     *Name, Purposes, and Offices.***

**1.1     Name.** The name of the nonprofit corporation shall be Heroes of Midlothian Foundation (hereinafter called the "Corporation").

**1.2     Purposes.** The Corporation is organized and shall be operated for exclusively charitable, scientific, religious, educational, and other purposes as set forth in and within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). Within the scope of the foregoing purpose, but not by way of limitation thereof, the Corporation is organized and shall be operated for the primary purposes of (1) the advancement of education by providing educational assistance and resources, scholarship assistance, and educational grants to graduates of any high school within the Midlothian Independent School District; and (2) erection and/or maintenance of a public monument honoring the past and present military, law enforcement, fire protection, and/or other public service rendered by individuals in the Midlothian, Texas area. Notwithstanding other language or provisions herein, the purpose will not further any specified purpose to more than an insubstantial degree other than those described in Section 501(c)(3) of the Code.

**1.3     Organization.** The Corporation is organized as a nonprofit Texas corporation, and shall have no members.

**1.4     Offices.** The Corporation may have, in addition to its registered office, offices at such places, both within and without the State of Texas, as the Board of Directors may from time to time determine or as the activities of the Corporation may require.

## ARTICLE TWO

### **2     *Board of Directors.***

**2.1     General Powers; Delegation.** The activities, property, and affairs of the Corporation shall be managed by a Board of Directors with may exercise all such powers and do all such lawful acts and things as are permitted by statute or by the Certificate of Formation or by these Bylaws.

**2.2     Number.** The initial Board of Directors shall consist of five (5) directors. The number of directors may be increased or decreased from time to time by amendment to these Bylaws, but notwithstanding any provision to the contrary in these Bylaws, no decrease in the number of directors shall have the effect of shortening the term of any incumbent director, and in no event shall there be less than three (3) directors.

**2.3     Initial Board of Directors; Initial Term of Office.** The initial Board of Directors and the initial term of office for each initial director are as follows:

<u>Name</u>	<u>Term</u>
Scott K. Koelker	Through December 31, 2013
Bryan Rury	Through December 31, 2013
Randy Rexroat	Through December 31, 2013
Ashley B. Davis	Through December 31, 2013
M. Shane Hill	Through December 31, 2013

**2.4     Election; Term of Office.** Each Director shall be elected by the majority vote or written consent of the outgoing Board of Directors. Directors shall serve for a term of one (1) year and thereafter until their successors are elected and qualified. Directors shall be eligible for re-election.

**2.5     Vacancies.** A vacancy occurring in the Board of Directors of the Corporation shall be filled by the vote or written consent of a majority of the remaining Directors of the Corporation though less than a quorum of the Board of Directors. A Director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office.

- 2.6 Meetings. The Board of Directors shall meet at least once every calendar year, at such other times as the Board of Directors may determine, and at any other time at the call of the Chair of the Board, the President, or a majority of directors. Notice of the date, time, and place of any such meeting shall be given at least ten days prior to the meeting. Attendance of a director at a regular or special meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.
- 2.7 Voting. Directors shall vote in person or by proxy executed in writing by the director. No proxy shall be valid after three months from the date of its execution. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and unless otherwise made irrevocable by law. Unless otherwise specified in the Certificate of Formation or these Bylaws, decisions shall be made by majority vote of the directors present in person or by proxy.
- 2.8 Quorum and Manner of Acting. At all meetings of the Board of Directors, the physical presence of at least a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business except as otherwise provided by statute or the Certificate of Formation. Directors present by proxy may not be counted toward a quorum. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by statute, the Certificate of Formation, or these Bylaws, in which case the act of such greater number shall be required to constitute the act of the Board of Directors. If a quorum shall not be present at any meeting of directors, the directors present may adjourn the meeting from time to time until a quorum shall be present. At any such adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally convened.
- 2.9 Action Without a Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent, in writing, setting forth the action so taken, is signed and dated by the number of directors necessary to take the action at a meeting at which all directors were present and voted. Such a consent must be delivered to the Corporation by hand or registered mail, return receipt requested, within sixty (60) days after the earliest dated consent and shall be addressed to the President. Notice of such action shall be promptly given to those directors who did not consent. Any articles or documents filed with the Secretary of State as a result of the taking of

an action by means of a written consent with less than unanimous consent shall state that written consent has been given in accordance with the provisions of Section 22.220 of the Texas Business Organizations Code, as amended, or the corresponding provisions of any successor statute (hereinafter the "TBOC") and that notice has been given to directors who did not consent.

- 2.10** Telephone Meetings. Directors may participate in and hold a meeting of directors by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this paragraph shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.
- 2.11** Procedure and Records. The Board of Directors shall keep regular minutes of its proceedings. The minutes shall be placed in the minute book of the Corporation.
- 2.12** Removal; Resignation. At any special meeting of Directors called expressly for the purpose of removing a Director or Directors, or at an annual meeting of Directors (but not by written consent), any Director may be removed with or without cause, by a vote of the three-fourths of the number of remaining Directors. Any director may resign by giving written notice of resignation to the President or the Secretary of the Corporation
- 2.13** Compensation. Directors shall not receive any compensation for their services as such, but by resolution of the Board of Directors, a reasonable amount may be allowed for reimbursement for the cost of attendance at each regular or special meeting of the Board of Directors. Directors may also be reimbursed for other reasonable expenses incurred on behalf of the Corporation, subject to approval by the Board of Directors.

### **ARTICLE THREE**

#### **3** *Officers.*

- 3.1** General Officers. The officers of the Corporation shall consist of a president, treasurer, and secretary, and may also consist of a Chair of the Board, one or more vice-presidents, and such other officers and assistant officers as the directors may from time to time deem necessary or desirable. The same person may hold any two or more offices, except the offices of President and Secretary.

There shall be no compensation paid for the services rendered by any officer of the Corporation, unless expressly authorized by the Board of Directors.

**3.2** Appointment; Term of Office. Officers shall be appointed by the directors and shall serve for one year and thereafter until their successors are appointed and qualified. Officers shall be eligible for re-appointment.

**3.3** Chair of the Board. The Chair of the Board must be a member of the Board of Directors, but his or her election as Chair of the Board may occur at the same meeting at which he or she becomes a member of the Board of Directors. The powers and duties of the Chair of the Board shall be as follows:

**3.3.1** To preside at meetings of the Board of Directors;

**3.3.2** Subject to confirmation by the Board of Directors, to nominate the members, and designate the powers and duties, of all committees;

**3.3.3** To advise and counsel the President and other officers of the Corporation; and

**3.3.4** To perform such other duties as may be prescribed from time to time by the Board of Directors.

**3.4** President. The President need not be a member of the Board of Directors. The powers and duties of the President shall be as follows:

**3.4.1** To act in all matters as Chief Executive Officer of the Corporation;

**3.4.2** To execute for and in the name of the Corporation such written instruments and documents as may be necessary or desirable;

**3.4.3** Generally, to perform all such duties as pertain to the office of Chief Executive Officer or as may be required by the Board of Directors; and

**3.4.4** To supervise the business and affairs of the Corporation and to report annually on the general activities of the Corporation for the previous year.

**3.5** Vice President. The Vice President shall, in the absence or during the disability of the President, have all the powers and perform all the duties of the President. The Vice President need not be a member of the Board of Directors.

- 3.6** Secretary. The Secretary shall report directly to the President. The Secretary need not be a member of the Board of Directors. The powers and duties of the Secretary shall be as follows:
- 3.6.1** To keep full and complete records of the meetings of the directors and any committees;
  - 3.6.2** To give or cause to be given all notices that may be proper or necessary. In case of failure for any reason of the Secretary to give any such notice, then such notice may be given by the President or by any person authorized by the President;
  - 3.6.3** To conduct the official correspondence of the Corporation;
  - 3.6.4** Where appropriate, to join the President in the execution and delivery of deeds, contracts, and other instruments and to affix the corporate seal as needed;
  - 3.6.5** To keep and preserve the minute book and all other books and records of the Corporation and the corporate seal; and
  - 3.6.6** Generally to perform all duties that pertain to the office of Secretary or that may be required by the Board of Directors or the President.
- 3.7** Treasurer. The Treasurer shall be responsible for the collection and custody of all monies and securities of the Corporation and shall, under the supervision of the Board of Directors, make disbursements and have charge of all financial affairs of the Corporation. He or she shall have charge and supervision of the books and records of account of the Corporation. The Treasurer shall render financial statements to the Board of Directors when required at regular and annual meetings and at such other times as shall be required by the Board of Directors. The Treasurer shall have the usual powers and duties incident to the office of Treasurer and shall perform all such additional duties as may be assigned to him or her by the Board of Directors. The Treasurer shall also periodically review the expenses of the President. The Treasurer need not be a member of the Board of Directors.
- 3.8** Assistant Secretaries. The duties of the Secretary may also be performed by any Assistant Secretary of the Corporation. The Secretary shall have the power and authority to appoint one or more Assistant Secretaries of the Corporation, which power shall not be exclusive of any right of the Board of Directors to elect or

appoint such officer. The Assistant Secretaries need not be members of the Board of Directors.

- 3.9 Assistant Treasurers. The duties of the Treasurer may also be performed by any Assistant Treasurer of the Corporation. The Treasurer shall have the power and authority to appoint one or more Assistant Treasurers of the Corporation, which power shall not be exclusive of any right of the Board of Directors to elect or appoint such officer. The Assistant Treasurers need not be members of the Board of Directors.
- 3.10 Resignation. Any officer may resign by giving written notice to the President or the Secretary of the Corporation.
- 3.11 Removal. Any officer may be removed by action of the Board of Directors whenever in its judgment the best interests of the Corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.
- 3.12 Compensation. No officer shall receive compensation for his services, but may be reimbursed for reasonable expenses incurred in carrying out the duties of his office, subject to the approval of the Board of Directors.

## ARTICLE FOUR

### 4 *Committees*

- 4.1 Power to Appoint; Function. The Board of Directors may appoint from their number, or from among such other persons as the Board of Directors may see fit, one or more committees, and at any time may appoint additional members thereto. The members of any such committee shall serve during the pleasure of the Board of Directors. Such committees shall advise with and assist the officers and directors of the Corporation in all matters designated by the Board of Directors. Each such committee may, subject to the approval of the Board of Directors, prescribe rules and regulations for the call and conduct of meetings of the committee and other matters relating to its procedure.
- 4.2 Compensation. The members of any committee shall not receive any compensation for their services, but may be reimbursed for reasonable expenses incurred in attendance at meetings or for other reasonable expenses incurred on behalf of the Corporation, subject to approval by the Board of Directors.

## ARTICLE FIVE

### 5 *Dissolution and Pledge of Assets.*

- 5.1 The Corporation hereby pledges all of its assets for use solely in performing the Corporation's charitable and educational functions. Upon discontinuance of the Corporation by dissolution or otherwise, the assets of the Corporation shall, after all liabilities of the Corporation have been paid or provision has been made for their payment in accordance with Sections 11.053 and 22.304 of the TBOC, be distributed to such organization or organizations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes as shall at that time have purposes similar to those of the Corporation and which qualify as charitable organizations under Internal Revenue Code Section 501(c)(3) or described by Internal Revenue Code Section 170(c)(1) or (2). In the event of dissolution, no director or officer of the Corporation and no private individual will be entitled to share in the distribution of assets of the Corporation (other than the payment of any outstanding liability owed to such person by the Corporation).

## ARTICLE SIX

### 6 *Limitation of Liability of Directors.*

- 6.1 Limitation. A director of the Corporation shall not be liable to the Corporation for monetary damages for an act or omission in the director's capacity as a director, except that this Article does not eliminate or limit the liability of a director to the extent the director is found liable for: (a) a breach of a director's duty of loyalty to the Corporation; (b) 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 that involves intentional misconduct or a knowing violation of the law; (c) a transaction from which a director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or (d) an act or omission for which the liability of a director is expressly provided by an applicable statute.
- 6.2 Duration. Neither the amendment nor repeal of this Article, nor the adoption of any amended Bylaws or amended and restated Certificate of Formation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise, prior to such amendment, repeal or adoption of any inconsistent provision. If the TBOC or any successor law is amended to



authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the TBOC, or any successor law, as so amended from time to time.

## ARTICLE SEVEN

### 7 *Indemnification*

7.1 Policy of Indemnification; Advancement of Expenses. To the fullest extent permitted by the TBOC, the Corporation shall indemnify any director or officer of the Corporation against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses (including court costs and attorneys' fees) actually incurred by any such person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director or officer and shall advance to such person such reasonable expenses as are incurred by him or her in connection therewith.

7.2 Rights Not Exclusive. The rights of directors or officers set forth in this Article shall not be exclusive of any other right which directors or officers may have or hereafter acquire relating to the subject matter hereof.

7.3 Insurance. To the fullest extent permitted by the TBOC, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Corporation or who is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic Corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise against any liability asserted against him or her and incurred by him or her in such a capacity or arising out of his or her status as such a person, whether or not the Corporation would have the power to indemnify him or her against that liability pursuant to the applicable provisions of the TBOC, all as permitted by the TBOC.

7.4 Definitions. As used in this Article, the following terms shall have the following meanings:

7.4.1 "Director" shall mean any person who is or was a director of the Corporation and any person who, while a director of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee,

agent, or similar functionary of the Corporation or of another foreign or domestic Corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

7.4.2 “Officer” shall mean any person who is or was an officer of the Corporation and any person who, while an officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of the Corporation or of another foreign or domestic Corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

7.4.3 “Proceeding” shall mean any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitratative, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

## **ARTICLE EIGHT**

### **8     *Miscellaneous.***

8.1     Checks. All checks, drafts, or orders for payment of money and notes or other evidences of indebtedness of the Corporation shall be signed by such officer or officers, or such other person or persons as the Board of Directors shall from time to time designate.

8.2     Bank Accounts. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

8.3     Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors.

8.4     Waiver of Notice. Whenever any notice is required to be given under the provisions of the TBOC or under the provisions of the Certificate of Formation or the Bylaws of the Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

- 8.5 Dividends and Distributions. No dividends shall be paid and no part of the net earnings of the Corporation shall be distributed to or inure to the benefit of any director or officer of the Corporation or any private individual; provided, however, that private individuals may benefit from a grant provided by the Corporation, provided such grant complies with Internal Revenue Code §4945(g), reasonable compensation may be paid for services rendered to or for the Corporation or expenses may be reimbursed or paid in furtherance of one or more of its purposes, reasonable interest may be paid on any outstanding liability owed by the Corporation to any director or officer of the Corporation or any private individual, and the Corporation may indemnify its directors, officers, and employees with respect to actions taken in their capacities as such to the extent permitted under the TBOC, the Certificate of Formation of the Corporation, these Bylaws, and Internal Revenue Code.
- 8.6 Books and Records. The Corporation shall keep correct and complete books and records of account and minutes of the proceedings of the Board of Directors. The Corporation shall retain all records required to be maintained by a private Corporation, as defined in Internal Revenue Code Section 509(a), including records pertaining to all grants to individuals as required by Treasury Regulation Section 53.4945-4(c)(6), which include (i) all information the Corporation secures to evaluate the qualification of potential grantees, (ii) identification of grantees (including any relationship of any grantee to the Corporation sufficient to make such grantee a “disqualified person” of the Corporation within the meaning of Internal Revenue Code Section 4946(a)(1)(c)), (iii) specification of the amount and purpose of each grant, and (iv) the follow-up information which the Corporation obtains in supervising its grants.
- 8.7 Construction. If any portion of these Bylaws shall be invalid or inoperative under applicable law, then, so far as reasonable and possible, the remainder of these Bylaws shall be considered valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative.
- 8.8 Amendments. These Bylaws may be amended, altered, changed, or repealed only with the approval of at least three-fourths of the members of the Board of Directors; provided, however, that the Board of Directors shall not authorize any amendment, alteration, change, or repeal which would have the effect of disqualifying the Corporation as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or would have the effect of disqualifying contributions to the Corporation for a deduction under

Section 170(c)(2), Section 2055(a)(2) or Section 2522 of the Internal Revenue Code of 1986, as amended.

## **CERTIFICATE OF SECRETARY**

### **I CERTIFY THAT:**

I am the duly qualified and acting Secretary of Heroes of Midlothian Foundation, a duly organized and existing Texas nonprofit corporation (the “**Corporation**”). The foregoing is a true and correct copy of the Bylaws of the Corporation reviewed by each member of the Board of Directors of the Corporation and adopted by the Board of Directors of the Corporation by the Unanimous Written Consent of the Board of Directors of the Corporation dated February 27, 2013. Said Bylaws conform to the Certificate of Formation, have never been modified or repealed, and are now in full force and effect.

Dated: February 27, 2013

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TOBY GONZALEZ  
SECRETARY OF THE CORPORATION