Form 202—General Information
(Certificate of Formation – Nonprofit Corporation)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. *This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.*

Commentary

A nonprofit corporation is governed by titles 1 and 2 of the Texas Business Organizations Code (BOC). Title 1, chapter 3, subchapter A, of the BOC governs the formation of a nonprofit corporation and sets forth the provisions required or permitted to be contained in the certificate of formation. Nonprofit corporations may be incorporated for any lawful purpose. Corporations formed for the purpose of operating a nonprofit institution, including an institution devoted to a charitable, benevolent, religious, patriotic, civic, cultural, missionary, education, scientific, social, fraternal, athletic, or aesthetic purpose, may be formed and governed only as a nonprofit corporation under the BOC and not as a for-profit corporation. In a nonprofit corporation, no part of the income of the corporation may be distributed to a member, director or officer of the corporation.

Please note that this form cannot be used to form a corporation authorized by or under a special state statute, such as a water supply corporation, a cemetery corporation or an industrial development corporation.

Taxes: Nonprofit corporations are subject to a state franchise tax and federal income taxes unless an exemption from those taxes is granted. For franchise tax information visit the web site of the Comptroller of Public Accounts at *www.window.state.tx.us/taxinfo/franchise/index.html*. For information on state tax exemption, including applications and publications, visit the Comptroller's Exempt Organizations web site at *www.window.state.tx.us/taxinfo/exempt/index.html* or call (800) 252-5555. For information relating to federal income tax filing requirements, exemptions, federal employer identification numbers, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service (IRS) web site at *www.irs.gov*.

This form does not include any additional statements or provisions that the Texas Comptroller of Public Accounts or the IRS may require as a condition to granting a tax-exempt status. Please refer to IRS publication 557, "Tax-Exempt Status for Your Organization," and Comptroller publication 96-1045, "Guidelines to Texas Tax Exemptions," for further information before completing this form.

Instructions for Form

- **Article 1—Entity Name and Type:** Provide a corporate name. An organizational designation may be used, but is not required. Under section 5.053 of the BOC, if the name chosen is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at *www.sos.state.tx.us/tac/index.shtml*. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to *corpinfo@sos.state.tx.us*. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based

on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate of formation under a name does not authorize the use of a name in violation of another person's rights to the name.

- **Article 2—Registered Agent and Registered Office:** The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The corporation cannot act as its own registered agent; do not enter the corporate name as the name of the registered agent.

  Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the certificate of formation. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

  Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Article 3—Management:** Except as provided by section 22.202 of the BOC, the affairs of a nonprofit corporation are governed by a board of directors.

  Board of Directors: The board of directors may be designated by any name appropriate to the customs, usages, or tenets of the corporation. If managed by a board of directors, three directors are required. A director must be a natural person; there are no residency requirements for directors. Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.).

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for directors, use a business or post office box address rather than a residence address if privacy concerns are an issue.

  Managed by Members: A nonprofit corporation is considered to have vested the management of the corporation in the board of directors unless otherwise provided in the certificate of formation. This certificate of formation also may be used to create a nonprofit corporation that is managed solely by its members. If management of the corporation is to be vested in the nonprofit corporation's members, a statement to that effect must be included in the certificate. If the nonprofit corporation is to be governed *solely* by its members, check the appropriate statement and proceed to Article 4 of this form. *The fact that the individuals named on the board of directors are also members of the nonprofit entity does not mean that the corporation is governed by its members.*

  Article 4—Members: If the corporation will not have members, the certificate of formation must include a statement to that effect. If management of the affairs of the corporation is vested in its members, you also must check statement A in Article 4 of this form. Checking statement B in Article 4 is inconsistent with a corporation that is managed by its members and will result in a rejection of the instrument.

- **Article 5—Purpose:** State the purpose of the corporation in the space provided. A nonprofit corporation may be formed for any lawful purpose or purposes not expressly prohibited under title 1, chapter 2, or title 2, chapter 22, of the BOC, which may be stated as "any or all lawful purposes" in the space provided. While the BOC allows formation with a general purpose, please note that other laws, including the Texas Tax Code and the Internal Revenue Code, may require that the certificate of formation include a more specific purpose statement as a basis for granting a license or a tax-exempt or tax-deductible status. An additional text area is provided to include any additional language or additional provisions that may be needed. In addition, the "Supplemental Provisions/Information" section may be used if the additional text area provided in this section is not sufficient.

- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an article within this form or to provide for additional articles to contain optional provisions. This space also may be used to provide for additional statements or provisions needed by the Texas Tax Code or Internal Revenue Code as a basis for granting a tax-exempt or tax-deductible status.

  Manner of Distribution: Section 22.304 of the BOC provides that after all liabilities and obligations of the corporation in the process of winding up are paid, satisfied, and discharged in accordance with chapter 11 of the BOC, the property of the corporation shall be applied and distributed as follows:

  - Property held by the corporation on a condition requiring return, transfer, or conveyance because of the winding up or termination shall be returned, transferred, or conveyed in accordance with that requirement; and
  - The remaining property shall be distributed only for tax-exempt purposes to one or more organizations that are exempt under Section 501(c)(3), or described by Section 170(c)(1) or (2) of the Internal Revenue Code as provided in a plan of distribution adopted by the corporation under the BOC unless the certificate of formation provides otherwise.

  If the corporation is not applying and distributing its property in accordance with section 22.304, the certificate of formation must include a statement describing the manner of distribution in the Supplemental Provisions/Information section of this form. If the space provided is not sufficient, an addendum may be included and attached to this form.

  Duration: Pursuant to section 3.003 of the BOC, a Texas nonprofit corporation exists perpetually unless provided otherwise in the certificate of formation. If formation of a corporation with a stated period of duration is desired, use the "Supplemental Provisions/Information" section of this form to provide for a limited duration.

- **Organizer:** Only one organizer is required for the formation of a nonprofit corporation. An organizer may be any person having the capacity to contract for the person or for another; that is, a natural person 18 years of age or older, or a corporation or other legal entity. There are no residency requirements for an organizer.

- **Effectiveness of Filing:** A certificate of formation becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state

the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file with the secretary of state a statement regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity will be shown as "in existence" on the records of the secretary of state.

- **Execution:** The organizer must sign the certificate of formation, but it does not need to be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by an organizer is an affirmation that the person named in the certificate of formation has consented to serve in that capacity. (BOC § 5.2011, effective January 1, 2010)

  A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:** The filing fee for a certificate of formation for a nonprofit corporation is **$25**. Fees may be paid by personal checks, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

  Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas, 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **Registered Agent/Office:** A corporation is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the certificate of formation. Failure to maintain a registered agent and registered office may result in the involuntary termination of the corporation.

- **Periodic Reports:** Under section 22.357 of the BOC, the secretary of state may require a nonprofit corporation to file a report not more often than once every four years. The secretary of state will send notice to the corporation at its registered office as to the time the report is due. Failure to file the report when requested to do so by the secretary will result in the involuntary termination of the corporation.

- **Information for Public Inspection:** Records, books and annual reports of the corporation's financial activity are required to be maintained at the registered office or principal office for three years after the close of a fiscal year. The corporation shall make those documents available to the

public for inspection and copying during regular business hours and may charge a reasonable fee for preparing a copy of those records. Failure to maintain those records, prepare an annual report or make the record or report available to the public is a Class B misdemeanor. These provisions do not apply to those corporations exempted under section 22.355 of the BOC. Also note that a nonprofit corporation supported in whole or in part by public funds or that spends public funds is considered a governmental body under chapter 552 of the Government Code (Public Information Act) and thus subject to the provisions of that Act regarding access to public information. In addition, a property owner's association may also be subject to the Public Information Act pursuant to section 552.0035 of the Government Code.

Revised 05/11

Form 202 **(Revised 05/11)** Submit in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX: 512/463-5709 **Filing Fee: $25**	**Certificate of Formation** **Nonprofit Corporation**	This space reserved for office use.

Article 1 – Entity Name and Type

The filing entity being formed is a nonprofit corporation. The name of the entity is:

AHFC NIGHTINGALE NON-PROFIT CORPORATION

Article 2 – Registered Agent and Registered Office

(See instructions. Select and complete either A or B and complete C.)

☐ A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

☒ B. The initial registered agent is an individual resident of the state whose name is set forth below:

Mandy		DeMayo	
First Name	*M.I.*	*Last Name*	*Suffix*

C. The business address of the registered agent and the registered office address is:

1000 East 11th Street, 2nd Floor	Austin	TX	78702
Street Address	*City*	*State*	*Zip Code*

Article 3 – Management

The management of the affairs of the corporation is vested in the board of directors. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of members or until their successors are elected and qualified are as follows:

A minimum of three directors is required.

Director 1					
Joe		Pantalion			
First Name	*M.I.*	*Last Name*			*Suffix*
1000 East 11th Street, 2nd Floor	Austin		TX	78702	USA
Street or Mailing Address	*City*		*State*	*Zip Code*	*Country*

Director 2					
Rosie		Truelove			
First Name	*M.I.*	*Last Name*			*Suffix*
1000 East 11th Street, 2nd Floor	Austin		TX	78702	USA
Street or Mailing Address	*City*		*State*	*Zip Code*	*Country*

Director 3					
Rebecca		Giello			
First Name	*M.I.*	*Last Name*			*Suffix*
1000 East 11th Street, 2nd Floor	Austin		TX	78702	USA
Street or Mailing Address	*City*		*State*	*Zip Code*	*Country*

OR

☐ The management of the affairs of the corporation is to be vested in the nonprofit corporation's members.

Article 4 – Membership

(See instructions. Do not select statement B if the corporation is to be managed by its members.)

☐ A. The nonprofit corporation shall have members.

☒ B. The nonprofit corporation will have no members.

Article 5 – Purpose

(See instructions. This form does not contain language needed to obtain a tax-exempt status on the state or federal level.)

The nonprofit corporation is organized for the following purpose or purposes:
Aiding Austin Housing Finance Corporation ("Austin HFC"), an instrumentality of the City of Austin, in its essential governmental functions and duties to foster affordable rental housing for low- and very low-income households in Austin by acquiring and constructing new rental housing, more particularly located at 5900 Carles Merle Drive.

The nonprofit corporation will serve as Managing Member of the Limited Liability Company that will own and operate the development.

The following text area may be used to include any additional language or provisions that may be needed to obtain tax-exempt status.

The corporation is formed pursuant to Chapter 22, Texas Business Organizations Code (Nonprofit Corporations). The corporation is directed by the Austin HFC, in accordance with Chapter 394, Texas Local Government Code (Housing Finance Corporations in Municipalities and Counties), which authorizes the corporation to assist and act on behalf of the Austin HFC and the City and to engage in activities that promote the purpose for its creation. The corporation is organized and will be operated exclusively for one or more charitable purposes as defined by Section 501(c)(4) of the Internal Revenue Codeof 1986, as amended, or any successor federal tax code.
The rental housing development the corporation is being formed to acquire and construct and manage as the Managing Member of a Limited Liability Corporation will provide approximately 174 rental units in Austin, Travis County, Texas. A minimum of 141 units will be reserved for households with yearly household incomes at or below 60% of Austin's Median Family Income (MFI), including 36 units for households with yearly household incomes at or below 50% MFI, and 16 units affordable to households with incomes at or below 30% MFI. 33 units will have no income restrictions.

Supplemental Provisions/Information

(See instructions.)

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Organizer

The name and address of the organizer:

Rosie Truelove
Name

1000 East 11th Street, 2nd Floor	Austin	TX	78702
Street or Mailing Address	*City*	*State*	*Zip Code*

Effectiveness of Filing (Select either A, B, or C.)

A. ☒ This document becomes effective when the document is filed by the secretary of state.

B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: _____

_____
Signature of organizer

Rosie Truelove
Printed or typed name of organizer