

RESOLUTION NO. 20171214-AHFC003

WHEREAS, the Austin Housing Finance Corporation (AHFC) was created by the City of Austin in accordance with Chapter 394, Local Government Code for the public purpose and function, among others, of providing a means to finance the cost of residential developments that will provide decent, safe, and sanitary housing at affordable prices for residents of the City of Austin; and

WHEREAS, Chapter 22, Texas Business Organization Code (Code), authorizes the creation and organization of non-profit corporations which may act as a duly constituted affiliate of a Texas housing finance corporation to aid and assist the housing finance corporation in the performance of one or more of its functions; and

WHEREAS, AHFC desires to further its public purposes and functions by creating a related, affiliate, non-profit corporation and instrumentality named AHFC Nightingale Non-Profit Corporation (Non-Profit Corporation), appointing and maintaining its board of directors, and otherwise exercising control over the Non-Profit Corporation, its dissolution and its assets; and

WHEREAS, by creating the Non-Profit Corporation, AHFC intends to serve as managing member of a to-be-formed Limited Liability Company, to be created under the laws of the State of Texas (Borrower), which will acquire the property and construct and operate a project (Project) of approximately 174 units of mixed-income rental housing located in the

Goodnight Ranch Planned Unit Development (PUD), more particularly, located at 5900 Charles Merle Drive. The Project will be known as The Nightingale Apartments; and

WHEREAS, it is expected that AHFC or an affiliated entity will ground lease the land for the Project to the Borrower under the terms of a ground lease; and

WHEREAS, AHFC desires that the Non-Profit Corporation have and exercise all of the powers prescribed by the Code; and

WHEREAS, AHFC desires that the Non-Profit Corporation's certificate of formation, articles of incorporation and by-laws shall be in the form and be executed, approved and filed in the manner prescribed by this Resolution; and

WHEREAS, the Board of Directors desires to authorize and approve the certificate of formation, articles of incorporation and by-laws of the Non-Profit Corporation, appoint the board of directors of the Non-Profit Corporation, and take other action with respect to the Non-Profit Corporation; **NOW, THEREFORE**,

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE
AUSTIN HOUSING FINANCE CORPORATION:**

Section 1. The Board of Directors finds, determines, recites, and declares that it is wise, expedient, necessary, and advisable that the Non-Profit Corporation be formed. The Board of Directors therefore approves the creation and organization of the Non-Profit Corporation under the provisions of the Code as a duly constituted affiliate, non-profit corporation and instrumentality of AHFC. The Board of Directors authorizes the Non-Profit Corporation to

aid, assist, and act on its behalf and for the benefit of AHFC in the performance of its functions to develop, construct, and acquire, affordable housing in Austin; to participate as managing member of the Borrower, which will own the Project and ground lease the land for the Project from the AHFC or an affiliated entity; to promote, develop, encourage and maintain the Project as decent, safe, and sanitary housing at affordable rental rates for a period of 99 years; and to ensure to the maximum extent possible and to the extent of the Non-Profit Corporation's percentage of ownership, that the Project helps to achieve the public purpose and functions of AHFC; and to perform the other purposes described in the Non-Profit Corporation's Articles of Incorporation.

Section 2. The Board of Directors approves the Certificate of Formation of the Non-Profit Corporation in substantially the form attached as **Exhibit "A"** and authorizes the incorporator of the Non-Profit Corporation to file such Certificate of Formation with the Secretary of State of the State of Texas in the manner provided by law.

Section 3. The Board of Directors approves the Articles of Incorporation of the Non-Profit Corporation in substantially the form attached as **Exhibit "B"** and authorizes the incorporator of the Non-Profit Corporation to execute and file such Articles of Incorporation as necessary and maintain them in the corporate records in the appropriate manner as provided by law.

Section 4. The Board of Directors appoints the initial board of directors of the Non-Profit Corporation, with their terms of office to expire at the time indicated.

Name	Term Expires
Joe Pantalione	December 31, 2020
Rosie Truelove	December 31, 2020
Rebecca Giello	December 31, 2020

Joe Pantalione is designated as the President of the Non-Profit Corporation. Other officers shall be designated as provided in the By-laws.

Section 5. The Board of Directors approves the By-laws of the Non-Profit Corporation in substantially the form attached as **Exhibit "C"** and authorizes the president of the corporation to execute and file them in the corporate records in the manner provided by law.

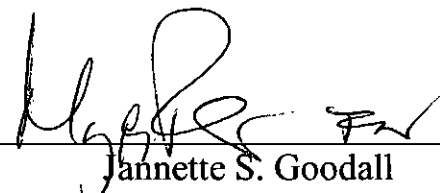
Section 6. The Board of Directors finds, determines, recites, and declares that any notes, bonds, loans, debts or other obligations of the Non Profit Corporation shall not be deemed an indebtedness, liability, general or moral obligation or pledge of the faith or credit of the State of Texas, the City of Austin, AHFC, or any other political subdivision or governmental unit, nor shall any such notes, bonds, loans, debts or other obligations constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction or an agreement, obligation, or indebtedness of AHFC, the City of Austin, the State of Texas within the meaning of AHFC's Articles of Incorporation, the City Charter or of any constitutional or statutory provision whatsoever.

Section 7. The Board of Directors finds, determines, recites, and declares that it is the purpose, intent, and desire of AHFC in approving the creation of the Non-Profit Corporation

and its Certificate of Formation, Articles of Incorporation and By-laws; that such actions and the Non-Profit Corporation is hereby authorized comply with the requirements of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations and Internal Revenue Service rulings promulgated thereunder and the rulings issued pursuant thereto, such that the Non-Profit Corporation shall be determined to be a constituted nonprofit corporation acting as an asset of AHFC pursuant to the provisions of the Code and Chapter 394, Texas Local Government Code.

Section 8. This Resolution shall take effect immediately upon its passage and approval by the Board of Directors.

ADOPTED: December 14, 2017 **ATTEST:**


Jannette S. Goodall
Secretary

**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

DRAFT

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



This space reserved for office use.

Certificate of Formation
Nonprofit Corporation

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

First Name

M.I.

DeMayo

Last Name

Suffix

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

1000 East 11th Street, 2nd Floor

Street Address

Austin

City

TX

State

78702

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		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
1000 East 11th Street, 2nd Floor	Austin	TX	78702	USA
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

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

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

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 Code of 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

DRAFT

**ARTICLES OF INCORPORATION
OF
AHFC NIGHTINGALE NON-PROFIT CORPORATION**

I, the undersigned natural person, of the age of eighteen (18) years or more and a citizen of the State of Texas, acting as incorporator of a corporation under Chapter 22 of the Texas Business Organizations Code (Code), do hereby adopt the following Articles of Incorporation for such corporation.

ARTICLE ONE

The name of the corporation (Corporation) is AHFC NIGHTINGALE NON-PROFIT CORPORATION.

ARTICLE TWO

The Corporation is a non-profit corporation, and is related to, affiliated with and an instrumentality of the Austin Housing Finance Corporation (AHFC), a Texas public, non-profit corporation.

ARTICLE THREE

The period of the Corporation's duration is perpetual.

ARTICLE FOUR

The Corporation is organized and shall be operated for the sole purpose of: (i) aiding, assisting, and acting on behalf of AHFC in the performance of its essential governmental functions to promote the common good and general welfare of AHFC on behalf of and for the benefit of the general public, the City of Austin and this state; (ii) fostering mixed-income housing in Austin, Travis County, Texas, by causing a minimum of 174 rental housing units, located at 5900 Charles Merle Drive, to be known as The Nightingale Apartments, for occupancy by persons and families with incomes that do not exceed the allowed amounts as stated in either a Land Use Restriction Agreement between the Owner and the Texas Department of Housing and Community Affairs, and/or other obligation(s) of the Owner which restrict tenant incomes, adjusted for household size, to be acquired, constructed, owned, operated and disposed of, and by having the Corporation as the managing member of a to-be-formed limited liability company which will own the Nightingale Apartments; (iii) serving as the managing member of the Limited Liability Company which will

acquire, construct, own and operate The Nightingale Apartments, perform all obligations and duties under the Limited Liability Company agreement, and incur all debts and obligations contemplated under the Limited Liability Company; (iv) promoting, developing, encouraging and maintaining The Nightingale Apartments as decent, safe, and sanitary housing and at affordable prices; and (v) ensuring to the maximum extent possible that the Nightingale Apartments helps to achieve the public purposes and functions of the AHFC, the Corporation shall: [a] not engage in any business or activity other than the acquisition, development, construction, ownership and operation of The Nightingale Apartments, whether directly or indirectly as the managing member of the Limited Liability Company, or [b] not incur or assume any indebtedness, unsecured trade debt incurred in the ordinary course of business, indebtedness incurred for the acquisition, construction, ownership, operation or disposition of The Nightingale Apartments or contemplated in any way under the Limited Liability Company agreement, and indebtedness incurred or assumed in carrying out the Corporation's obligations or rights as the managing member of the Limited Liability Company, or [c] not violate or fail to maintain the Corporation's identity as an entity separate from any other person or entity; and, provided further, the Corporation may perform any and all lawful activities which may be reasonably necessary, useful or desirable for the furtherance, accomplishment, fostering, or attaining any of the foregoing purposes, either directly or indirectly, and either alone or in conjunction or cooperation with others, whether such as corporations, firms, associations, trusts, institutions, foundations, or governmental bureaus, departments or agencies. The Corporation is formed pursuant to the provisions of the Code and as directed by the AHFC in accordance with Chapter 394, Texas Local Government Code (Local Government Code), which authorizes the Corporation to assist and act on behalf of AHFC and the City and to engage in activities in the furtherance of the purposes for its creation. Further, the Corporation will be organized and will be operated exclusively for one or more charitable purposes, within the meaning of Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, or any successor federal tax code (the "Federal Code").

ARTICLE FIVE

POWERS

The activities of the Corporation and the application of the funds and assets of the Corporation shall be limited to the purposes stated herein, but the Corporation shall: (i) have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of the State to non-profit corporations incorporated under the Code; and (ii) have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in the State 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.

ARTICLE SIX

MEMBERSHIP

The Corporation shall have no members and shall have no stock.

ARTICLE SEVEN

INITIAL REGISTERED OFFICE AND AGENT

The street address of the initial registered office of the Corporation is in care of AHFC, 1000 East Eleventh Street, Suite 200, Austin, Texas, 78702, and the name of its initial registered agent at such address is Mandy DeMayo.

ARTICLE EIGHT

BOARD OF DIRECTORS

All powers of the Corporation shall be vested in a Board of Directors (the "Board") consisting of three (3) persons. The initial directors of the Corporation (the "Director" or "Directors") shall be those persons named in this Article Eight. Each initial Director shall serve for the term expiring on the date set forth in this Article Eight. Subsequent Directors shall be appointed to the Board of the Corporation by the Board of Directors of AHFC. Except as provided in the Articles of Incorporation, each Director shall serve for the term provided in the Bylaws. Any Director may be removed from office at any time, with or without cause, by the Board of Directors of AHFC. The number of Directors may only be increased or decreased by an amendment to these Articles of Incorporation and may never be decreased to less than three (3).

To be qualified to serve as a Director, a person must be an employee of AHFC or the City and be at least eighteen (18) years old. AHFC shall designate the president of the Corporation. AHFC may appoint the number of ex-officio, non-voting members of the Board that is desired. All other matters pertaining to the internal affairs of the Corporation shall be governed by the By-laws of the Corporation, so long as such By-laws are not inconsistent with these Articles of Incorporation, or the laws of the State. The names, addresses, positions, and terms of office of the initial Directors, each of whom resides within the state and is an employee of the City; are:

<u>NAME</u>	<u>ADDRESS</u>	<u>POSITION</u>	<u>TERM EXPIRES</u>
Joe Pantalion	1000 East 11 th Street, 2 nd Floor Austin, TX 78702	Director	December 31, 2020
Rosie Truelove	1000 East 11th Street, 2 nd Floor Austin, TX 78702	Director	December 31, 2020
Rebecca Giello	1000 East 11th Street, 2 nd Floor Austin, TX 78702	Director	December 31, 2020

ARTICLE NINE

LIMITATION ON LIABILITY OF DIRECTORS

To the fullest extent permitted by Texas statutes, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits broader limitation than permitted prior to such amendment), a Director shall not be liable to the Corporation for monetary damages for an actor omission in the Director's capacity as a Director. Any repeal or amendment of this Article Nine by the Directors shall be prospective only and shall not adversely offset any limitation on the personal liability of a Director existing at the time of such repeal or amendment.

ARTICLE TEN

RESTRICTIONS AND REQUIREMENTS

Regardless of any other provisions of these Articles of Incorporation or the laws of the State, the Corporation shall not (i) permit any part of the net earnings of the Corporation to inure to the benefit of any private interest or private individual (except that reasonable compensation may be paid for personal services rendered to or for the Corporation in effecting one or more of its purposes); (ii) devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; or (iii) participate in, or intervene in (in each case either directly or indirectly), political campaigns on behalf of or in opposition to any candidate for public office. Any income earned by the Corporation after payment of reasonable expenses, debt and establishing a reserve with respect to the Timbers Apartments shall accrue only to the benefit of AHFC, unless AHFC shall otherwise direct in accordance with the Local Government Code.

Any notes, bonds, loans, debts or other obligations of the Corporation shall not be deemed an indebtedness, liability, general or moral obligation or pledge of the faith or credit of the State of Texas, the City of Austin, AHFC or any other political subdivision or governmental unit, nor shall any such notes, bonds, loans, debts or other obligations constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction or an agreement, obligation, or indebtedness of AHFC, the City of Austin or the State of Texas within the meaning of AHFC's Articles of Incorporation, the City Charter or of any constitutional or statutory provision whatsoever.

AHFC shall, at all times, have an unrestricted equal right to receive any income earned by the Corporation, exclusive of amounts needed to cover reasonable expenditures and reasonable reserves for future activities. The Corporation shall conduct its affairs and activities so as to insure that upon its dissolution full legal title to all property of the Corporation with respect to which such indebtedness was incurred shall vest in AHFC.

ARTICLE ELEVEN

AMENDMENTS TO ARTICLES OF INCORPORATION

AND BYLAWS

The articles of incorporation, except Article Four for so long as any bonds are outstanding, and the by-laws of the Corporation may at any time and from time to time be amended so as to make any changes therein and add any provisions thereto which might have been included in the articles of incorporation or the by-laws in the first instance. Any such amendment shall be effected in either of the following manners: (i) the Board of the Corporation shall file with the Board of Directors of AHFC an application in writing seeking permission to amend the articles of incorporation or the bylaws, specifying in such application the amendment proposed to be made, the Board of Directors of AHFC shall consider such application and, if it shall by appropriate resolution duly find and determine that it is wise, expedient, necessary or advisable that the proposed amendment be made and shall authorize the same to be made, and shall approve the form of the proposed amendment, then the Board of the Corporation may amend the articles of incorporation or the bylaws by adopting such amendment at a meeting of the Board of the Corporation and, in the case of amendments to the articles of incorporation, delivering articles of amendment to the Secretary of State, or (ii) the Board of Directors of AHFC may, at its sole discretion, and at any time, alter or change the structure, organization, programs, or activities of the Corporation (including the power to terminate the Corporation), subject to any limitations on the impairment of contracts entered into by the Corporation, by adopting amendments to the articles of incorporation or the by-laws of the Corporation at a meeting of the Board of Directors of AHFC and in the case of amendments to the articles of incorporation, delivering articles of amendment to the Secretary of State.

ARTICLE TWELVE

DISSOLUTION OF THE CORPORATION

If the Board of the Corporation or the Board of Directors of AHFC determines by resolution that the purposes for which the Corporation was formed have been substantially met and all debts and obligations incurred by the Corporation have been fully paid or otherwise provided for, the Board of the Corporation shall request the Board of Directors of AHFC to execute and deliver Articles of Dissolution to the Secretary of State which states those facts and declares the Corporation dissolved in accordance with the requirements of the Code. In the event of dissolution or liquidation of the Corporation, at any time and for any reason, all of the funds, properties and assets, including full legal title to all property of the Corporation, shall vest in and be conveyed to AHFC unless AHFC shall otherwise direct in accordance with the Local Government Code.

ARTICLE THIRTEEN

AHFC APPROVAL

On December 14, 2017 the Board of Directors of AHFC duly adopted AHFC Resolution No. _____ approving the form of the Certificate of Formation, these Articles of Incorporation, the form of the initial By-laws and approving the creation of the Corporation.

ARTICLE FOURTEEN

CONSTRUCTION

All references in these Articles of Incorporation to statutes, regulations or other sources of legal authority shall refer to the authorities cited, or their successors, as they may be amended from time to time.

ARTICLE FIFTEEN

INCORPORATOR

The name and street address of the incorporator, who resides within the state and is an employee of the City, is:

NAME

Rosie Truelove

ADDRESS:

City of Austin
Neighborhood Housing & Community
Development Department
1000 East 11th Street, 2nd Floor
Austin, Texas 78702

IN WITNESS WHEREOF, I, Rosie Truelove, the undersigned Incorporator, have hereto set my name this ____ day of _____, 2017.

ROSIE TRUELOVE
Incorporator

**STATE OF TEXAS
COUNTY OF TRAVIS**

Before me, _____, a notary public, on this day personally appeared Rosie Truelove, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of this office this ____ day of _____, 2017.

SEAL

Notary Public Signature

Printed Name of Notary

My commission Expires: _____

**BY-LAWS OF THE
AHFC NIGHTINGALE NON-PROFIT CORPORATION**

ARTICLE 1. NAME.

The name of the corporation is the AHFC Nightingale Non-Profit Corporation (Corporation).

ARTICLE 2. PURPOSE AND DUTIES.

Section 1. Purpose. The purpose of the Corporation is (i) aiding, assisting, and acting on behalf of AHFC in the performance of its essential governmental functions to promote the common good and general welfare of AHFC on behalf of and for the benefit of the general public, the City of Austin and this state; (ii) fostering mixed-income housing in Austin, Texas, by causing an a minimum of 141 low- and medium-income, rental housing units in a proposed rental housing development of 174 units, located within the Goodnight Ranch Planned Unit Development (PUD) at 5900 Charles Merle Drive, Austin, Travis County, Texas and known as The Nightingale Apartments for occupancy by persons and households who have incomes that do not exceed the amounts as stated in the Land Use Restriction Agreement executed between the current owner and the Texas Department of Housing and Community Affairs, and adjusted for family size, to be acquired, constructed, owned, operated and disposed of, and by having the Corporation as the managing member of a to-be-formed Limited Liability Company which will own The Nightingale Apartments; (iii) serving as the managing member of the Limited Liability Company which will acquire, construct, own and operate The Nightingale Apartments, perform all obligations and duties under the Limited Liability Company agreement, and incur all debts and obligations contemplated under the Limited Liability Company; (iv) promoting, developing, encouraging and maintaining The Nightingale Apartments as decent, safe, and sanitary housing and at affordable prices; and (v) ensuring to the maximum extent possible that The Nightingale Apartments helps to achieve the public purposes and functions of the AHFC, the Corporation shall: [a] not engage in any business or activity other than the acquisition, development, rehabilitation, ownership and operation of The Nightingale Apartments, whether directly or indirectly as the managing member of the Limited Liability Company, or [b] not incur or assume any indebtedness, unsecured trade debt incurred in the ordinary course of business, indebtedness incurred for the acquisition, rehabilitation, ownership, operation or disposition of The Nightingale Apartments or contemplated in any way under the Limited Liability Company agreement, and indebtedness incurred or assumed in carrying out the Corporation's obligations or rights as the managing member of the Limited Liability Company, or [c] not violate or fail to maintain the Corporation's identity as an entity separate from any other person or entity; and, provided further, the Corporation may perform any and all lawful activities which may be reasonably necessary, useful or desirable for the furtherance, accomplishment, fostering, or attaining any of the foregoing purposes, either directly or indirectly, and either alone or in conjunction or cooperation with others, whether such as corporations, firms, associations, trusts, institutions, foundations, or governmental bureaus, departments or agencies.

Section 2. Duties. The Corporation shall keep correct and complete books and records of accounts and shall also keep minutes of all proceedings of its Board of Directors. All books and records of the Corporation may be inspected by any director or director's agent or attorney for any proper purpose during regular business hours of the Corporation's principal office. No notice of regular meetings of the Board is required other than a resolution of the Board stating the time and place of meetings.

ARTICLE 3. MEMBERSHIP.

Section 1. Board of Directors. The property and affairs of the Corporation shall be managed and controlled by a Board of Directors (the Board) and, subject to the restrictions imposed by law, the Certificate of Formation, the Articles of Incorporation and these By-Laws, the Board shall exercise all of the powers of the Corporation.

(A) The Board shall consist of three (3) directors, each of whom shall be appointed by the board of directors of the Austin Housing Finance Corporation (AHFC). The Board shall be comprised of one class. Any director may be removed from office by the board of directors of AHFC for cause or at will.

(B) Directors shall serve for a term as approved by the board of directors of AHFC or until their successor is duly elected and qualified provided that the initial term of the directors will be determined by the Articles of Incorporation.

(C) Vacancies in the Board, including vacancies to be filled by an increase in the number of directors, shall be filled by the board of directors of AHFC for terms of no more than three (3) years.

(D) An individual Board member may not act in an official capacity except through the formal and noticed action of the entire Board.

Section 2. Action & Duties of the Board.

(A) A majority of the number of directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board. The directors present at a duly called or held meeting at which a quorum is present may leave the meeting so that less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of directors required to constitute a quorum. If a quorum is present at any time during a meeting, a majority of the directors present may adjourn and reconvene the meeting one time without further notice.

(B) Directors shall exercise ordinary business judgment in managing the affairs of the Corporation. In acting in their official capacity as directors of this Corporation, directors shall act in good faith and take actions they reasonably believe to be in the best interests of the Corporation and that are not unlawful. In all other instances, the Board shall not take any action that they should reasonably believe would be opposed to the Corporation's best interests or would be unlawful. A director shall not be liable if, in the exercise of ordinary care, the director acts in good faith relying on written financial and legal statements provided by an accountant or attorney retained by the Corporation.

(C) The Board shall try to act by consensus. However, the vote of a majority of directors present and voting at a meeting at which a quorum is present shall be sufficient to constitute the act of the Board of Directors unless the act of a greater number is required by law or the By-laws. A director who is present at a meeting and abstains from a vote is not considered to be present and voting for the purpose of determining the decision of the Board. For the purpose of determining the decision of the Board, a director who is represented by a proxy in a vote is considered present.

(D) A director may vote by proxy executed in writing by the director. No proxy shall be valid after three (3) months from the date of its execution.

Section 3. Compensation of Directors. Directors shall not receive salaries from the Corporation for their services. The Board may adopt a resolution providing for payment to directors of a fixed sum and expenses of attendance, if any, for attendance at a meeting of the Board. A director may serve the Corporation in any other capacity and receive compensation for those services. Any compensation that the Corporation pays to a director shall be commensurate with the services performed and reasonable in amount.

Section 4. Removal of Directors. The board of directors of AHFC may remove a director from the Board at any time, with or without cause.

ARTICLE 4. OFFICERS AND DUTIES OF OFFICERS.

Section 1. Titles and Terms of Office. The officers of the Corporation shall be a president, a vice president, a secretary, and a treasurer. The Board may create additional officer positions, define the authority and duties of each such position, and elect or appoint persons to fill the positions. Any two or more offices may be held by the same person, except the offices of president and secretary. Any officer elected or appointed by the Board may be removed by the Board or by resolution of the board of directors of AHFC, with or without cause. The president may only be removed by the board of directors of AHFC. Removal of an officer shall be without prejudice to the contract rights, if any, of the officer.

Section 2. President. The president shall be the chief executive officer of the Corporation. The president shall supervise and control all of the business and affairs of the Corporation. The president shall preside at all meetings of the Board. The president may execute any deeds, mortgages, bonds, contracts, or other instruments that the Board has authorized to be executed. However, the president may not execute instruments on behalf of the Corporation if this power is expressly delegated to another officer or agent of the Corporation by the Board, the Articles of Incorporation, the By-laws, or statute. The president shall perform other duties prescribed by the Board and all duties incident to the office of president.

Section 3. Vice-President. The vice president shall have such powers and duties as may be assigned by the Board and shall exercise the powers of the president during that officer's absence or inability to act. Any action taken by the vice president in the performance of duties as the president shall be conclusive evidence of the absence or inability to act of the president at the time such action was taken. The vice president shall perform other duties as assigned by the president or the Board.

Section 4. Treasurer. The treasurer shall:

(A) have charge and custody of and be responsible for all funds and securities of the Corporation;

(B) receive and give receipts for moneys due and payable to the Corporation from any source;

(C) deposit all moneys in the name of the Corporation in banks, trust companies, or other depositories as provided in these By-laws or as directed by the Board or president.

(D) write checks and disburse funds to discharge obligations of the Corporation. Funds may not be drawn from the Corporation or its accounts for greater than \$5,000 without the signature of both the president or vice president and the signature of the treasurer;

(E) maintain the financial books and records of the Corporation;

(F) prepare financial reports at least annually;

(G) perform other duties as assigned by the president or by the Board;

(H) if required by the Board, give a bond for the faithful discharge of his or her duties in an amount and with surety as determined by the Board; and

(I) perform all of the duties incident to the office of treasurer.

Section 5. Secretary. The secretary shall:

(A) keep the minutes of all meetings of the Board in books provided for this purpose;

(B) attend to the giving and serving of all notices on behalf of the Corporation;

(C) take minutes of the meetings of the Board and keep the minutes as part of the corporate records;

(D) attest to the signature of the officers of the Corporation on all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation;

(E) keep a register of the mailing address of each director, officer, and employee of the Corporation;

(F) perform duties as assigned by the Board or president; and

(G) perform all duties incident to the office of secretary.

ARTICLE 5. PARLIAMENTARY AUTHORITY.

The rules contained in the current edition of Robert's Rules of Order shall govern the Board in all cases to which they are applicable, except when inconsistent with these by-laws or with special rules of order which the Board or the AHFC board of directors may adopt.

ARTICLE 6. ARTICLES OF INCORPORATION AND BY-LAWS.

Section 1. Amendments to Articles of Incorporation and By-laws.

(A) The Articles of Incorporation may at any time and from time to time be amended, provided that the Board files with the AHFC board of directors a written application requesting the AHFC board of directors to approve such amendment to the Articles of Incorporation, specifying in such application the amendment or amendments proposed to be made and explaining the necessity of such amendment(s). If the AHFC board of directors by appropriate resolution finds and determines that it is advisable that the proposed amendment(s) be made, authorizes the same to be made and approves the form of the proposed amendment(s), the Board shall proceed to amend the Articles of Incorporation as provided in the Act. The Articles of Incorporation may also be amended at any time by the AHFC board of directors at its sole discretion by adopting an amendment to the Articles of Incorporation of the Corporation by resolution of the AHFC board of directors and delivering the Articles of Amendment to the Secretary of State as provided in the Act.

(B) These by-laws may be amended by majority vote of the Board and shall be ratified by the AHFC board of directors.

Section 2. Interpretation of Bylaws. These by-laws and all the terms and provision contained herein shall be liberally construed to give effect to the purposes set forth herein. If any word, phrase, clause, sentence, paragraph, section or other part of these by-laws, or the application thereof to any person or circumstance is ever held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of these by-laws and the application of such word, phrase, clause, sentence, paragraph, section or other part of these by-laws to any other person or circumstance shall not be affected thereby.

ARTICLE 7. GENERAL PROVISIONS

Section 1. Principal Office. The principal office of the Corporation shall be located at 1000 East Eleventh Street, Suite 200, Austin, Texas 78702. The Corporation shall have and continuously maintain in the State of Texas a registered office, and a registered agent whose business office is identical with such registered office, as required by the Act. The registered office may be, but need not be, identical with the principal office for the Corporation, and the address of the registered office may be changed from time to time by the Board, pursuant to the requirements of the Act.

Section 2. Fiscal Year. The fiscal year for the corporation shall be from October 1st of a given year through September 30th of the following year.

Section 3. Notice and Waiver of Notice. Whenever any additional notice is required to be given to a director under the provisions of the Articles of Incorporation or these by-laws, such notice shall be deemed sufficient if given by depositing same in a post office box in a stamped addressed envelope to the person entitled to the notice at their last known address or as it appears in the books of the Corporation, if to a holder of corporate bonds, and such notice shall be deemed to have been given on the day of such mailing.

Section 4. Resignations. Any director or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified in the writing, or, if no time is specified, at the time of its receipt by the president or secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly provided for in the resignation.

Section 5. Organizational Control. The board of directors of AHFC may, at its sole discretion, and at any time, alter or change the structure, organization, programs or activities of the Corporation (including the power to terminate the Corporation), subject to any limitation in the Act on the impairment of contracts entered into by the Corporation.

Section 6. Dissolution of the Corporation. Upon dissolution of the Corporation, title to or other interests in any real or personal property owned by the Corporation at such time shall vest in AHFC. Any prior acts and instruments performed or executed by the Board or officers of the Corporation in its name and on its behalf are hereby ratified and confirmed.

ADOPTED this ____ day of December 2017.

AHFC NIGHTINGALE NON-PROFIT CORPORATION

By: _____
Name: JOE PANTALION
President

ATTEST:

Name: ROSIE TRUELOVE
Treasurer