

TEXAS SECRETARY of STATE
HOPE ANDRADE[UCC](#) | [Business Organizations](#) | [Trademarks](#) | [Notary](#) | [Account](#) | [Help/Fees](#) | [Briefcase](#) | [Logout](#)**BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY**

Filing Number: 801440169 **Entity Type:** Domestic Nonprofit Corporation
Original Date of Filing: June 15, 2011 **Entity Status:** In existence
Formation Date: N/A **Non-Profit Type:** N/A
Tax ID: 32044468828 **FEIN:**
Duration: Perpetual

Name: AUSTIN REGENERATION FUND
Address: 301 W 2ND ST
AUSTIN, TX 78701-3906 USA

<u>REGISTERED</u> <u>AGENT</u>	<u>FILING HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED NAMES</u>	<u>ASSOCIATED</u> <u>ENTITIES</u>
Name Marc A. Ott	Address 301 W. 2nd Street Austin, TX 78701 USA			Inactive Date	

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**CERTIFICATE OF FORMATION - NONPROFIT CORPORATION
OF
AUSTIN REGENERATION FUND**

Corporations Section

ARTICLE I - Entity Name and Type

The name of the corporation is AUSTIN REGENERATION FUND (the "Corporation"). The Corporation is being formed as a nonprofit corporation pursuant to the provisions of the Texas Nonprofit Corporation Law, Chapter 22, Business Organizations Code, Section 22.01, et seq. (the "Act").

ARTICLE II - Registered Agent and Registered Office

The initial registered agent of the Corporation is Marc A. Ott, an individual residing within the State of Texas. The business address of the registered agent and the registered office address of the Corporation is 301 W. 2nd Street, Austin, Texas 78701.

ARTICLE III - Management

All powers of the Corporation shall be vested in a Board of Directors consisting of three (3) persons (each a "Director"). To be eligible to serve as a Director, a person must be a resident of the City and at least eighteen (18) years of age.

The City Manager of the City of Austin, Texas (the "City") has selected the following individuals, each of whom resides in the City, to serve as the Corporation's initial Directors:

NAME	ADDRESS
1. Sue Edwards	301 W. 2nd Street Austin, Texas 78704
2. Kevin Johns	301 W. 2nd Street Austin, Texas 78704
3. James Rodney Gonzales	301 W. 2nd Street Austin, Texas 78704

Each of the above initial Directors shall serve a term that expires on September 30, 2014, and shall hold office for such term or until the Director's successor is appointed as set forth below.

Upon the expiration of such term, the City's City Manager shall appoint replacement Directors and each subsequent Director shall serve for a term of three (3) years from the date of appointment or until his or her successor is appointed by the City's City Manager, unless such Director has been appointed to fill an unexpired term, in which case the term of such Director

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shall expire on the expiration date of the term of the Director who he or she was appointed to replace. Any Director may be removed from office at any time, with or without cause, by the City's City Manager.

At the first meeting of the Corporation following the filing of this Certificate of Formation with, and acceptance of same by, the Texas Secretary of State, the existing Directors, by a majority vote, shall appoint officers of the Corporation and members of an Advisory Board, with the members of such Advisory Board to be representative of the communities to be served by the Corporation as set forth in the Corporation's Bylaws. The members of the Advisory Board shall serve for such term as specified by the Directors and such positions shall be re-filled by majority vote of the Directors.

All other matters pertaining to the internal affairs of the Corporation shall be governed by the Bylaws of the Corporation, so long as such Bylaws are not inconsistent with this Certificate of Formation, the Act, or the laws of the State of Texas.

ARTICLE IV - Membership

The Corporation will have no members. The Corporation is organized on a nonstock basis only, and there will be no shareholders in the Corporation.

ARTICLE V - Purpose

The Corporation is formed exclusively for the benefit of, and to assist in carrying out the economic development program and objectives of, the City by generating private investment capital through the New Markets Tax Credit Program (the "N.M.T.C. Program") to be made available for investment in low-income communities (as defined in the law and regulations governing the N.M.T.C. Program). In order to fulfill this purpose, and as required by the N.M.T.C. Program, the Corporation shall (a) apply to the United States Treasury Department's Community Development Financial Institution Fund (the "C.D.F.I. Fund") for designation as a qualified community development entity ("Community Development Entity"); (b) apply to the C.D.F.I. Fund for one or more allocations of tax credits under the N.M.T.C. Program; (c) in the event the Corporation receives an allocation of tax credits under the N.M.T.C. Program, transfer all or a portion of such allocation to one (1) or more for-profit subsidiaries established by the Corporation in accordance with the regulations governing the N.M.T.C. Program for purposes of (i) making qualified low-income community investments (as defined in the law and regulations governing the N.M.T.C. Program) in the service area as defined in the Corporation's application for certification as a Community Development Entity, or (ii) engaging in other activities which qualify under the N.M.T.C. Program; and (d) perform such ongoing asset management, servicing, compliance, and other related functions as necessary to maintain these investments in good standing and ensure compliance with the rules and objectives of the NMTC Program.

The City is the Corporation's "Controlling Entity", as that term is defined by the C.D.F.I. Fund, and the Corporation shall remain so controlled through the term of any written agreements between the Corporation and the C.D.F.I. Fund. The Corporation shall be deemed to be

performing essential public functions; however, the City does not own the Corporation, and provides no guaranty or indemnity in favor of the Corporation.

The Corporation is organized exclusively for charitable, religious and educational purposes as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code") or corresponding section of any future United States Internal Revenue law. Notwithstanding any other provision of this Certificate of Formation, the Corporation will not carry on any other activities not permitted to be carried on by (i) a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or the corresponding provision of any future United States Internal Revenue law, or (ii) a corporation, contributions to which are deductible under Section 170(c)(2) of the Code, or the corresponding provision of any future United States Internal Revenue law.

ARTICLE VI - Corporate Powers

The Corporation is organized and shall be operated exclusively for such charitable purposes described in Article V above and in the Bylaws. The Corporation shall have all such powers as are required by and are consistent with its purposes and shall have and exercise all of the rights, powers, privileges, authority and functions given by the laws of the State of Texas, including the Act, to nonprofit corporations, including, but not limited to, the following:

A. To enter into, make and perform contracts of every sort and kind with any person, firm, association, corporation, municipality, body politic, housing authority, county, state, or with the federal government or any agency or instrumentality thereof, including, without limitation, contracts with the City for such staff support and financial assistance as may be required by the Corporation;

B. To advance or lend money or provide equity capital to any person, association, corporation, municipality, body politic, housing authority, county or state in such manner and upon such terms as is deemed expedient consistent with the N.M.T.C. Program;

C. To borrow money, to acquire, own, hold, sell, negotiate, assign, deal in, exchange, transfer, mortgage, pledge or otherwise dispose of mortgages, notes, evidences of indebtedness, and all other securities or choses in action issued or created by any person, firm, association, corporation, municipality, body politic, housing authority, county, state, or with the federal government or any agency or instrumentality thereof;

D. To sell, lease, sublease, or otherwise make available to any person, firm, association, corporation, municipal, body politic, housing authority, county or state any real estate or interest therein acquired by the Corporation;

E. To employ agents, employees, consultants and independent contractors necessary to carry out the purposes of the Corporation and to fix their compensation and terms and conditions of employment;

F. In connection with the N.M.T.C. Program, to solicit proposals from low-income businesses and from potential investors for projects meeting the economic development goals and objectives of the City and that satisfy the requirements of the N.M.T.C. Program;

G. To attain certification of and maintain its status as a Community Development Entity for purposes of the N.M.T.C. Program; and

H. Without limiting the generality of the foregoing, the Corporation shall have all of the powers, privileges, rights, and immunities necessary or convenient for carrying out the purposes for which the Corporation is formed, and the Directors hereby claim for the Corporation all the benefits, privileges, rights and powers created, given, extended or conferred, now or hereafter, by the provisions of all applicable laws of the State of Texas, pertaining to nonprofit corporations, and any additions or amendments thereto.

Notwithstanding any other provision contained in this Certificate or the Bylaws to the contrary, the Board of Directors, by the unanimous vote of the Directors qualified and able to vote at a validly organized meeting of the Board of Directors, shall have the power to control all aspects of the transfer, allocation, or any other use of tax credits allocated to the Corporation under the N.M.T.C. Program. Any use of such tax credits shall occur through a transfer of tax credit allocation from the Corporation to a subsidiary entity which shall also have been certified as a Community Development Entity by the C.D.F.I. Fund. Any transfer of such tax credit allocation from the Corporation to a subsidiary entity shall be subject to the terms and conditions contained in a written resolution approved by the unanimous vote of the Directors in attendance at a validly organized meeting. Additionally, such transfers must also be approved by the C.D.F.I. Fund and the City, as evidenced by a City Council resolution indicating the amount of the allocation to be transferred and the beneficiary of the sub-allocation of NMTC subsidy.

ARTICLE VII - Director Liability

No Director shall be liable to the Corporation for monetary damages for an act or omission in the Director's capacity as a Director, except for liability (a) for any breach of the Director's duty of loyalty to the Corporation, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) for any transaction from which the Director received an improper benefit, whether or not the benefit resulted from an act taken within the scope of the Director's office, or (d) for acts or omissions for which the liability of a Director is expressly provided by statute. Any repeal or amendment of this Article by the Directors shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director existing at the time of such repeal or amendment. In addition to the circumstances in which a Director is not personally liable as set forth in the preceding sentences, a Director shall not be liable to the fullest extent permitted by any amendment to the Texas statutes hereafter enacted that further limits the liability of a Director.

ARTICLE VIII - Prohibition Against Private Inurement

In accordance with the provisions of Section 501(c)(3) of the Internal Revenue Code, and regardless of any other provisions of this Certificate of Formation or the laws of the State of

Texas, the Corporation: (a) shall not afford pecuniary gain, directly or indirectly, incidentally or otherwise, to its Directors, officers or members of its Advisory Board or any other committee, and no part of the net income or net earnings of the Corporation shall inure to the benefit of any of the foregoing; (b) shall not permit any part of the net earnings of the Corporation to inure to the benefit of any 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); (c) shall not direct any of its activities to attempting to influence legislation by propaganda or otherwise; (d) shall not participate in or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office; (e) shall not attempt to influence the outcome of any election for public office or to carry on, directly or indirectly, any voter registration drives; and (f) shall not take any other action that would be inconsistent with the requirements for tax exemption under Section 501(c)(3) of the Internal Revenue Code. Any income earned by the Corporation after payment of reasonable expenses, debt and such reserves as may be necessary as set forth in the authorizing documents related to the issuance of debt by the Corporation shall accrue to the City.

ARTICLE IX - Disposition of Assets Upon Dissolution

If the Board of Directors determines by resolution that the purposes for which the Corporation was formed have been substantially met and all debt obligations, if any, issued by the Corporation, and all other obligations incurred by the Corporation, have been fully paid or provision made for such payment, the Directors shall authorize the execution of a certificate of dissolution which states those facts and declares the Corporation dissolved in accordance with the requirements of the Act, or with applicable law then in existence. In the event of dissolution or liquidation of the Corporation, all assets will be turned over to the City for a public purpose for deposit into such account or fund as the City Council shall direct to the extent allowed under the law and regulations governing the N.M.T.C. Program.

Should the City no longer exist, not accept such assets, or no longer qualify to receive such assets, then, upon dissolution of the Corporation, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such exempt purposes or to such organization or organizations organized exclusively for such exempt purposes, as said court shall determine.

ARTICLE X - Private Foundation Provisions

If the Corporation is a private foundation within the meaning of Section 509(a) of the Internal Revenue Code, the Corporation (a) shall distribute its income for each taxable year at such time and in such manner so as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code; (b) shall not engage in any act of self dealing as defined in Section 4941(d) of the Internal Revenue Code; (c) shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code; (d) shall


ARTICLE XII - Amendments

Any subsequent revisions, amendments or changes adopted by the Board of Directors to either the Certificate of Formation or the Bylaws shall be approved by majority vote of all of the Directors, unless otherwise provided or restricted by the Act.

ARTICLE XIII - Effective Date

This document becomes effective upon filing by the Secretary of State. The period of duration of the Corporation shall be perpetual.

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.



James Rodney Gonzales
Organizer