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 VI COLLINA 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					
J. Rodney		Gonzales			
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 ("AHFC"), 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 constructing new rental housing located at 2401 E. Oltorf Street, Austin, Texas 78741

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 nonprofit corporation is formed pursuant to Chapter 22, Texas Business Organizations Code (Nonprofit Corporations). The nonprofit corporation is directed by the AHFC, in accordance with Chapter 394, Texas Local Government Code (Housing Finance Corporations in Municipalities and Counties), which authorizes the nonprofit corporation to assist and act on behalf of the AHFC and the City of Austin and to engage in activities that promote the purpose for its creation. [The nonprofit corporation is organized and will be operated exclusively for one or more charitable purposes as defined by Section 50l(c)(4) of the Internal Revenue Codeof 1986, as amended, or any successor federal tax code.]
The rental housing development the nonprofit corporation is being formed to act as the managing member of a limited liability company that will develop and construct and operate a multifamily development of approximately 170 rental units in Austin, Travis County, Texas. A minimum of 139 units will be reserved for households with yearly household incomes at or below 60% of Austin's Median Family Income (MFI), including 66 units for households with yearly household incomes at or below 50% MFI, and 5 units affordable to households with incomes at or below 30% MFI. 31 units will be rented to households with yearly household incomes at or below 80% MFI.

Supplemental Provisions/Information

(See instructions.)

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

The attached addendum includes additional articles (Articles 6 through 17) and 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

Addendum

Article 6

The nonprofit corporation is a nonprofit corporation formed under the laws of the State of Texas, and is related to, affiliated with, and an instrumentality of, AHFC.

Article 7

The period of the nonprofit corporation's duration is perpetual.

Article 8

The nonprofit corporation is organized and shall be operated solely for the following purposes: (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 the State of Texas; (ii) fostering affordable housing in Austin, Travis County, Texas, by causing approximately 170 rental housing units, located at 2401 E. Oltorf Street, Austin, Texas, to be known as Vi Collina Apartments, to be occupied by persons and families with incomes that do not exceed the allowable amounts stated in the Land Use Restriction Agreement between the limited liability company (Limited Liability Company) and the Texas Department of Housing and Community Affairs, and other agreements of the Limited Liability Company which restrict tenant incomes, adjusted for household size; (iii) serving as the managing member of the Limited Liability Company which will acquire, construct, own and operate the Vi Collina Apartments subject to a ground lease, and performing all obligations and duties as managing member under the Limited Liability Company agreement, including the incurrence of all debts and obligations contemplated under the Limited Liability Company agreement; (iv) serving as the general contractor for the construction of the Vi Collina Apartments; (v) promoting, developing, encouraging and maintaining the Vi Collina Apartments as decent, safe, and sanitary housing at affordable prices; and (vi) ensuring to the maximum extent possible that the Vi Collina Apartments helps to achieve the public purposes and functions of the AHFC.

The nonprofit corporation shall <u>not</u>: (a) engage directly or indirectly, in any business or activity other than the acquisition, development, construction, ownership and operation of the Vi Collina Apartments, acting as the managing member of the Limited Liability Company, and as the general contractor for the construction of the Vi Collina Apartments, (b) incur or assume any indebtedness for the acquisition, construction, ownership, operation or disposition of the Vi Collina Apartments, other than indebtedness incurred or assumed in carrying out the nonprofit corporation's obligations or rights as the managing member of the Limited Liability Company, or (c) violate or fail to maintain the nonprofit corporation's identity as an entity separate from any other person or entity; and, provided further, the nonprofit 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, such as corporations, firms, associations, trusts, institutions, foundations, or governmental bureaus, departments or agencies.

Article 9
Powers

The activities of the nonprofit corporation and the application of the funds and assets of the nonprofit corporation shall be limited to the purposes stated herein, but the nonprofit corporation shall: (i) have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of the State of Texas to nonprofit 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 nonprofit corporations in the State of Texas and which are necessary or useful to enable the nonprofit 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 10
Board of Directors

All powers of the nonprofit corporation shall be vested in a Board of Directors (the "Board") consisting of three (3) persons. The initial directors of the nonprofit corporation (each a "Director" and collectively the "Directors") shall be those persons named in Article 3. Each such person resides in the State of Texas and each is an employee of the City of Austin. Each initial Director shall serve for a term expiring December 5, 2022. Subsequent Directors shall be appointed to the Board of the nonprofit corporation by the Board of Directors of AHFC. Except as provided in this Articles 10, each Director shall serve for the term provided in the By-Laws. 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 this Certificate of Formation 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 of Austin and be at least eighteen (18) years old. AHFC shall designate the president of the nonprofit 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 nonprofit corporation shall be governed by the By-Laws of the nonprofit corporation, so long as such By-Laws are not inconsistent with this Certificate of Formation, or the laws of the State of Texas.

Article 11
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 nonprofit corporation for monetary damages for an actor omission in the Director's capacity as a Director. Any repeal or amendment of this Article 11 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 12
Restrictions and Requirements

Regardless of any other provisions of this Certificate of Formation or the laws of the State of Texas, the nonprofit corporation shall not (i) permit any part of the net earnings of the nonprofit 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 nonprofit 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 nonprofit corporation after payment of reasonable expenses, debt and establishing a reserve with respect to the Vi Collina 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 nonprofit 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 or By-Laws, 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 nonprofit corporation, exclusive of amounts needed by the nonprofit corporation to cover reasonable expenditures and reasonable reserves for future activities. The nonprofit corporation shall conduct its affairs and activities so as to insure that upon its dissolution full legal title to all property of the nonprofit corporation with respect to which such indebtedness was incurred shall vest in AHFC.

Article 13
Amendment to Certificate of Formation and By-Laws

This Certificate of Formation and the By-Laws of the nonprofit 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 certificate of formation 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 nonprofit corporation shall file with the Board of Directors of AHFC an application in writing seeking permission to amend the Certificate of Formation or the By-Laws, 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 nonprofit corporation may amend the Certificate of Formation or the By-Laws by adopting such amendment at a meeting of the Board of the nonprofit corporation and, in the case of amendments to the Certificate of Formation, 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 nonprofit corporation (including the power to terminate the nonprofit corporation), subject to any limitations on the impairment of contracts entered into by the nonprofit corporation, by adopting amendments to the Certificate of Formation or the By-Laws of the nonprofit corporation at a meeting of the Board of Directors of AHFC and in the case of amendments to the Certificate of Formation, delivering articles of amendment to the Secretary of State.

Article 14
Dissolution of the Corporation

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

Article 15
AHFC Approval

On _____, 2020 the Board of Directors of AHFC duly adopted AHFC Resolution No. _____ approving the creation of the nonprofit corporation and the forms of this Certificate of Formation and the initial By-Laws.

Article 16
Construction

All references in this Certificate of Formation 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 17
Incorporator

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

Name:	**Address:**
Rosie Truelove	City of Austin Neighborhood Housing & Community Development Department 1000 East 11th Street, 2nd Floor Austin, Texas 78702