

SEP 03 2019

Corporations Section

**CERTIFICATE OF FORMATION
OF
BIG SKY ESTATES HOMEOWNERS ASSOCIATION, INC.**

The undersigned, a natural person, having the capacity of contract and acting as organizer of Big Sky Estates Homeowners Association, Inc. (the "Association") under the Texas Business Organizations Code (the "TBOC"), does hereby adopt the following Certificate of Formation of the Association:

ARTICLE I. NAME

The name of the Association is Big Sky Estates Homeowners Association, Inc.

ARTICLE II. NONPROFIT CORPORATION

The Association is a Texas nonprofit corporation organized under the TBOC.

No part of the assets or net earnings of the Association shall inure to the benefit of, or be distributable to its members, directors, trustees, officers, or other private persons, except that the Association shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distribution in furtherance of the purposes set forth in Article IV below. No substantial part of the activities of the Association shall be to carry on of propaganda, or otherwise attempt to influence legislation, and the Association shall not participate in, or otherwise intervene in any political campaign on behalf of any candidate for public office (including publishing or distribution of statements). Notwithstanding any other provision of this Certificate, the Association shall not carry on any other activities not permitted to be carried on by an Association exempt from federal income tax under Section 501(c)(4) of the Internal Revenue Code or any corresponding section of any future federal tax code.

ARTICLE III. DURATION

The Association shall exist perpetually.

ARTICLE IV. PURPOSES AND POWERS

The purposes for which the Association is organized are:

1. To promote the health, safety and welfare of the residents in the subdivision known as Big Sky Estates Subdivision in Denton County, Texas (the "Subdivision"), as well as all property that may be annexed into the Subdivision;
2. To improve and maintain the Common Areas;
3. At the Association's election, to enforce any covenants, conditions and restrictions governing the Subdivision and any additions thereto as may hereinafter be brought within the jurisdiction of the Association; and

4. For any other lawful purpose.

In order to carry out the aforementioned purposes, the Association will have all those powers, rights, and privileges permitted to nonprofit entities under Chapter 2 of the TBOC, and all the powers listed in the Declaration, bylaws, and other governing documents which govern the operation of the Association.

ARTICLE V. MEMBERSHIP

The Association shall have members, without certificates or shares of stock. Every record owner (whether one (1) or more persons or entities) of fee simple title in any lot that is subject to the Declaration, including contract sellers, shall be a member of the Association. The foregoing does not include those leasing from record holders of fee simple title or those having an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot that is subject to the Declaration.

ARTICLE VI. BOARD OF DIRECTORS

The management of the affairs of the Association is vested in its Board of Directors pursuant to TBOC Section 22.201. Until Class B Membership ceases, the three (3) initial directors appointed by Declarant shall so serve. The names and addresses of the persons who are to serve as the three (3) initial directors are:

<u>NAME</u>	<u>ADDRESS</u>
Bryan Merchant	1450 Lake Robbins Drive, Suite 430 The Woodlands, Texas 77380
Lucas Lansman	1450 Lake Robbins Drive, Suite 430 The Woodlands, Texas 77380
Kyle Hanna	1450 Lake Robbins Drive, Suite 430 The Woodlands, Texas 77380

The initial Board shall serve until the Control Transfer Date occurs; the “**Control Transfer Date**” shall mean that point in time when the Declarant, at its sole option, shall cause an instrument transferring control to the Association to be recorded in the Official Public Records of Real Property of the county where the Subdivision is located. After the Control Transfer Date, the affairs of the Association shall be managed by the Board, which shall consist of at least three (3) persons, all of whom must be members of the Association. Upon the Control Transfer Date, a new Board shall be elected. Notwithstanding anything herein to the contrary, until the Control Transfer Date, directors need not be owners.

ARTICLE VII. WINDING UP AND TERMINATION

The Association may be wound up and terminated pursuant to the TBOC with the assent given in writing and signed by not less than two-thirds (2/3rds) of each class of members. Upon winding up and termination of the Association, other than incident to a merger or consolidation, the assets (if any) of the Association shall be dedicated to a public body or conveyed to a nonprofit corporation with purposes similar to those of the Association.

ARTICLE VIII. AMENDMENTS

Amendment of this Certificate of Formation shall require the assent of two-thirds (2/3) of the votes of the entire membership of each class of members; provided further, however, that so long as there is Class B Membership, joinder of the Declarant will also be required. Furthermore, the Declarant has the right to unilaterally amend this Certificate of Formation under the following circumstances:

1. If the amendment is necessary to bring any provision in this Certificate of Formation into compliance with a governmental statute, rule or regulation or judicial determination;
2. If the amendment is required by an institutional or governmental lender or purchaser of mortgage loans to enable such lender or purchaser to make or purchase mortgage loans on the Property;
3. If the amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Property;
4. If the amendment is necessary to enable a reputable title insurance company to issue title insurance coverage on Lots;
5. To correct any error or omission or to clarify any ambiguity in this Certificate of Formation; and
6. In the Declarant's sole discretion, as necessary for the development of the Property.

ARTICLE IX. REGISTERED AGENT & REGISTERED OFFICE

Devin "Buck" Benson is the initial registered agent of the Association. The address of the initial registered agent and the registered office address is 745 E. Mulberry Ave., Ste. 550, San Antonio, Texas 78212.

ARTICLE X. INDEMNIFICATION

To the fullest extent permitted by Texas law, as the same exist or as they 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 of the Association shall not be liable to the Association for monetary damages for an act or omission in the director's capacity as a

director. Any amendment of this Certificate of Formation shall be prospective only and shall not adversely offset any limitation on the personal liability of a director of the Association existing at the time of such repeal or amendment.

(a) Subject to the exceptions and limitations contained in Article X(b) hereof:

(1) Every person who is or has been a director, officer, or managing agent of the Association shall be indemnified by the Association to the fullest extent permitted by law against liability and against all expenses reasonably incurred or paid by him in connection with any demand, claim, action, suit (or threat thereof) or proceeding in which he/she becomes involved as a party or otherwise by virtue of his/her being or having been a director or officer and against amounts paid or incurred by him/her in the settlement thereof; and

(2) The words "claim," "action," "suit," or "proceeding" shall apply to all claims, actions, suits, or proceedings (civil, criminal, or other, including appeals), actual or threatened, made or commenced subsequent to the adoption of this Certificate of Formation; and the words "liability" and "expenses" shall include, without limitation, attorneys' fees, costs, judgments, amounts paid in settlement, fines, penalties, and other liabilities.

(b) No indemnification shall be provided hereunder to a director, officer, or managing agent of the Association:

(1) Against any liability to the Association by reason of willful misfeasance, bad faith, gross negligence, breach of fiduciary duty, criminal misconduct or reckless disregard of the duties involved in the conduct of his/her office; and

(2) With respect to any matter as to which he/she shall have been finally adjudicated not to have acted in good faith

(c) The rights of indemnification herein provided may be insured against by policies maintained by the Association, shall be severable, shall not affect any other rights to which any director or officer now or hereafter may be entitled, shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person.

(d) Expenses in connection with the preparation and presentation of a defense to any claim, action, suit, or proceeding of the character described in this Article X may be advanced by the Association before final disposition thereof upon receipt of an undertaking by or on behalf of the director(s), officer(s), or managing agent(s) secured by a surety bond or other suitable insurance issued by a company authorized to conduct such business in the State of Texas, to repay such amount if it is ultimately determined that he/she is not entitled to indemnification under Article X.

ARTICLE XI. LIABILITY OF THE ASSOCIATION AND ACKNOWLEDGEMENTS

THE ASSOCIATION, ITS BOARD OF DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS AND/OR ITS ATTORNEYS, (collectively, the "ASSOCIATION AND

RELATED PARTIES") SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTY. NEITHER SHALL THE ASSOCIATION AND RELATED PARTIES BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

MEMBERS AND TENANTS, ON BEHALF OF THEMSELVES, ALL OCCUPANTS OF THE LOT OWNED OR BEING LEASED, GUESTS AND INVITEES OF THE MEMBER OR TENANT, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND RELATED PARTIES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES, OR SECURITY SYSTEMS (IF ANY ARE PRESENT) WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED.

MEMBERS AND TENANTS, ON BEHALF OF THEMSELVES, ALL OCCUPANTS OF THE LOT OWNED OR BEING LEASED, THEIR GUESTS AND INVITEES OF THE MEMBER OR TENANT, AS APPLICABLE, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION AND RELATED PARTIES ARE NOT AN INSURER AND THAT EACH MEMBER, TENANT, AND OCCUPANT OF ANY LOT ON BEHALF OF THEMSELVES AND THEIR GUESTS AND INVITEES ASSUME THE RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION AND RELATED PARTIES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY MEMBER OR TENANT ON BEHALF OF THEMSELVES, ALL OCCUPANTS OF THE LOT OWNED OR BEING LEASED, THEIR GUESTS OR INVITEES, AS APPLICABLE, RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

ARTICLE XII. ORGANIZER

The name and address of the organizer is Shanna R. Castro, 745 E. Mulberry Ave., Ste. 550 San Antonio, Texas 78212.

ARTICLE XIII. MISCELLANEOUS

All capitalized terms used herein and not otherwise defined herein shall have the same meanings as set forth in the Declaration of Covenants, Conditions and Restrictions for Big Sky Estates. Said Declaration, as amended, supplemented, renewed, or extended from time to time, is hereinafter referred

to as the “**Declaration**” and is incorporated herein as if set forth at length.

EXECUTED on the 3rd day of September, 2019.

A handwritten signature in black ink, appearing to be 'a' followed by a long horizontal stroke.

Shanna R. Castro, Organizer

PLEASE RETURN TO:
Barton Benson Jones PLLC
Attn: Shanna R. Castro
745 E. Mulberry Ave., Ste. 550
San Antonio, Texas 78212