

BYLAWS  
OF  
CWC306 MASTER COMMUNITY, INC.

ARTICLE I  
NAME, PRINCIPAL OFFICE, AND DEFINITIONS

**Section 1.1. Name.** The name of the Association shall be CWC306 Master Community, Inc., a Texas non-profit corporation (hereinafter referred to as the "Association").

**Section 1.2. Principal Office.** The principal office of the Association shall be located in Comal County, Texas.

**Section 1.3. Definitions.** Capitalized terms used herein but not defined in these Bylaws shall have the same meaning as set forth in that Amended and Restated Community Covenant for The Village at Creekside, recorded in the Official Records of Comal County, Texas, as may be amended and supplemented from time to time (the "Covenant"), unless the context indicates otherwise.

ARTICLE II  
MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

**Section 2.1. Membership.** Each Owner of a Unit is a mandatory member ("Member") of the Association, as more fully set forth in the Covenant.

**Section 2.2. Place of Meetings.** Meetings of the Association shall be held where designated by the Board, either within the Community or as convenient as possible and practical.

**Section 2.3. Majority.** As used in these Bylaws, the term "Majority" shall mean more than half.

**Section 2.4. Annual Meetings.** An annual meeting of the Association will be held once during each 12 month period on a date and at a time determined by the Board.

**Section 2.5. Special Meetings.** It is the duty of the president to call a special meeting of the Association if directed to do so by a majority of the Board or by a petition signed by Members representing at least forty percent (40%) of the votes in the Association. The meeting must be held within thirty (30) days after the Board resolution or receipt of petition. The notice of any special meeting must state the time, place, and purpose of the meeting. No business, except the purpose stated in the notice of the meeting, may be transacted at a special meeting.

**Section 2.6. Notice of Meetings.** At the direction of the Board, written notice of meetings of the Association will be given to each Member at least ten (10) days but not more

than sixty (60) days prior to the meeting. Notices of meetings will state the date, time, and place the meeting is to be held. Notices will identify the type of meeting as annual or special, and will state the particular purpose of a special meeting. Notices may also set forth any other items of information deemed appropriate by the Board. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at such party's address as it appears on the records of the Association, with postage prepaid.

**Section 2.7. Waiver of Notice.** Waiver of notice of a meeting of Member shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting, either before or after such meeting. Attendance at a meeting shall be deemed waiver by such Person of notice of the time, date, and place thereof, unless such Person specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall be deemed waiver of notice of all business transacted at such meeting unless an objection is raised based on the lack of proper notice before the business is put to a vote.

**Section 2.8. Quorum.** Except as provided in these Bylaws or in the Covenant, the presence of Members representing at least twenty percent (20%) of the votes in the Association constitute a quorum.

**Section 2.9. Conduct of Meetings.** The President or any other person appointed by the Board shall preside over all Association meetings, and the Secretary, or the Secretary's designee, shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

**Section 2.10. Voting.** The voting rights of the Members shall be as set forth in the Covenant, and such voting rights provisions are specifically incorporated by reference. Except as otherwise provided in the Covenant, action may be taken at any legally convened meeting of the Members upon the affirmative vote of the Members having a Majority of the total votes present at such meeting. The person holding legal title to a Unit shall be entitled to cast the vote allocated to such Unit and not the person merely holding beneficial title to the same unless such right is expressly delegated to the beneficial Owner thereof in writing.

**Section 2.12. Proxies.** On any matter as to which a Member is entitled personally to cast the vote for his Unit, such vote may be cast in person (or through any other method of exercising the Member's voting rights, if approved by the Board pursuant to *Section 4.4* of the Covenant) or by proxy, subject to the limitations of Texas law relating to use of general proxies and subject to any specific provision to the contrary in the Covenant or these Bylaws. No proxy shall be valid unless signed by the Member for which it is given or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Proxies shall be valid only for the specific meeting for which given and for lawful adjournments of such meeting. In no event shall a proxy be valid more than ninety (90) days after the date of the original meeting for which it was given. Every proxy shall be revocable and shall automatically cease upon conveyance of the Unit for which it was given.

**Section 2.13 Action Without a Meeting.** Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice, and without a vote if written consent specifically authorizing the proposed action is signed by the Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within sixty (60) days after receipt of the earliest dated consent, dated, and delivered to the Association at its principal place of business in Texas. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

### ARTICLE III BOARD OF DIRECTORS

**Section 3.1. Authority; Number of Directors.**

(a) The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. The number of Directors shall be fixed by the Board of Directors from time to time. The initial Directors shall be three (3) in number and shall be those Directors named in the Certificate. The initial Directors shall serve until their successors are elected and qualified. Except as is provided in the Covenant and in Sections 4.1(b) and 4.1(c) below, Declarant shall have the absolute right to appoint and remove members of the Board of Directors.

(b) At such time as Declarant no longer has the right to appoint and remove all members of the Board of Directors as provided in the Covenant, and if Voting Groups have not been established, the Board of Directors will be increased to five (5) members. The President of the Association will thereupon call a meeting of the Members of the Association where the Members will elect one (1) Director for a three (3) year term, two (2) Directors for a two (2) year term, and two (2) Directors for a one (1) year term. Upon expiration of the term of a Director initially elected by the Members pursuant to this Section 4.1(b), his or her successor will be elected for a term of two (2) years. If Voting Groups have been established, the number of Directors will be equivalent to the number of Voting Groups and the terms of each such Director will be established by the Board; provided, (i) that the total number of Directors will be not less than three (3); and (ii) upon expiration of the term of a Director initially elected by the Owners of Units within the applicable will elect his or her successor for a term of two (2) years.

(c) A Director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed.

(d) Until such time as Declarant no longer has the right to appoint and remove all members of the Board of Directors as provided in the Covenant, Directors need not be Members

of the Association. At such time as Declarant no longer has the right to appoint and remove all members of the Board, all of the Directors must be Members. In the case of a Member which is not a natural person, any officer, director, partner, or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of Directors appointed by the Declarant as set forth herein.

**Section 3.2. Compensation.** The Directors shall serve without compensation for such service.

**Section 3.3. Removal of Directors and Vacancies.** Any Director elected by the Members may be removed, with or without cause, by the vote of Members holding a Majority of the votes entitled to be cast in the Association. Any Director whose removal is sought shall be given written notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall be elected by the Members or Voting Group, as applicable. The Director so appointed will serve for the unexpired term of the Director removed pursuant to this Section. In the event of the death, disability, or resignation of a Director, the remaining Board shall declare a vacancy and shall appoint a successor to fill the vacancy for the remainder of such Director's term.

#### ARTICLE IV MEETINGS OF DIRECTORS

**Section 4.1. Definition of Board Meetings.** A meeting of the Board means a deliberation between a quorum of the Board, or between a quorum of the Board and another person, during which Association business is considered and the Board takes formal action.

**Section 4.2. Regular Meetings.** Regular meetings of the Board shall be held annually or such other frequency as determined by the Board, at such place and hour as may be fixed from time to time by resolution of the Board.

**Section 4.3. Special Meetings.** Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days' notice to each Director.

**Section 4.4. Conduct of Meetings.** The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of the Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

**Section 4.5. Quorum.** A Majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a Majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors. A meeting at which a quorum is initially present may continue to

transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a Majority of the Directors present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

**Section 4.6. Record; Minutes.** The Board shall keep a record of each regular or special Board meeting in the form of written minutes of the meeting. The Board shall make meeting records, including approved minutes, available to a Member for inspection and copying on the Member's written request to the Association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the Board.

**Section 4.7. Telephone and Electronic Meetings.** Any action permitted to be taken by the Board may be taken by telephone or electronic methods by means of which all persons participating in the meeting can hear each other. Participation in such a meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**Section 4.8. Consent in Writing.** Any action which may be taken at a meeting of the Board of Directors, is permitted to be taken by the Board by unanimous written consent. Unanimous written consent occurs if all Directors individually or collectively consent in writing to such action. The written consent must be filed with the minutes of Board meetings. Action by written consent shall be in lieu of a meeting and has the same force and effect as a unanimous vote of the Directors.

## ARTICLE V POWERS AND DUTIES OF THE BOARD

### **Section 5.1. Powers and Duties.**

(a) **Powers.** The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done all acts and things that the Governing Documents, or applicable law do not direct to be done and exercised exclusively by the Members.

(b) **Duties.** The Board's duties shall include, without limitation:

(i) Preparation and adoption of the annual budgets and establishing Assessments under the Covenant;

(ii) Providing for the operation, care, upkeep, and maintenance of the Master Community Facilities;

(iii) Designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(iv) Depositing all funds received on the Association's behalf in a bank depository that it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in the depositories other than banks;

(v) Making and amending rules and regulations;

(vi) Opening bank accounts on the Association's behalf and designating the signatories required;

(vii) Making or contracting for the making of repairs, additions, and improvements to or alterations of the Master Community Facilities in accordance with the Governing Documents and these Bylaws;

(viii) Enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;

(ix) Obtaining and carrying insurance, as provided in the Covenant, providing for payment of all premiums, and filing and adjusting claims, as appropriate;

(x) Paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Members;

(xi) Keeping books with detailed accounts of the Association's receipts and expenditures;

(xii) Making available to any prospective purchaser of a Unit, any Member, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association;

(xiii) Permitting utility suppliers to use portions of the Master Common Facilities as may be determined necessary, in the Board's sole discretion, to the ongoing development or operation of the Community;

(xiv) Indemnifying a director, officer, or committee member or former director, officer, or committee member of the Association to the extent such indemnity is required by Texas law or the Governing Documents; and

(xv) Assisting in the resolution of disputes between Members and others without litigation, as set forth in the Covenant.

**Section 5.2. Management.** The Board of Directors may employ for the benefit of the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policymaking authority. The Board of Directors may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

**Section 5.3. Accounts and Reports.** The following management standards of performance shall be followed unless the Board, by resolution, specifically determines otherwise:

(a) Accounting and controls should conform to generally accepted accounting principles;

(b) The Association's cash accounts shall not be commingled with any other accounts;

(c) No remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fee, services fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;

(d) Any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(e) Commencing at the end of the month in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(f) An income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(g) A statement reflecting all cash receipts and disbursements for the preceding period;

(h) A variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(i) A balance sheet as of the last day of the preceding period;

(j) A delinquency report listing all Members who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the fifteenth (15<sup>th</sup>) day following the due date unless otherwise specified by Board resolution); and

(k) An annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year; (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared and reviewed by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any Mortgage on a Unit, the Association shall provide an audited financial statement.

**Section 5.4. Borrowing.** The Association shall have the power to borrow money for any legal purpose.

**Section 5.5. Right to Contract.** The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, and other Members, owners or occupants, or associations.

**Section 5.6. Enforcement.** In addition to such other rights as are specifically granted under the Covenant, the Board shall have the power to impose monetary fines, which shall constitute a lien upon the Unit of the violator, and to suspend a Member's right to vote or any person's right to use the Master Community Facilities (other than those facilities open to the public) for violation of any duty imposed under the Governing Documents; provided, nothing herein shall authorize the Board to limit ingress and egress to or from a Unit. In addition, the Board may suspend any services provided by the Association to a Member or the Member's Unit if the Member is more than thirty (30) days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may first be assessed against the occupant; provided, if the fine is not paid by the occupant within the time period set by the Board, the Member shall pay the fine upon notice from the Association. The Board's failure to enforce any provision of the Governing Documents shall not be deemed a waiver of the Board's right to do so thereafter.



(a) Prior to imposition of any sanction hereunder or under the Governing Documents, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than thirty (30) days within which the alleged violator may present a written request for a hearing to the Board; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless the violation is cured within the thirty (30) day notice period set forth above. Any decision by the Board not to impose sanctions in connection with a violation of the Governing Documents shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) If a timely request for a hearing is not made, the sanction stated in the notice may be imposed without the necessity of a hearing; provided, the Association may not impose a fine or suspend Master Community Facility use rights for any violation other than a failure to pay assessments, unless the Board, by a Majority vote, first approves the proposed fine or suspension.

(c) If a hearing is requested within the allotted thirty (30) day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

**Section 5.7. Additional Enforcement Rights.** Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or, following compliance with the procedures set forth in the Covenant, if applicable, by any proceeding at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Member or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

## ARTICLE VI OFFICERS AND THEIR DUTIES

**Section 6.1. Officers.** The Association's officers shall be a President, a Vice President, a Secretary, and a Treasurer. Officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform

the duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

**Section 6.2. Election and Term of Office.** Within ten (10) days after each annual meeting of the Association, the Directors will convene an organizational meeting for the purpose of electing officers.

**Section 6.3. Removal and Vacancies.** The Board may remove any officer whenever in its judgment the Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal or otherwise, for the unexpired portion of the term.

**Section 6.4. Powers and Duties.** The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Covenant and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both...

**Section 6.5. Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6.6. Agreements, Contracts, Deeds, Leases, Checks, etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

## ARTICLE VII OTHER COMMITTEES OF THE BOARD OF DIRECTORS

**Section 7.1. General.** The Board may appoint such committees as it deems appropriate to perform such tasks and functions as the Board may designate by resolution. Committee members serve at the Board's discretion for such periods as the Board may designate by resolution; provided, any committee member, including committee chair, may be removed by the vote of a Majority of the Board. Each committee shall operate in accordance with the terms of the resolution establishing such committee.

**Section 7.2. Service Area Committees.** In addition to any other committees appointed as provided above, for each Service Area that has no formal organizational structure a Service Area Committee may be created by the Board to determine the nature and extent of services, if any, to be provided to the Service Area by the Association in addition to those provided to all Members in accordance with the Covenant. A Service Area Committee may advise the Board on any other issues but shall not have the authority to bind the Board. Such Service Area

Committees shall consist of three to five Members from the Service Area to which the committee will have jurisdiction. Service Area Committee members shall be elected for a term of one year or until their successors are elected, or such other term as may be permitted under a Supplemental Covenant governing the Service Area. Any director elected to the Board of Directors from a Service Area shall be an *ex officio* member of the Committee. In the conduct of its activities, each Service Area Committee shall abide by the notice and quorum requirements applicable to the Board.

## ARTICLE VIII MISCELLANEOUS

**Section 8.1. Fiscal Year.** The fiscal year of the Association will be set by resolution of the Board, and is subject to change from time to time as the Board determines. In the absence of a resolution by the Board, the fiscal year is the calendar year.

**Section 8.2. Conflicts.** If there are conflicts among the provisions of Texas law, the Certificate of Formation, the Covenant, and these Bylaws, the provisions of Texas law, the Covenant, the Certificate of Formation, and the Bylaws (in that order) shall prevail.

### **Section 8.3. Books and Records.**

(a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit; any Member; or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to such Member's interest in a Unit: the Covenant, Bylaws, and Certificate of Formation, including any amendments, the rules of the Association, the membership register, books of account, and the minutes of meeting of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Community as the Board shall designate.

(b) **Rules for Inspection.** The Board shall establish rules with respect to:

- (i) Notice to be given to the custodian of the records;
- (ii) Hours and days of the week when such an inspection may be made; and
- (iii) Payment of the cost of reproducing copies of documents requested.

(c) **Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Association's expense.

**Section 8.3. Notices.** Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be

deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid: if to a Member at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

**Section 8.4. Amendment.** These Bylaws may be amended by a Majority of the Board.

**Section 8.5. Indemnification.** To the fullest extent permitted by applicable law, the Association will indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a director, officer, committee member, including the Reviewer, employee, servant, or agent of the Association against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a court that such person: (i) acted in good faith; (ii) in the case of conduct by a person in his official capacity, acted in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Association; (iii) in the case of conduct by a person not in his official capacity, acted in a manner which such person reasonably believed to be not opposed to the best interests of the Association; and (iv) with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit, or proceeding by settlement, or upon a plea of Nolo Contendere or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful.