

**CERTIFIED RESOLUTIONS OF THE BOARD OF DIRECTORS****OF TIMBERCREEK CANYON PROPERTY OWNERS ASSOCIATION, INC.****ADOPTION OF PROCEDURES AND GUIDELINES FOR CONDUCTING  
HEARINGS PURSUANT TO CHAPTER 209 OF THE TEXAS PROPERTY CODE**

The undersigned, Robert Wyatt, as the duly elected, qualified, and acting Secretary of the Timbercreek Canyon Property Owners Association, Inc., a Texas nonprofit corporation (the "**Association**"), hereby certifies on behalf of the Association that the following resolutions were duly adopted by the Board of Directors of the Association (the "**Board**") at a meeting of the Board held on January 4, 2022, and that such preamble and resolutions have not been amended or rescinded and are in full force and effect on the date hereof.

WHEREAS, the Association is a property owners association governed by Chapter 209 of the Texas Property Code and is vested with the authority to enforce restrictive covenants and other terms and provisions of that certain *Dedication and Restrictions of Timbercreek Canyon* recorded at:

Unit No. 1: Volume 486, Page 265

Unit No. 2: Volume 506, Page 333

Unit No. 3: Volume 334, Page 226

Unit No. 4: Volume 512, Page 43

Unit No. 5: Volume 519, Page 37

Unit No. 6: Volume 555, Page 375

Unit No. 7: Volume 588, Page 11

Unit No. 8: Volume 733, Page 283

Unit No. 9: Volume 603, Page 137

in the Official Public Records of Randall County, Texas, as amended and supplemented (collectively, the "**Declaration**").

WHEREAS, Chapter 209 of the Texas Property Code requires the Board to conduct a hearing, if timely requested by a property owner, for the appellate review of negative architectural review determinations and before the Association may suspend a property owner's right to use a common area, file a suit against a property owner (other than a lawsuit seeking a temporary restraining order or temporary injunctive relief or a lawsuit to collect a regular or special assessment or to foreclose an assessment lien), charge a property owner for property damage, levy a fine for a violation of the restrictions or bylaws or rules of the Association, or report any delinquency of a property owner to a credit reporting service.

**TIMBERCREEK CANYON PROPERTY OWNERS ASSOCIATION, INC.  
RESOLUTION ADOPTING PROCEDURES AND GUIDELINES FOR CONDUCTING  
HEARINGS PURSUANT TO CHAPTER 209 OF THE TEXAS PROPERTY CODE**

WHEREAS, the Board desires to adopt procedures and guidelines for conducting such hearings in compliance with Chapter 209 of the Texas Property Code.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the procedures and guidelines set forth on Exhibit "A", attached hereto and incorporated herein by reference.


BE IT RESOLVED, FURTHER, that, the Secretary of the Association is hereby authorized and empowered, in the name and on behalf of the Association, from time to time to do and perform all such further acts and things and to execute and deliver all such further instruments as he or she may deem necessary or advisable to carry out and effectuate the intent and purposes of the foregoing resolutions and of the actions referred to therein.

BE IT RESOLVED, FURTHER, that any actions taken by the officers or directors of the Association prior to the date of this action or hereafter that are within the authority conferred hereby are hereby ratified, confirmed and approved as the act and deed of the Association.

***[SIGNATURE PAGE FOLLOWS]***

## SECRETARY'S CERTIFICATE

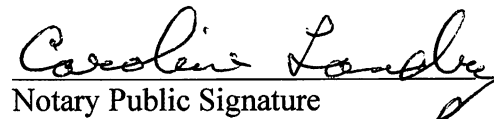
IN WITNESS WHEREOF, the undersigned has executed this Certificate as Secretary on behalf of the Association to be effective upon the recording of this document in the Official Public Records of Randall County, Texas.

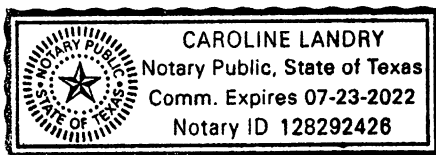
  
By: Robert Wyatt  
Title: Secretary

STATE OF TEXAS           §

COUNTY OF RANDALL   §

This instrument was acknowledged before me on 11/5/2022 2022, by Robert Wyatt, Secretary of Timbercreek Canyon Property Owners Association, Inc. a Texas non-profit corporation, on behalf of said non-profit corporation.

  
Notary Public Signature



### **AFTER RECORDING PLEASE RETURN TO:**

Gregory S. Cagle  
CAGLE PUGH, LTD. LLP  
4301 Westbank Drive, Ste. A-150  
Austin, Texas 78746

## EXHIBIT A

### **TIMBERCREEK CANYON PROPERTY OWNERS ASSOCIATION, INC.**

#### **PROCEDURES AND GUIDELINES FOR CONDUCTING HEARINGS PURSUANT TO CHAPTER 209 OF THE TEXAS PROPERTY CODE**

##### **ARTICLE I**

##### **Introduction and Purpose**

Timbercreek Canyon Property Owners Association, Inc., a Texas nonprofit corporation (the “**Association**”) is a property owners association governed by Chapter 209 of the Texas Property Code and is vested with the authority to enforce restrictive covenants and other terms and provisions of that certain *Dedication and Restrictions of Timbercreek Canyon* recorded at:

Unit No. 1: Volume 486, Page 265

Unit No. 2: Volume 506, Page 333

Unit No. 3: Volume 334, Page 226

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Unit No. 6: Volume 555, Page 375

Unit No. 7: Volume 588, Page 11

Unit No. 8: Volume 733, Page 283

Unit No. 9: Volume 603, Page 137

in the Official Public Records of Randall County, Texas, as amended and supplemented (the “**Declaration**”).

Chapter 209 of the Texas Property Code imposes certain due process procedures that the Association must perform before it may enforce restrictive covenants and other terms and provisions of the Declaration. In particular, Section 209.006 of the Texas Property Code requires the Board to provide a property owner with a statutorily-mandated notice (the “**Chapter 209 Notice**”), and to conduct a hearing if timely requested by such property owner, before the Association may suspend a property owner's right to use a common area, file a suit against a property owner (other than a lawsuit seeking a temporary restraining order or temporary injunctive relief or a lawsuit to collect a regular or special assessment or to foreclose an assessment lien), charge a property owner for property damage, levy a fine for a violation of the restrictions or bylaws or rules of the Association, report any delinquency of a property owner to a credit reporting service, or hold a property owner liable of attorneys’ fees incurred by the Association associated with such enforcement action by the Association (a “**Chapter 209 Enforcement Hearing**”). In

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addition, Section 209.007 of the Texas Property Code imposes statutory procedures for providing notice of and conducting a Chapter 209 Enforcement Hearing.

In addition, the 2021 Texas legislature enacted Section 209.00505 of the Texas Property Code, which establishes authority for the appellate review by the Association's Board of Directors (the "**Board**") of negative architectural determinations made by the Association's Architectural Committee (the "**Architectural Committee**"). Section 209.00505 also imposes statutory procedures for providing notice of and conducting a hearing by the Board for the appellate review of such architectural determinations (a "**Chapter 209 Architectural Review Hearing**").

The purpose of these procedures and guidelines (the "**Guidelines**") is to assist the Board in scheduling, providing notice of, and conducting Chapter 209 Enforcement Hearings and Chapter 209 Architectural Review Hearings in compliance with Chapter 209 of the Texas Property Code and to provide property owners requesting such hearings with notice of the procedures and guidelines that will govern such proceedings.

### ARTICLE II

#### Chapter 209 Architectural Review Hearings

2.1 Scope of the Board's Appellate Review Authority. Unless the Declaration provides otherwise, the Board's authority to conduct an appellate review of an architectural determination by the Architectural Committee shall be limited to a decision by the Architectural Committee denying an application or request by a property owner for the construction or modification of an improvement on the property owner's lot pursuant to Section 209.00505 of the Texas Property Code. The authority of the Board to review decisions of the Architectural Committee under Section 209.00505 does not extend to an approval of a property owner's application for the construction or modification of an improvement or a denial of a request for a variance from compliance with the provisions of the Declaration.

2.2 Requesting Appellate Review of an Architectural Determination. To be effective, a request for appellate review by the Board of an eligible architectural determination must be in writing and received by the Association within thirty (30) days from the date written notice of such architectural determination was mailed by certified mail, hand-delivered, or emailed to the property owner in compliance with Section 209.00505 of the Texas Property Code. The written request for appellate review must be sent to the Association by certified mail at the mailing address of the Association or authorized representative as reflected on the most current management certificate filed by the Association pursuant to Section 209.004 of the Texas Property Code. Failure to timely request appellate review of an eligible architectural determination shall waive the Board's appellate review authority.

2.3 Scheduling and Notice of the Chapter 209 Architectural Review Hearing. The Board shall conduct a Chapter 209 Architectural Review Hearing within thirty (30) days from the date the Board receives a property owner's timely written request for appellate review. The Board shall also provide the property owner notice of the date, time, and location of the hearing at least ten (10) days prior to the date of said hearing. The notice of the Chapter 209 Architectural Review Hearing may be mailed, hand-delivered, or emailed to the requesting property owner and shall be considered delivered on the day it is hand-delivered, mailed to the requesting property owner at

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his or her last known mailing address with proper postage, or emailed to the requesting property owner at an email address provided to the Association by such property owner. The Board or the requesting property owner may request a postponement of the scheduled hearing date one (1) time each and, if requested, a postponement shall be granted for a period of no more than ten (10) days from the date of the previously scheduled hearing date unless otherwise agreed to by the Board and the property owner. Additional postponements may be granted by agreement of the parties. The Board shall provide the requesting property owner with the date, time, and location of the rescheduled hearing date at least twenty-four (24) hours in advance of the rescheduled hearing date. Notice of a rescheduled hearing date may be given to a property owner by any reasonable manner designed to provide adequate notice of the rescheduled hearing.

2.4 Location of the Chapter 209 Architectural Review Hearing. A Chapter 209 Architectural Review Hearing may be conducted in conjunction with a meeting of the Board or at a non-public work session of the Board. In addition, a Chapter 209 Architectural Review Hearing may be held at a physical location, or at the election of the Board, by video conference technology, provided the property owner is afforded the reasonable ability to present information relevant to the appellate review of the architectural determinations concerning the property owner's application or request for the construction or modification of an improvement that are at issue. Upon the agreement of the Board and the property owner, a Chapter 209 Architectural Review Hearing may be conducted at the property for which the architectural determinations at issue relate.

2.5 Attendance at the Chapter 209 Architectural Review Hearing. The Board and the requesting property owner may be represented by legal counsel at a Chapter 209 Architectural Review Hearing. In addition, both parties may have other relevant persons attend the Chapter 209 Architectural Review Hearing, including the Association's managing agents, members of the Architectural Committee, architects, contractors, consultants and any other person that either party believes would be in a position to provide information relevant to the appellate review of the architectural determinations concerning the property owner's application or request for the construction or modification of an improvement that are at issue.

2.6 Conduction of the Chapter 209 Architectural Review Hearing. At the Chapter 209 Architectural Review Hearing, the Board (or a designated representative of the Association) and the requesting property owner (or the property owner's designated representative) shall each be provided the opportunity to discuss, verify facts, and resolve the denial of the property owner's application or request for the construction of improvements, and the changes, if any, requested by the Architectural Committee in the written denial of such application or request. In order to conduct such process in an orderly manner, the Board shall use the script attached to these Guidelines as Exhibit A-1. An audio recording of the Chapter 209 Architectural Review Hearing may be made by the Board or the property owner.

2.7 Appellate Review Ruling by the Board. The Board shall have the authority to affirm, modify, or reverse, in whole or in part, any decision of the Architectural Committee concerning the application or request for the construction or modification of an improvement that is the subject of the Board's appellate review. Such authority shall include the power to modify or reverse decisions by the Architectural Committee previously approving components of the requesting property owner's application or request for the construction or modification of an improvement. The Board's ruling may be conditioned upon the property owner's agreement to modify the

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proposed construction or modification of the improvement at issue or upon the owner's agreement to other reasonable terms and conditions (such as installation of landscaping or screening). The Board may, but is not required to, state the basis for its determinations in the written ruling. Notwithstanding anything to the contrary, the Board's ruling shall be consistent with the terms and provisions of the Declaration and no architectural determinations made by the Board pursuant to its appellate review of the Architectural Committee's determinations may exceed the architectural review authority vested in the Architectural Committee by the Declaration. The Board's ruling shall be in writing and mailed by certified mail, hand-delivered or emailed to the requesting property owner within ten (10) business days from the date of the Chapter 209 Architectural Review Hearing. There shall be no further appeal or reconsideration of the ruling by the Board.

### ARTICLE III

#### Chapter 209 Enforcement Hearings

3.1 Requesting a Chapter 209 Enforcement Hearing. To be effective, a request for a Chapter 209 Enforcement Hearing must be in writing and received by the Association within thirty (30) days from the date written notice of a violation, property damage, fine, suspension of rights or intent to notify a credit reporting service is sent to the property owner by verified mail in compliance with Section 209.006 of the Texas Property Code. The written request for a Chapter 209 Enforcement Hearing must be sent to the Association by certified mail at the mailing address of the Association or authorized representative as reflected on the most current management certificate filed by the Association pursuant to Section 209.004 of the Texas Property Code. Failure to timely request a Chapter 209 Enforcement Hearing shall waive any right to such a hearing.

3.2 Scheduling and Notice of the Chapter 209 Enforcement Hearing. The Board shall conduct a Chapter 209 Enforcement Hearing within thirty (30) days from the date the Board receives a property owner's timely written request for a hearing. The Board shall also provide the property owner notice of the date, time, and location of the hearing at least ten (10) days prior to the date of said hearing. The notice of the Chapter 209 Enforcement Hearing may be mailed, hand-delivered, or emailed to the requesting property owner and shall be considered delivered on the day it is hand-delivered, mailed to the requesting property owner at his or her last known mailing address with proper postage, or emailed to the requesting property owner at an email address provided to the Association by such property owner. The Board or the requesting property owner may request a postponement of the scheduled hearing date one (1) time each, and if requested, a postponement shall be granted for a period of no more than ten (10) days from the date of the previously scheduled hearing date unless otherwise agreed to by the Board and the property owner. Additional postponements may be granted by agreement of the parties. The Board shall provide the requesting property owner with the date, time, and location of the rescheduled hearing date at least twenty-four (24) hours in advance of the rescheduled hearing date. Notice of a rescheduled hearing date may be given to a property owner by any reasonable manner designed to provide adequate notice of the rescheduled hearing.

3.3 Location of the Chapter 209 Enforcement Hearing. A Chapter 209 Enforcement Hearing may be conducted in conjunction with a meeting of the Board or at a non-public work session of the Board. If the Chapter 209 Enforcement Hearing is conducted at a meeting of the Board, it shall be conducted during an executive session of the meeting unless the requesting property owner and the Board agree to conduct it during an open session of the meeting. In addition, a Chapter 209

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Enforcement Hearing may be held at a physical location, or at the election of the Board, by video conference technology, provided the property owner is afforded the reasonable ability to present information relevant to the subject matter of the Chapter 209 Enforcement Hearing. Upon the agreement of the Board and the property owner, a Chapter 209 Enforcement Hearing may be conducted at the property that is the subject of the hearing.

3.4 Pre-Hearing Disclosure of Evidence Packet. No later than ten (10) days before a Chapter 209 Enforcement Hearing is held by the Board, the Board shall provide to the requesting property owner a packet containing all documents, photographs, and communications relating to the matter that the Board intends to introduce at the Chapter 209 Enforcement Hearing (the “**Evidentiary Packet**”). The Evidentiary Packet may be mailed, hand-delivered or emailed to the requesting property owner and shall be considered delivered on the day it is hand-delivered, mailed to the requesting property owner at his or her last known mailing address with proper postage or emailed to the requesting property owner at an email address provided to the Association by such property owner. A letter from the Board to the requesting property owner stating that all documents, photographs, and communications relating to the matter that the Board intends to introduce at the Chapter 209 Hearing have been produced or that there are no documents, photographs, or communications relating to the matter that the Board intends to introduce at the Chapter 209 Enforcement Hearing shall satisfy the Board’s obligation concerning the pre-hearing disclosure of the Evidence Packet. If the Board fails to timely provide the Evidentiary Packet to the requesting property owner, the property owner shall be entitled to an automatic fifteen (15) day postponement of the Chapter 209 Enforcement Hearing, unless the property owner agrees to waive the Board’s obligation concerning the pre-hearing disclosure of the Evidence Packet. A template letter for providing notice of a Chapter 209 Enforcement Hearing and pre-hearing disclosure of the Evidence Packet is attached to these Guidelines as Exhibit A-2.

3.5 Attendance at the Chapter 209 Enforcement Hearing. The Board and the requesting property owner may be represented by legal counsel at a Chapter 209 Enforcement Hearing. In addition, both parties may have other relevant persons attend the Chapter 209 Enforcement Hearing, including the Association’s managing agents, members of the Architectural Committee, architects, contractors, consultants and any other person that either party believes would be in a position to provide information relevant to the subject matter of the hearing.

3.6 Conduction of the Chapter 209 Enforcement Hearing. The purpose of the Chapter 209 Enforcement Hearing is to discuss and verify facts and resolve the matters at issue. At the Chapter 209 Enforcement Hearing, a member of the Board (or a designated representative of the Association) shall first present the Association's case against the property owner. The property owner (or the property owner's designated representative) may then present the property owner's information and issues relevant to the appeal or dispute. In order to conduct such process in an orderly manner, the Board shall use the script attached to these Guidelines as Exhibit A-3. An audio recording of the Chapter 209 Enforcement Hearing may be made by the Board or the property owner.

3.7 Ruling by the Board. The Board’s ruling shall be in writing and mailed by certified mail, hand-delivered, or emailed to the requesting property owner within ten (10) business days from the date of the Chapter 209 Enforcement Hearing. The Board may, but is not required to, state the



## EXHIBIT A

basis for its determinations in the written ruling. There shall be no appeal or reconsideration of the ruling by the Board.

## EXHIBIT A-1

### OUTLINE FOR CONDUCTING A CHAPTER 209 ARCHITECTURAL REVIEW HEARING

**Note:** A Director or Officer should act as the presiding hearing officer. The hearing officer will provide introductory remarks and administer the hearing agenda.

#### I. Introduction:

**Hearing Officer:** “The Board of Directors has convened for the purpose of hearing an appeal by \_\_\_\_\_ of an architectural determination by the Architectural Committee denying an application or request for the construction or modification of an improvement. The hearing is being conducted as required by Section 209.00505 of the Texas Property Code, and it is an opportunity for the appealing party to discuss, verify facts, and attempt to resolve the matter at issue. The Board has the authority to affirm, modify, or reverse, in whole or in part, any decision of the Architectural Committee concerning the application or request for the construction or modification of an improvement that is the subject of hearing.”

“The hearing will be conducted in three phases. First will be the Presentment of Facts, followed by a Discussion of Issues in Dispute, and then Proposal of Resolutions.”

“The Board of Directors would like to resolve the appeal at this hearing. However, the Board of Directors may elect to take the appeal under advisement and conclude the hearing. If the matter is taken under advisement, a final decision will be communicated to the appealing party in writing within ten (10) business days.”

#### II. Presentation of Facts:

**Hearing Officer:** “This portion of the hearing is to permit the appealing party the opportunity to present information related to the application for construction or modification of an improvement that was denied by the Architectural Committee. After which, the Board or a designated representation of the Association may present information concerning the basis for the Architectural Committee’s denial of the application or other information related thereto. Thereafter, the Board may permit the appealing party to present additional information if such information is relevant to issues raised during the presentation by the Board or the Association’s representative.”

“During the presentations, all parties are expected to be respectful and to not interrupt the party who is making a presentation. The Board members, however, may ask questions during a party’s presentation so long as it does not unreasonably disrupt the presentation.”

“Before beginning, the appealing party is requested to introduce any of his or her representatives or witnesses that will be participating in the presentation of facts.”

[Conduct Presentations]

## EXHIBIT A-1

### III. Discussion of Issues in Dispute:

**Hearing Officer:** “This portion of the hearing is to permit the Board of Directors and the owner to discuss factual issues or disputes relevant to the application for construction or modification of an improvement that was denied by the Architectural Committee. Discussion should be productive and designed to seek, if possible, an acceptable resolution that permits the appealing party to construct or modify the improvement at issue. An agreement may be conditioned upon the appealing party modifying the proposed construction or modification plan or the Board imposing other reasonable conditions or concessions that may address or mitigate issues of concern. The Hearing Officer retains the right to conclude this portion of the hearing at any time.”

### IV. Proposal of Resolutions:

**Hearing Officer:** “This portion of the hearing is to permit discussion between the Board of Directors and the appealing party regarding the final terms for the approval of the application to construct or modify an improvement if a resolution was agreed upon during the discussion phase of the hearing.”

If no settlement is agreed upon, the Hearing Officer may: (1) request that the Board of Directors enter into executive session to discuss its ruling on the appeal; (2) request that the Board of Directors take the matter under advisement and adjourn the hearing; or (3) advise the appealing party of the Board of Directors’ decision and adjourn the hearing.

EXHIBIT A-2

TIMBERCREEK CANYON PROPERTY OWNERS ASSOCIATION, INC.

\_\_\_\_\_, 2021

Via [mail, hand-delivery, and/or email]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Notice of hearing and pre-hearing disclosure of evidentiary packet concerning violation(s) of the restrictive covenants [or unpaid assessments] related to \_\_\_\_\_ (the “**Property**”)

Dear \_\_\_\_\_:

Timbercreek Canyon Property Owners Association, Inc. (the “**Association**”) is in receipt of your request for a hearing with the Board concerning the restrictive covenant violation(s) [and/or unpaid assessments] related to the Property (the “**Enforcement Matter**”).

The hearing on the Enforcement Matter will be conducted at \_\_: \_\_m on \_\_\_\_\_, 2021 at \_\_\_\_\_ [by Zoom video conference at the following link].

If you cannot attend the scheduled hearing, you are entitled to one postponement. Please notify the Association of your request for a postponement and the hearing will be rescheduled for a new date within ten (10) days from the original scheduled date and an email address that may be used to notify you of the new hearing date. You can request a postponement by sending an email to the following email address: \_\_\_\_\_.

In addition, enclosed with this notice is a packet containing all the documents, photographs, and/or communications relating to the Enforcement Matter that the Association intends to introduce at the hearing. [The Association does not intend to introduce any documents, photographs, or communications at the hearing.]

Sincerely,

## OUTLINE FOR CONDUCTING A CHAPTER 209 ENFORCEMENT HEARING

**Note:** A Director or Officer should act as the presiding hearing officer. The hearing officer will provide introductory remarks and administer the hearing agenda.

I. Introduction:

**Hearing Officer:** “The Board of Directors has convened for the purpose of hearing an appeal by \_\_\_\_\_ from a determination by the Association that such owner is in violation of the restrictive covenants applicable to his or her property and/or the guidelines or rules of the Association (or from the imposition of fines by the Association for violation of the restrictive covenants applicable to his or her property and/or the guidelines or rules of the Homeowners Association). The hearing is being conducted as required by Section 209.007 of the Texas Property Code, and it is an opportunity for the appealing party to discuss, verify facts, and attempt to resolve the matter at issue. The Board of Directors would like to resolve the dispute at this hearing. However, the Board of Directors may elect to take the appeal under advisement and conclude the hearing. If the matter is taken under advisement, a final decision will be communicated to the appealing party in writing within fifteen (15) days.”

II. Presentation of Facts:

**Hearing Officer:** “This portion of the hearing is to permit a representative of the Homeowners Association the opportunity to describe the violation and to present photographs or other material relevant to the violation, fines, and/or penalties. After the Homeowners Association’s representative has finished his or her presentation, the owner or his or her representative will be given the opportunity to present photographs or other material relevant to the violation, fines, or penalties. The Board of Directors may ask questions during either party’s presentation. It is requested that questions by the appealing party be held until completion of the presentation by the Homeowners Association’s representative.”

[Conduct Presentations]

III. Discussion of Issues in Dispute:

**Hearing Officer:** “This portion of the hearing is to permit the Board of Directors and the owner to discuss factual disputes relevant to the violation. Discussion regarding any fine or penalty is also appropriate. Discussion should be productive and designed to seek, if possible, an acceptable resolution of the dispute. The Hearing Officer retains the right to conclude this portion of the hearing at any time.”

IV. Proposal of Resolutions:

**Hearing Officer:** “This portion of the hearing is to permit discussion between the Board of Directors and the appealing party regarding the final terms of the settlement if a resolution was agreed upon during the discussion phase of the hearing.”

If no settlement is agreed upon, the Hearing Officer may: (1) request that the Board of Directors enter into executive session to discuss the matter; (2) request that the Board of Directors take the matter under advisement and adjourn the hearing; or (3) advise the appealing party of the Board of Directors’ decision and adjourn the hearing.

# FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



*Susan B. Allen*

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01/06/2022 10:45 AM

Fee: 74.00

Susan B. Allen, County Clerk

Randall County, Texas

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