

**CERTIFIED RESOLUTIONS OF THE BOARD OF DIRECTORS
OF TIMBERCREEK CANYON PROPERTY OWNERS ASSOCIATION, INC.**

**ADOPTION OF PROCEDURES AND GUIDELINES FOR
THE EXERCISE OF ARCHITECTURAL REVIEW AUTHORITY
PURSUANT TO CHAPTER 209 OF THE TEXAS PROPERTY CODE**

The undersigned, Robert Wyatt, as the duly elected, qualified, and acting Secretary of 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at a meeting of the Board held on January 4, 2022, and that such preamble and resolutions have not been amended or rescinded and are in full force and effect on the date hereof.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 imposes certain procedures for the denial of a property owner’s application for architectural review of proposed construction or modification of an improvement and establishes procedures for appealing a denial of an application for architectural review to the Association’s Board of Directors

WHEREAS, the Board desires to adopt procedures and guidelines for conducting architectural review of a property owner's application for proposed construction or modification of an improvement 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

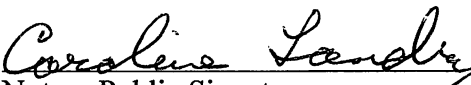
IN WITNESS WHEREOF, the undersigned has executed this Certificate as Secretary on behalf of the Association to be effective upon the recording of this document in the Official Public Records of Randall County, Texas.

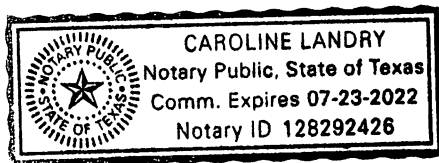

By: Robert Wyatt
Title: Secretary

STATE OF TEXAS §

COUNTY OF RANDALL §

This instrument was acknowledged before me on 1/5/2022 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 THE EXERCISE OF ARCHITECTURAL REVIEW AUTHORITY PURSUANT TO CHAPTER 209 OF THE TEXAS PROPERTY CODE

ARTICLE I Introduction

The architectural review of applications for construction or modification of improvements is a vital task for ensuring that improvements constructed in Timbercreek Canyon Property Owners Association, Inc. community (the “**Community**”) are in compliance with the terms and provisions of the governing documents applicable to the community. Such task commonly involves a high degree of discretionary determinations, which may be scrutinized or disagreed with by others after the fact. In order to provide greater transparency and procedures for redress when property owners disagree with architectural review decisions concerning their property, the Texas legislature enacted Section 209.00505 of the Texas Property Code, which imposes new procedures for the denial of a property owner’s application for architectural review and establishes procedures for appealing a denial of an application for architectural review to the property owners association’s board of directors.

These procedures and guidelines are intended to assist the Architectural Committee, (the “**Architectural Committee**”) in the review and approval or denial of an application for architectural review of proposed construction or modification of an improvement and, if applicable, the appellate review of a denied application (the “**Guidelines**”). The Guidelines have been prepared by the Cagle Pugh law firm specifically for the Architectural Committee and the Board of Directors (the “**Board**”) of Timbercreek Canyon Property Owners Association, Inc., (the “**Association**”) and are based on 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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ARTICLE II

Purpose

The purpose of the Architectural Committee is to serve as a “gate-keeping” function for the construction of improvements in a development. In most Declarations, property owners are required to submit an application for the construction of new improvements or the modification of existing improvements to the Architectural Committee for its review in advance of initiating construction, and the Architectural Committee is vested with exclusive discretion to determine whether such proposed construction of new improvements or modification of existing improvements is in compliance with the Restrictive Covenants applicable to the community. Often such task also involves a subjective determination as to whether the proposed construction is aesthetically attractive and harmonious with the other structures in the community. The authority to review and approve construction of new improvements and/or modifications to existing improvements is generally referred to as the “Architectural Review Authority.”

ARTICLE III

Improvements Requiring Approval of the Architectural Committee

The necessity of obtaining approval from an architectural committee is derived from a land-use restriction contained in the dedicatory instruments applicable to the community. Such land-use restriction will often restrict property owners from constructing or modifying certain improvements, buildings and/or structures without the advance written approval of the architectural committee. The scope of items requiring approval of the architectural committee is specified by the dedicatory instruments applicable to the community.

The Declaration for the Community requires the following items to be submitted to and approved by the Architectural Committee:

It shall be the duty of the Architectural Committee to receive, consider and act upon all Improvement Requests for approval of proposed construction, erection, placement, modification and/or removal of buildings, fences, walls, utilities or other structures.

ARTICLE IV

Scope of Architectural Review Authority

The authority of the Architectural Committee to approve or deny a property owner’s application to construct or modify an improvement is not without limitation. In a 1981 case law opinion, entitled *Davis v. Huey*, the Texas Supreme Court held that dedicatory instrument provisions requiring the submission of plans to and prior consent of an architectural committee before construction of improvements are valid “insofar as they furnish adequate notice to the homeowners of the specific restriction sought to be enforced” and that an architectural committee may not impose building restrictions upon property owners that are more stringent than those specifically set out in the dedicatory instruments through its discretionary authority to disapprove proposed construction projects. In other words, even if a dedicatory instrument vests an architectural committee with discretionary approval authority, the architectural committee is not permitted to alter or expand the specific building restrictions or to impose limitations on a property owner’s construction or remodeling project that are more restrictive than the specific restrictions set out elsewhere in the dedicatory instrument. Thus, the scope of an architectural committee’s review of an application for proposed construction or modification of an improvement is generally dictated by the express provisions of the dedicatory instrument establishing such committee, and an architectural committee may not exercise architectural review authority over characteristics of a proposed improvement that is not expressly within such scope of review.

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The permitted scope of Architectural Review Authority by the Architectural Committee established by the Declaration is as follows:

The Architectural Committee shall have the right to consider as the basis for any approval or disapproval of an Improvement Request: (i) compliance or noncompliance with certain objective standards set out in the Declaration; (ii) the nature and quality of the building materials and methods of construction to be used; (iii) the location of the proposed improvement or structure on the Lot; (iv) the harmony of the design of the improvement or structure with existing improvements and structures in the Subdivision; and (v) the visual impact of the proposed improvement or structure from the standpoint of style and consistency with other improvements previously constructed in the Subdivision.

ARTICLE V Variance Authority

It is very common for a dedicatory instrument to vest an architectural committee with the power to grant a property owner a variance from compliance with one or more of the land-use restrictions in the dedicatory instrument regarding construction or modification of an improvement. When such variance authority is granted to an architectural committee it may be limited to certain types of land-use restrictions or the architectural committee may be restricted from granting a variance except in limited circumstances where the architectural committee determines there is good cause or justification for allowing the deviation and such variance will not have an adverse impact on the community.

The Declaration does not grant the Architectural Committee the authority to grant variances.

ARTICLE VI Time Period for Review

The Declaration provides that an application for architectural review must be completed and communicated to the requesting property owner (or his or her representative) within thirty (30) days from submission of the application for an Improvement Request. It is very important that the Architectural Committee comply with this deadline as the failure to do so will result in an approval of the application by default.

If the Architectural Committee does not have sufficient information from the requesting property owner to be able to approve an application within the specified time period to do so, the Architectural Committee should deny the application for such reason before the expiration of the deadline, request the additional information needed to perform a review of the application, and inform the requesting property owner that the application will be reconsidered by the Architectural Committee upon receipt of the requested information.

ARTICLE VII Denial of an Application

Section 209.00505 of the Texas Property Code requires all denials of an application for construction or modification of an improvement to be in writing and delivered to the requesting property owner by certified mail, hand-delivery, or electronic delivery. The written denial must also (1) describe the basis for the denial in reasonable detail and changes, if any, to the application or improvements required as a condition to approval; and (2) inform the property owner that he or she may request a hearing with the board of directors for the purpose of appealing the denial by the architectural committee on or before the thirtieth (30th) day after the date the written denial is mailed, hand-delivered or electronically delivered to the property owner.

EXHIBIT A

Based on the permitted scope of Architectural Review Authority described above, an application may be denied by the Architectural Committee for one (1) or more of the following reasons:

1. The proposed improvement or structure is not in accordance with the Declaration.
2. The nature and quality of the building materials and methods of construction to be used for the proposed improvement or structure are not acceptable.
3. The location of the proposed improvement or structure on the Lot is not acceptable.
4. The design of the proposed improvement or structure is not in harmony with existing improvements and structures in the Subdivision.
5. The proposed improvement or structure is not consistent visually or style-wise with other improvements previously constructed in the Subdivision.

A template letter for denial of an application that conforms to the Architectural Committee's scope of Architectural Review Authority under the Declaration and complies with the requirements of Section 209.00505 of the Texas Property Code is attached hereto as Exhibit A-1 and the Architectural Committee is strongly encouraged to use such template when denying a property owner's application for architectural review. The denial of an application letter should state all applicable reasons for the denial.

ARTICLE VIII Appellate Review by the Board

If a request for an appellate review hearing is timely received from a property owner, the Board must conduct an appellate review hearing not later than the thirtieth (30th) day after the date the Board receives the property owner's request and the Board must provide the property owner notice of the date, time, and place of the hearing not later than the tenth (10th) day before the date of the hearing.

During an appellate review hearing, the Board, or a designated representative of the Association, and the owner, or his or her designated representative, will each be provided the opportunity to discuss, verify facts, and resolve the denial of the property owner's application or request for the construction or modification of an improvement, and the changes, if any, requested by the architectural committee in the written denial provided to the property owner.

The Board or the property owner may request a postponement of the scheduled hearing. If requested, a postponement shall be granted for a period of not more than ten (10) days. Subsequent postponements may be granted by agreement of the parties. The Association and/or the property owner may make an audio recording of the appellate review hearing.

The Board is authorized to affirm, modify, or reverse, in whole or in part, any decision of the Architectural Committee concerning an application for construction of an improvement, as consistent with the Declaration. In other words, the Board is limited to the same scope of architectural review as the Architectural Committee.

EXHIBIT A-1

TIMBERCREEK CANYON PROPERTY OWNERS ASSOCIATION, INC.

Architectural Committee

_____, 2021

[Insert Owner Name]

Via Certified Mail, Hand-Delivery, and/or
Electronic Delivery

RE: Denial of application for construction or modification of improvement at _____ (the
“Property”) submitted to the Architectural Committee (the “Committee”) on _____, 2021
(the “Application”)

Dear [insert owner name]:

Thank you for your submission of the Application. The Committee has denied the Application for
the following reasons:

- ☐ The proposed improvement or structure is not in accordance with the Declaration.
- ☐ The nature and quality of the building materials and methods of construction to be used for the
proposed improvement or structure are not acceptable.
- ☐ The location of the proposed improvement or structure on the Lot is not acceptable.
- ☐ The design of the proposed improvement or structure is not in harmony with existing improvements or
structures in the Subdivision.
- ☐ The proposed improvement or structure is not consistent visually or style-wise with other
improvements previously constructed in the Subdivision.
- ☐ The submitted Application failed to include information required by the applicable dedicatory
instrument and/or requested by the Committee. Please provided the required/requested information and
the Committee will reconsider the Application
- ☐ Other: _____

[if applicable – add the following provision]

Notwithstanding the denial above, the Committee shall reconsider its denial and approve the Application
on the following conditions:

EXHIBIT A-1

Pursuant to Section 209.00505 of the Texas Property Code, you may request an appellate review hearing with the Board of Directors of Timbercreek Canyon Property Owners Association, Inc., (the "Board"). A request for an appellate review hearing must be delivered to the Board on or before the thirtieth (30th) day from the date this notice was transmitted to you at the following mailing and/or email address:

Sincerely,

[insert name]

[insert title]

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



Susan B Allen

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01/06/2022 10:45 AM

Fee: 58.00

Susan B. Allen, County Clerk
Randall County, Texas

RES