RP-2022-373831
07/20/2022 ER $50.00

CERTIFIED RESOLUTIONS OF THE BOARD OF DIRECTORS

OF LAKEWOOD FOREST NORTH HOMEOWNERS ASSOCIATION

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

The undersigned, John P. Montgomery, as the duly elected, qualified, and acting Secretary of Lakewood Forest North Homeowners Association, 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at a meeting of the Board held on 10/20/21, 2021, and that such preamble and resolutions have not been amended or rescinded and are in full force and effect on the date hereof.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 *Residential Declaration of Protective Covenants for Lakewood Forest North, Section One*, recorded as Document No. S722619 in the Official Public Records of Harris County, Texas, as may be amended from time to time (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]

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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 Harris County, Texas.

By: John P. Montgomery
Title: Secretary

STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on 10/20 2021, by John P Montgomery, Secretary of Lakewood Forest North Homeowners Association, a Texas non-profit corporation, on behalf of said non-profit corporation.

Wendy A Golden
Notary Public Signature

WENDY A. GOLDEN
ID #824530
My Commission Expires
October 25, 2023

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AFTER RECORDING PLEASE RETURN TO:

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

EXHIBIT A

LAKEWOOD FOREST NORTH HOMEOWNERS ASSOCIATION

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 Lakewood Forest North Homeowners Association 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 Control 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 Lakewood Forest North Homeowners Association, (the "**Association**") and are based on that certain *Residential Declaration of Protective Covenants for Lakewood Forest North, Section One*, recorded as Document. No. S722619 in the Official Public Records of Harris County, Texas, as amended from time to time (collectively, the "**Declaration**").

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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:

1. Any structure that is placed, erected or installed upon any Unit.

2. Any construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, at a Unit.

3. Any exterior alteration or modification of existing improvements.

4. Any planting or removal of plants, trees, or shrubs.

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.

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

Review and approval of any application by the Architectural Committee is made on the basis of subjective, aesthetic considerations. In making a determination, the Architectural Committee shall look at the quality of the workmanship and design of the proposed plans; the harmony of the external design with existing structures in the Community; the location of the proposed improvements to the surrounding structures, topography, and finish grade elevation; and any guidelines and procedures that may have been promulgated by the Architectural Committee. Additionally, the Architectural Committee may, at its discretion, require that all dwellings constructed on any portion of the Residential Properties be designed by and built in accordance with the plans and specifications of a licensed architect or licensed builder.

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EXHIBIT A

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 grant the Architectural Committee the authority to grant variances under the following circumstances:

The Architectural Committee may authorize variances and waivers from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require.

In addition, the Architectural Committee may grant conditional variances (i.e., variances that are conditioned upon the continued existence of certain conditions) or temporary variances (i.e., variances that expire upon the expiration of specified period of time or upon an event, such as the sale of the lot).

The variance must be in writing. Further, no previously granted variance shall ever operate in any manner to waive guidelines adopted by the Architectural Committee or to estop the Architectural Committee from denying a variance in other circumstances.

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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 forty-five (45) days from submission of the plans. If the Architectural Committee does not approve the plans within this forty-five (45) day time frame, the plans shall be deemed denied.

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 explanation 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.

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 plans and specifications are not in accordance with any guidelines and procedures promulgated by the Architectural Committee.

2. The plans and specifications are not in accordance with the Declaration.

3. Purely aesthetic reasons.

4. The quality of workmanship and design, as specified in the plans and specifications, is inadequate.

5. The plans and specifications regarding the external design is not in harmony with existing structures and improvements in the Community.

6. The location of the proposed construction, modifications, additions, or alterations will impact surrounding structures, topography, and finish grade elevation.

7. The dwelling proposed to be constructed has not been designed by and/or is not planned to be built in accordance with plans and specifications of a licensed architect or licensed building designer.

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.

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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.

EXHIBIT A

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.

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EXHIBIT A-1

LAKEWOOD FOREST NORTH HOMEOWNERS ASSOCIATION

Architectural Control 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 Control 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 plans and specifications are not in accordance with the Declaration.

☐ The plans and specifications are not in accordance with any guidelines or procedures promulgated by the Architectural Committee.

☐ Purely aesthetic reasons.

☐ The quality of the workmanship and design, as specified in the plans and specifications, is inadequate.

☐ The plans and specifications regarding the external design is not in harmony with existing structures in the Community.

☐ The location of the proposed construction, modifications, additions, or alterations impacts the surrounding structures, topography, and finish grade elevation.

☐ The dwelling proposed to be constructed has not been designed by and/or is not planned to be built in accordance with plans and specifications of a licensed architect or licensed building designer.

☐ 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]

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

_____

_____

_____

Pursuant to Section 209.00505 of the Texas Property Code, you may request an appellate review hearing with the Board of Directors of Lakewood Forest North Homeowners Association, (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]

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e-Filed & e-Recorded in the

Official Public Records of

HARRIS COUNTY

TENESHIA HUDSPETH

COUNTY CLERK

Fees $50.00

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RECORDERS MEMORANDUM
This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.

COUNTY CLERK
HARRIS COUNTY, TEXAS