

ARCHITECTURAL GUIDELINES FOR POAs

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ARCHITECTURAL GUIDELINES FOR POAS

"This report, by its very length, defends itself against the risk of being read." - Winston Churchill

I. INTRODUCTION

The concept of universal favorability of restrictions as vehicles of retention of property values was adopted by most Courts in the United States in the first quarter of the 20th Century, emphasizing the beneficial aspects over ways to inconvenience subsequent purchasers. They began to enforce restrictions using equitable principles, "meaning that the decision is based on the court's evaluation of the overall fairness of the situation rather than on any specific legal principle. *Neposit Property Owners Association vs. Emigrant Industrial Savings Bank*, 278 N.Y. 248, 262 (1938).

Gradually, the power to determine the character of a community shifted. Instead of communities evolving through decisions made by the people who live there, decisions concerning the painting of houses, the planting of trees, and the building of fences, for example, the look and feel of communities increasingly is predetermined by private developers who plan, build, and restrict from the outset.¹

Contracting suburban space and increasing urban residential demand have caused developers to move away from using restrictive covenants merely as a means to create more garden cities. Zero lot line and townhome concepts are no longer a novelty and require homogeneity, which can only be maintained through the use of architectural controls. They are characterized by a group of dwellings with some common interest amenities such as landscaping and driveways. There is a lesser need for control within the condominium concept, which is not a style of building but a form of ownership; but still restrictions on use and appearance are necessary.

Even with the passage of the POA "reform" statutes of the 82nd Texas legislative session, elected officials are reluctant to become too involved with the activities of private government of land use. Until recently, housing industry interest groups have aggressively opposed aggressive state regulation of private neighborhoods, arguing that this segment of the housing market can, for the most part, regulate itself.²

Property owners associations are empowered by statute and their governing documents to impose certain standards of repair and maintenance on individual owners, but also require plans to be submitted before any construction or alteration is commenced. Beyond basic requirements, architectural control is used to safeguard target marketing strategy. The Texas Luxury Home Sales Report for 2014 released by the Texas Association Realtors cited sales volume increases from nine to more than twenty-five percent for homes sold at \$1 million or more in Texas major cities. It reported that the luxury market is one of the current strongest segments of housing in Texas.³ Symbiotically, architectural control in the form of restrictive covenants play an important role in the marketing and sale of these up-market residences as a component to the preservation of their values.

II. SCOPE OF ARTICLE

Guidelines for architectural control are more prevalent in residential and mixed-use communities, therefore this article is predominately targeted at residential settings. Moreover, provisions of the Texas Property Code addressing the subject concern, for the most part, the rights of property owners associations and individual owners as to residential use. Many of the same principles may be applied to commercial guidelines by the drafter.

III. REQUISITES OF BINDING RESTRICTIONS ON LAND

As early as medieval times in England, sellers of real estate have used restrictive covenants as a means to regulate the future use of their property. *Tulk v. Moxhay*, 2 Phillips 774, 41 English Reporter 1143 (1848), is a landmark English land law case in which the court decided that in certain cases a restrictive covenant can "run with the land" (real covenant) and abolished the requirement that horizontal privity (a personal covenant) was required for the burden of a covenant to be enforced at equity. American jurisdictions have long recognized the distinction between real and personal covenants. Those in the first category are said to run with the land at law, while a "personal" covenant is often referred to as an equitable "reservation" or "servitude" which may be binding upon successors in interest even though the traditional tests of Spencer's case are not satisfied.

A. Real Covenants - Run With the Land

If the original parties to the covenant intended that the restriction would benefit some particular property,

¹ Evan McKenzie, *Privatopia: Homeowner Associations and the Rise of Residential Private Government* (New Haven: Yale University Press, 1994) , 30.

² Evan McKenzie, *Beyond Privatopia: Rethinking Residential Private Government* (Washington D.C.: The Urban Institute Press, 2011), 94.

³ "Income, Population Growth Spur Texas Luxury Home Sales," *RECON*, accessed January 6, 2015, <http://www.recenter.tamu.edu/recon/main.asp?date=1/6/2015>.

it may be said that the restriction runs with the land. If the original parties to the covenant intended that the restriction would benefit some particular property, it may also be said that the restriction runs with the land. *Billington v. Riffe*, 492 S.W.2d 343, 346 (Tex.App.--Amarillo 1973, no writ).

In most jurisdictions, the following requirements are necessary for a restrictive covenant to run with the land:

- The covenant must relate to something *in esse*, or else assigns must be named if they are to be bound or are to obtain the benefit of the running of the covenant;
- The covenant must touch or concern the land;
- There must be privity of estate between the covenanting parties;
- The requirements of the Statute of Frauds must be satisfied; and
- It must be the intention of the original covenanting parties that the covenant run with the land.

1. In Esse

This Latin term for a thing "in being" or "in existence," is self-explanatory. As a rule, any owner of property may impose restrictions, so long as they do not prohibit the use by or the sale, lease, or transfer to a person because of race, color, religion, or national origin. TEX. PROP. CODE ANN. § 5.026 (Vernon 1984).

2. Touch and Concern

Early Courts in England and the United States recognized that a covenant touched and concerned the land when it ceased to be a personal promise between the parties and accepted the concept when it was intended to have a mutually beneficial effect, *i.e.* property values are enhanced by the restrictions.

The Restatement (Third) of Property purports to abandon the common law touch and concern doctrine in favor of a new inquiry and abolishes the touch and concern requirement: "Neither the burden nor the benefit of a covenant is required to touch or concern land in order for the covenant to be valid as a servitude." See RESTATEMENT (THIRD) OF PROP.: SERVITUDES § 3.2 cmt. b (2000).

Texas Courts continue to adhere to the "touch and concern" requirement, and do not follow the Restatement, as indicated in *Inwood North Homeowners Ass'n v. Harris*, 736 S.W.2d 632, 635 (Tex. 1987):

In Texas, a covenant runs with the land when it touches and concerns the land; relates to a thing in existence or specifically binds the parties and their assigns; is intended by the

original parties to run with the land; and when the successor to the burden has notice.

Generally, if the promisor's legal relations in respect to the land in question are lessened - his legal interest as owner rendered less valuable by the promise - the burden of the covenant touches or concerns that land; if the promisee's legal relations in respect to that land are increased - his legal interest as owner rendered more value by the promise - the benefit of the covenant touches or concerns the land. *Westland Oil Dev. Corp. v. Guld Oil Corp.*, 637 S.W.2d 903, 911 (Tex. 1982).

3. Privity of Estate

To satisfy the privity of estate requirement, there must be a successive interest in the same property and, historically, those individuals affected and benefitted by a restriction were the only parties with the ability to enforce. Ordinarily, restrictive covenants are only enforceable by the contracting parties or those in direct privity; however, where many property owners are interested in a restrictive covenant, any one of them can enforce it. *Giles v. Cardenas*, 697 S.W.2d 422, 427 (Tex.App.--San Antonio 1985, writ ref'd n.r.e.). In *Wayne Harwell Props. v. Pan American Logistics Center, Inc.*, 945 S.W.2d 216 (Tex.App.--San Antonio 1997, no writ), the court held that Covenants may be real or equitable and for them to bind successors, the covenant must be made between parties who are in privity of estate at the time the covenant is made. The privity must be contained in the grant of the land or in a grant of some property interest in the land. If no privity of estate existed between the original parties, it must be shown that the restriction was imposed for the benefit of adjacent land; otherwise, the covenant will be construed as a personal covenant with the grantor. To show privity between the parties, the court noted that the interest transferred must convey the land involved. *Id.* at 218.

4. Statute of Frauds

From law school we remember that the statute of frauds requires that certain kinds of contracts be memorialized in a writing, signed by the party to be charged, with sufficient content to evidence the contract. TEX. BUS. & COM. CODE ANN. § 26.01 (Vernon 1967).

5. Intention

So long as a party can show that it was the intent that a restriction attach, it may be enforced. The intention of the original parties in creating a restrictive covenant is usually considered to be the deciding factor against whom a restriction may be enforced. *Billington, infra* at 346.

B. Personal Covenants - Servitudes

A servitude a non-possessory interest in land that operates much like a covenant running with the land, that may be implied from a common scheme for the development of a residential subdivision, so long as landowners have notice of the agreement. But, where a general plan of development has been maintained and has been understood, accepted, relied upon, and acted upon, it is binding and enforceable so long as the grantee of a lot, which is not specifically restricted, either took with notice of the restriction or with knowledge of the general plan. *Selected Lands Corp. v. Speich*, 702 S.W.2d 197, 199 (Tex.App.—Houston [1st Dist.] 1985, writ ref'd n.r.e.).

1. General Scheme

A general plan or scheme of development can be established by (1) express covenant; (2) by implication from the filed map; (3) parol representations made in sales brochures, maps, advertising and oral statement on which a purchaser relied in making his purchase; (4) reciprocal covenants in all deeds out of the common developer; or (5) the developer pursuing a course of conduct indicating a neighborhood scheme. *Lehmann v. Wallace*, 510 S.W.2d 675, 680 (Tex.App.—San Antonio 1974, writ ref'd n.r.e.).

2. Implied Reciprocal Negative Easement Doctrine

The doctrine of implied reciprocal negative easements applies when an owner of real property subdivides it into lots and sells a substantial number of those lots with restrictive covenants designed to further the owner's general plan or scheme of development. The central issue is usually the existence of a general plan of development. The lots retained by the owner, or lots sold by the owner from the development without express restrictions to a grantee with notice of the restrictions in the other deeds, are burdened with what is variously called an "implied reciprocal negative easement," an "implied equitable servitude," or a "negative implied restrictive covenant," in that they may not be used in violation of the restrictive covenants burdening the lots sold with the express restrictions. The Texas Supreme Court implicitly recognized the doctrine in *MacDonald v. Painter*, 441 S.W.2d 179 (Tex.1969), and *Evans v. Pollock*, 796 S.W.2d 465 (Tex. 1990). In *Evans*, the Texas Supreme Court discussed "restricted districts," and noted that Texas cases support the conclusion that a restricted area need not be the whole subdivision. *Id.* at 466, citing *Curlee v. Walker*, 112 Tex. 40, 43-44, 244 S.W. 497, 498 (1922).

IV. DEFINITIONS

Some of the following terms are defined in the Texas Property Code in the chapters addressing architectural restrictions generally, and often there is

more than one definition given for the same term in different chapters. Here, those distinct definitions are noted and/or combined to give a general meaning, to which is how they are referred in this article. For brevity, references to TEX. PROP. CODE ANN. are indicated as "TCP."

- Architectural control committee ("ACC") a/k/a Architectural Review Committee ("ARC"):
 - TCP § 204.001(a) - a committee created under a dedicatory instrument with the power to approve or deny applications for proposed original construction or modification of a building, structure, or improvement.
- Architectural or design guidelines: A dedicatory instrument which sets forth in detail the architectural and aesthetic standards for the design of residences, accessory structures, landscaping, and all other improvements constructed on lots in a residential subdivision.
- Dedicatory instrument (used herein interchangeably with "governing documents"):
 - TPC §§ 202.001(1) & 209.002(4) - each document governing the establishment, maintenance, or operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes a declaration or similar instrument subjecting real property to: (A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners association; (B) properly adopted rules and regulations of the property owners association; or (C) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.
- Development period:
 - TPC §§ 209.002(4-a) & 209.0041(a)(1)-(2) - a period stated in a declaration during which a declarant reserves: (A) a right to facilitate the development, construction, and marketing of the subdivision; and (B) a right to direct the size, shape, and composition of the subdivision;
- Property owners association ("POA") a/k/a homeowners association, or association:
 - TPC §§ 202.001(2) & 209.002(7) - means and incorporated or unincorporated

association that is designated as the representative of the owners of property in a residential subdivision, owned by or whose members consist primarily of the owners of the property covered by the dedicatory instrument and through which the owners, or the board of directors or similar governing body, manage or regulate the residential subdivision, planned unit development, condominium or townhouse regime, or similar planned development for the benefit of the owners of property;

- TPC § 204.004(a) - a designated representative of the owners of property in a subdivision and may be referred to as a "homeowners association," "civic association," "civic club," "association," "committee," or similar term contained in the restrictions.
- Restrictive covenant or restriction a/k/a CCRs:
 - TPC §§ 202.001(4) & 209.002(11) - any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative;
 - TPC § 203.002 - a limitation that affects the use to which real property may be put, fixes the distance at which buildings or other structures must be set back from property, street, or lot lines, affects the size of lots, or affects the size, type, or number of buildings or other structures that may be built on the property.
- Subdivision:
 - TPC § 201.003(2) - all land encompassed within one or more maps or plats of land that is divided into two or more parts if the maps or plats cover land within a city, town, or village, or within the extraterritorial jurisdiction of a city, town, or village and are recorded in the deed, map, or real property records of a county, and the land encompassed within the maps or plats is or was burdened by restrictions limiting all or at least a majority of the land area covered by the map or plat, excluding streets and public areas, to residential use only; or all land located within a city, town, or village, or within the ETJ divided into two or more parts that is or was burdened in at least a majority of the land area, excluding streets and public area, to residential use only;

- TPC § 207.001(6) - all land that has been divided into two or more parts and that is or was burdened by restrictions limiting at least the majority of the land area burdened by restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the restrictions are recorded in the deed or real property records of a county;
- TPC § 209.002(9) - a subdivision, planned unit development, townhouse regime, or similar planned development in which all land has been divided into two or more parts and is subject to restrictions that: (A) limit a majority of the land subject to the dedicatory instruments, excluding streets, common areas, and public areas, to residential use for single-family homes, townhomes, or duplexes only; (B) are recorded in the real property records of the county in which the residential subdivision is located; and (C) require membership in a property owners association that has authority to impose regular or special assessments on the property in the subdivision.

V. STATUTES

Statutes which are used notably with restrictive covenants are listed below.

A. Texas Property Code ("TCP")

1. Architectural and Appearance Related

The following statutes directly apply to architectural standards, and are in descending order of prevalent application:

- TPC § 5.012 requires notice by sellers to purchasers of residential real property if they shall become members of a property owners association, and there are restrictive covenants governing the use and occupancy of the property.
- TPC Chapter 207: Applies to mandatory POAs.
 - § 207.003 (a)(1) requires that a POA must deliver, upon request by a seller of real property, his agent or title insurer, *inter alia*, a current copy of the restrictions applying to the subdivision;
 - § 207.006 requires restrictions to be posted on an association's website.
- TPC Chapter 202: Applies to all restrictive covenants, regardless of the date on which they were created for the benefit of residential subdivisions, planned unit developments,

condominium or townhouse regimes, or similar planned development.

- § 202.001(5) defines "front yard" as a yard within a lot having a front building setback of not less than 15 feet extending the full width of the lot between the front lot line and the front building setback line;
- § 202.003(a) states that a restrictive covenant shall be liberally construed to give effect to its purpose and intent;
- § 202.003(b) states that restrictive covenants may not be construed to prevent the use of property as a family home, except to the extent that the construction would restrict the use as a family home;
- § 202.006(b) states that a dedicatory instrument shall be, and has no effect until, it is filed in the real property records of each county in which the restricted property is located;
- § 202.007 prohibits property owners associations from restricting composting, rain barrels and rain harvesting systems, efficient irrigation systems, drought-resistant landscaping, and water-conserving turf;
- § 202.009 governs regulation of display of political signs;
- § 202.010 regulates solar energy devices;
- § 202.011 regulates certain roofing materials;
- § 202.012 imposes standards for display of flags of the United States of America, the State of Texas and official or replica flags of any branch of the U.S. armed forces;
- § 202.018 addresses the regulation of display of certain religious items.
- TPC § 209.015 allows owners of residential lots to use adjacent contiguous lots for uses consistent with residential purposes other than the construction of a residence, subject to approval by the ACC.
- TPC Chapter 82: The Texas Uniform Condominium Act, some sections which apply to a condominium for which the declaration was recorded before January 1, 1994, or an earlier regime if adopted by a vote of the membership by amendment.
- § 82.061 governs alterations of units and states that a unit owner may not change the appearance of the common elements or the exterior appearance of a unit or any other portion of the condominium without written permission

- § 82.102(a)(7) allows the board of directors of a condominium association to adopt and amend rules regulating the modification and appearance of units and common elements to the extent the regulated actions affect common elements or other units, and applies to all condominiums regardless of when created.

- TCP § 5.025 deems void a deed restriction that requires the use of a wood shingle roof on a residential structure.
- TPC § 208.004 contains criteria for a common scheme for preservation of property and imposition of restrictions in historic neighborhoods.

2. Enforcement of Restrictive Covenants

- TPC §§ 5.006 & 82.161(b) allow attorneys fees to be awarded to a prevailing party who asserted an action for breach of a restrictive covenant or condominium dedicatory instrument.
- TPC Chapter 202: Applies to the enforcement of dedicatory instruments by property owners associations.
- § 202.004(a) creates a presumption of reasonableness by a POA in enforcement of a restriction;
- § 202.004(b) describes the designation of a POA or similar representative by an owner as an appointment to initiate, defend, or intervene in litigation or administrative proceedings affecting the enforcement of a restrictive covenant on behalf of the owners of property covered by a dedicatory instrument;
- § 202.004(c) directs that a court may assess civil damages for the violation of a restrictive covenant in an amount not to exceed \$200 for each day of the violation.
- TPC Chapter 209: Applies to residential subdivisions statewide in which owners are subject to regular or special associations, *i.e.* mandatory POAs.
- § 209.006 requires due process by POAs prior to enforcing a restrictive covenant against an owner of property within a residential subdivision;
- § 209.007 gives owners a right to an appeal and alternative dispute resolution to actions for enforcement of a restriction by a POA;

- § 209.008 provides for a means by which a POA may collect attorney's fees in an action to enforce a restrictive covenant.

- TPC Chapter 203: In counties with more than 200,000 persons, its county attorney may sue in a court of competent jurisdiction to enjoin or abate violations of a restriction contained or incorporated by reference in a properly recorded plat, re-plat, or other instrument affecting real property and, if successful, may collect attorney's fees and costs.
- TPC Chapter 204: Applies to subdivisions in certain counties adjacent to Harris County whose restrictions require more than 75 percent of the owners to extend, add, or modify restrictions, or the restrictions contain a prohibition against modification or extension for a period of time. It contains provisions for the creation and powers of a POA to be created, if none exists, and addresses transfer of architectural control from a committee to an association.
- TPC § 208.004(a)(2) & (d) empower a historic neighborhood preservation association and each owner of property to enforce restrictive covenants on property subject to a common scheme for preservation.
- TPC Chapter 215: Currently applies only to Las Colinas, a master mixed-use communities with a property owners association that includes commercial, single-family attached and detached, and multifamily properties, with similar provisions to and in lieu of Chapter 209 with regard to restriction enforcement.
- TCP § 301.025 (Texas Fair Housing Act): Defines discrimination against disabled persons to include refusing to permit a reasonable modification of existing premises if necessary to afford full enjoyment. to such persons

B. Other Texas Statutes

- TEX. CIV. PRAC. AND REM. CODE §§ 37.001 - 37.011 (Vernon 2008); (Uniform Declaratory Judgments Act): A person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.
- TEX. LOC. GOV'T. CODE §§ 212.151 - 212.158 (Vernon 2008): municipalities with populations of

1.5 million or more that do not have zoning ordinances and pass an ordinance that requires uniform applications and enforcement with regard to all property and residents, may file actions to enforce restrictive covenants as a governmental function.

- TEX. HUM. RES. CODE § 123.001 *et seq.* (Vernon 2013); (Community Homes for Disabled Persons Location Act): prohibits restrictions that discriminate against Community Homes.

C. Federal Statutes

- Americans with Disabilities Act; 42 U.S.C. §12101 *et seq.*: requires POAs which operate a "public accommodation" to adhere to specific construction and use standards to accommodate disabled persons.
- Fair Housing Amendments Act of 1988; 42 U.S.C. §3601 *et seq.*: requires POAs to allow modifications and accommodations for disabled persons.
- 1996 Telecommunications Act; amendment to 47 U.S.C. §151 *et seq.*: prohibits restrictions that impair a viewer's ability to receive video programming services designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution serve, or direct broadcast satellite service.

VI. ENFORCEMENT AUTHORITY

A. Land Owners

Generally, any person whose property was intended to benefit under a restrictive covenant has standing to bring a suit to enforce the covenant. When many property owners have an interest in a restrictive covenant, any one of the owners can enforce it. *In Re a Purported Lien or Claim Against Hai Quang La*, 415 S.W.3d 561, 564 (Tex.App.--Fort Worth 2013, pet. denied). Failure of an association to enforce restrictions does not preclude an individual owner from enforcing restrictions. *Cox v. Melson-Fulsom*, 956 S.W.2d 791, 794 (Tex.App.--Austin 1997, no pet.).

B. Declarant

Generally, the developer of real property reserves the rights he or she wishes to retain, and for what period of time in the dedicatory instruments. According to the language in the restrictions, each lot owner gave the Developer a power of attorney to perform any act on behalf of other owners for a three-year period ending on the earlier of the third anniversary of the filing of the plat dedication or when the developer no longer owned lots within the subdivision. *Raman Chandler Properties, L.C. v. Caldwell's Creek Homeowners Assoc., Inc.*, 178

S.W.3d 384, 397 (Tex.App. – Fort Worth 2005, pet. denied).

C. Property Owners Association

TCP Texas Property Code §§§82.(a)(4), 202.004(b), 204.010(a)(4) and 215.009 specifically provide for an appointment to property owners associations where they exist to enforce restrictive covenants by means of litigation or administrative proceedings.

Anderson v. New Prop. Owners' Ass'n of Newport, Inc., 122 S.W.3d 378 (Tex. App.—Texarkana 2003, pet. denied) added that an association has standing to sue when it satisfies a three-pronged test: (1) the members must otherwise have standing to sue in their own right; (2) the interests it seeks to protect must be germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested may require the participation of individual members in the lawsuit.

A property owners association or other representative designated by an owner may initiate, defend, or intervene in litigation affecting the enforcement of a restrictive covenant or the protection, preservation, or operation of the property covered by the dedicatory instrument. *Tanglewood Homes Ass'n v. Feldman*, 436 S.W.3d 48, 75 (Tex.App.—Houston [14th Dist.] no pet.).

D. Architectural Control Committee

Often the tasks of carrying out architectural control functions and interpreting restrictive covenants is delegated to a committee, most commonly known as architectural control or architectural review committees ("ACC" or "ARC"). These bodies have the responsibility of reviewing construction plans for the erection or modification of new residences, accessory buildings, and landscaping plans, and rely heavily on the individual resources of homeowners. Often a subgroup or "restrictions committee" carries the duty of restriction enforcement. There is no statutory basis creating these subgroups; they are appointed and act pursuant to the subdivision's dedicatory instrument, and/or through the auspices of the Board of Directors of a property owners association. Care should be taken that the procedures for authority and appointment are taken pursuant to the dedicatory instruments are followed. By the express terms of a covenant, an Architectural Control Committee may lose its power. *Gonzalez v. Atascocita North Cmty. Improvement Ass'n*, 902 S.W.2d 591, 593 (Tex.App.—Houston [1st Dist.] 1995, no writ). In *Corcoran v. Atascocita Community Improvement Association, Inc.*, No. 14-12-00982-CV (Tex.App.—Houston [1st Dist.] 2013, pet. denied), the court found that the association did not reassign all of its architectural control authority to ACC but merely designated ACC as its agent regarding such authority. In *Rakowski v. Comm. to Protect Clear*

Creek Village Homeowners' Rights, 252 S.W. 3d 673 (Tex.App.—Houston [14th Dist.] 2008, pet. denied), The court determined that the Committee did have standing by virtue of being composed of homeowners and additionally by the restrictions that provided an owner the right to prosecute deed restriction violations. *Id.* at 679.

E. County Attorney

In counties with populations exceeding 200,000 persons, the county attorney may sue in a court of competent jurisdiction to enjoin or abate violations of a restriction contained or incorporated by reference in a properly recorded plan, plat, replat, or other instrument affecting a real property subdivision located in the county, regardless of the date on which the instrument was recorded. TCP § 203.003.

F. Municipalities

If a POA with the authority to enforce a restriction has not filed suit, the City of Houston may sue in any court of competent jurisdiction to enjoin or abate a violation of a restriction contained or incorporated by reference in a properly recorded plan, plat or other instrument that affects a subdivision located inside the boundaries of the municipality, under TEX. LOC. GOV'T. CODE § 212.153. The City of Houston had authority to enforce a residential use only restriction. *Davis v. City of Houston*, 869 S.W.2d 493 (Tex.App.—Houston [1st Dist.] 1993, writ denied); *Young v. City of Houston*, 756 S.W.2d 813 (Tex.App.—Houston [1st Dist.] 1988, writ denied).

VII. JUDICIAL RULES OF CONSTRUCTION

A. Strict vs. Liberal Construction

While Texas Property Code § 202.003(a) requires liberal construction of a restrictive covenant's language to ascertain its purpose and intent, Texas common law, prior to the enactment of this section, called for restrictive covenants to be construed in favor of the free and unrestricted use of the premises and against the party seeking to enforce the covenants. *Wilmoth v. Wilcox*, 734 S.W.2d 656, 657 (Tex. 1987). There seems to be some confusion as to how to construe restrictive covenants in light of the two standards. For example, cases decided after TCP § 202.003(a) went into effect have noted that there is no conflict between *Wilmoth* and that section, without providing an analysis of how the standards fit together. *See Ashcreek Homeowner's Ass'n v. Smith*, 902 S.W.2d 586, 588-89 (Tex.App.—Houston [1st Dist.] 1995, no writ); *Crispin v. Paragon Homes, Inc.*, 888 S.W.2d 78, 81 (Tex.App.—Houston [1st Dist.] 1994, writ denied); *See also Tien Tao Ass'n v. Kingsbridge Park Community Ass'n*, 953 S.W.2d 525, 528 (Tex. App.—Houston [1st Dist.] 1997, no pet.) (noting that a restrictive covenant should be construed to give effect

to its purpose, without referencing *Wilmoth's* instruction that a restrictive covenant should be construed strictly or the Property Code's instruction that a restrictive covenant should be construed liberally). Other cases seem to discard the concept of strict construction of restrictive covenants in light of TCP §202.003(a). See *Highlands Management Co., Inc. v. First Interstate Bank*, 956 S.W.2d 749, 752 (Tex.App.--Houston [14th Dist.] 1997, pet. denied).

The Texas Supreme Court did not address whether TCP §202.003(a) supplants *Wilmoth* when that issue was raised by the respondents in *Pilarcik v. Emmons*, 966 S.W.2d 474, 478 (Tex. 1998). The Fourth Court of Appeals has employed both standards to review a restrictive covenant, finding that a restrictive covenant should be liberally construed to determine the framer's intent, and if there is any ambiguity as to that intent, the covenant should then be strictly construed in favor of the free and unrestricted use of the premises. See *Munson v. Milton*, 948 S.W.2d 813, 816 (Tex.App.--San Antonio 1997, pet. denied). This judicial toning however, must never lose sight of legislative intent. We believe that the legislature, in its enactment of §202.003(a) intended that restrictive covenants be construed in a manner which may occasionally run hard afoul of strict common law requirements, i.e., strict construction favoring grantee, and strict construction against the drafter. Invariably, the strong but clear statutory language of §202.003(a) does not mesh with established common law contract principles, creating a perpetual need for reconciliation. *Benard v. Humble*, 990 S.W.2d 929, 930 (Tex.App.--Beaumont 1999, pet. denied).

B. Interpretation *De Novo*

An interpretation of a restrictive covenant is reviewed *de novo*. *Uptegraph v. Sandalwood Civic Club*, 312 S.W.3d 918, 925 (Tex.App.—Houston [1st Dist.] 2010, no pet.). We review a trial court's interpretation of a restrictive covenant *de novo* in accordance with general rules of contract construction. *Pilarcik, supra* at 478; see also *Ski Masters of Tex., LLC v. Heinemeyer*, 269 S.W.3d 662, 667 (Tex.App.—San Antonio 2008, no pet.). Covenants are examined as a whole in light of the circumstances present when the parties entered into the agreement. *Pilarcik, supra* at 478. We give effect to every sentence, clause, and word of a covenant, and avoid constructions that would render parts of the covenant superfluous or inoperative. *Owens v. Ousey*, 241 S.W.3d 124, 129-30 (Tex.App.—Austin 2007, pet. denied). Our primary intent is to ascertain and give effect to the true intention of the parties as expressed in the instruments. *Id.* at 129. To ascertain the intent of the parties, we must examine the entire instrument and give effect to all the provisions so that none will be rendered meaningless. *Coker v.*

Coker, 650 S.W.2d 391.650 S.W.2d 391.93 (Tex. 1983).

C. Ambiguities

The determination that a restrictive covenant is ambiguous is not a question of fact; it is a question of law. *Pilarcik, supra* at 478. Restrictive covenants are subject to the general rules of contract construction. *Bank United v. Greenway Improvement Ass'n*, 6 S.W.3d 705, 707 (Tex.App.-Houston [1st Dist.] 1999, pet. denied). As when interpreting any contract, the court's primary duty in construing a restrictive covenant is to ascertain the drafter's intent from the instrument's language. *Id.* at 707. A covenant is not ambiguous simply because there may be disagreements about its interpretation. *Air Park-Dall.Zoning Comm. v. Crow Billingsley Airpark, Ltd.*, 109 S.W.3d 900, 909 (Tex App.—Dallas 2003, no pet.). Rather, a covenant is ambiguous only if it is susceptible to more than one reasonable interpretation. If it can be given a definite or certain legal meaning, then it is unambiguous. To make this determination, a court must examine the covenants as a whole in light of the circumstances present when the parties entered the agreement. *Pilarcik, supra* at 478. We will give the restriction's language its plain grammatical meaning unless doing so would defeat the parties' intentions as evidenced clearly in other parts of the document. *Moore v. Smith*, 443 S.W.2d 552, 555 (Tex. 1969). If there are ambiguities, the circumstances and conditions surrounding the parties and the property must also be considered, together with the clear goals of the restrictive grant, so that the intent of the parties governs. *York v. Howard*, 521 S.W.2d 344, 347 (Tex.App.--Waco 1975, no writ). In the alternative, if there is no ambiguity, the intentions of the parties must be determined from the language of the covenant itself, construed in connection with the surrounding circumstances. *Hoyer v. Shepherds Glen Land Co., Inc.*, 753 S.W.2d 226, 229 (Tex.App.--Dallas 1988, writ denied). The focus is on the parties' objective, rather than subjective, intent, as that intent is reflected in the written contract. See *Lopez v. Munoz, Hockeman & Reed*, 22 S.W.3d 857, 861 (Tex. 2000).

In *Edberg v. Laurel Canyon Ranch Architectural Review Committee*, No. 04-10-00395-CV (Tex. App.--San Antonio 2011, pet. denied), the court recognized the "typographical error doctrine" in application to restrictive covenants, and held that the mistake need not be verifiable from the document itself. It also considered the evidence presented by the ACC of the drafter's intent.

VIII. CREATION AND MANIFESTATION OF ARCHITECTURAL GUIDELINES

A. Developer's Vision

In their providence, developers are vested in a vision for a community by dedication in the plats and governing documents. To ensure this vision is carried out in a homogeneous manner at the initial stages of planning and construction, developers retain for themselves and entities they control the master design functions that determine the aesthetics of the subdivision. Usually these powers are reserved until such time as they are transferred by the terms of the declaration to a POA. The plan can be memorialized in implementing a community-wide standard and/or design guidelines within the declaration or in separate instruments to uphold minimum standards requiring prior approval for construction and modification to existing improvements.

1. Statutory Declarant Control Period

Developers commonly claim their right and duration of regulation in their dedicatory instruments, which are drafted at their expense and behest. Because of economic challenges and market factors, often these periods of control were ill-defined or given to interpretation, or the developer simply vanished without providing viable succession to a property owners association. At other times development rights were assigned to other entities, which created a gap in or a tolling of the term. To address these situation, the Texas Legislature enacted TCP § 209.00591(c) effectively regulating the period of declarant may appoint and remove board members, to-wit:

Regardless of that which is provided in the declaration, on or before the 120th day after the date 75 percent of the lots that may be created and made subject to the declaration are conveyed to owners other than the declarant, at least one-third of the board members must be elected by owners other than the declarant. If the declaration does not include the number of lots that may be created and made subject to the declaration, at least one-third of the board members must be elected by owners other than the declarant not later than the 10th anniversary of the date the declaration was recorded.

This may not necessarily impact the composition of the committee that reviews and approves or disapproves original construction plan submissions for compliance; however, it will allow owner board members to have input into the appointment of persons who sit on these committees unless the declarant reserves the exclusive power to appoint.

2. Original Construction of Improvements

To facilitate architectural and aesthetic precedent during the original development period, the developer appoints individuals usually in his employ to review plans for original construction if the subdivision is not to be built out by contractors subject to his or her control. These bodies may be referred to as a "design review committee," or an ACC or ARC, as defined above. The appointments may be subject to reassignment or may expire simultaneously with the declarant control period and be gradually phased to owners or reconstituted under the auspices of a property owners association.

3. Preferred Builders

Some developments may require the use of a named contractor or a choice from a list ostensibly to maintain the aesthetic integrity and homogeneity of the subdivision. Individual purchasers of lots may choose from an array of pre-approved plans that will not be subject to additional constraints unless modifications are requested.

4. Owner Construction

If the building of the principle residential improvement by an owner for consumption is permitted by the dedicatory instruments, there may be specific submission and approval requirements.

B. POA Succession

Per TCP § 209.0591(c) and the governing documents, there is a procedure for the succession of interest and assignment of rights and duties which must be followed for a POA to become legitimately empowered to assert its authority over owners and the subdivision. *Simms v. Lakewood Village Prop. Owners Ass'n, Inc.*, 895 S.W.2d 779 (Tex.App.--Corpus Christi 1995, no writ).

1. Assignment of Architectural and Aesthetic Review

The right to delegate this authority must be reserved by the declarant to appoint within his or her period of control, or may come into play later on in the process when a property owners association has assumed a majority or all of the positions on the board of directors. *Anderson, supra* at 389.

2. Modifications to Existing Improvements

Most dedicatory instruments bifurcate the function of architectural control for newly created improvements and later modifications. Guidelines for modifications to design and construction activities of the developer or its affiliates are usually expressly excluded from the purview of the modification context.

a. Submission of Plans

Procedures for submitting applications and standards for quality and appearance for proposed alterations, including types of building materials and design elements preferred and discouraged must be properly adopted and set forth in a recorded dedicatory instrument to be enforceable. Applications must be accompanied by plans and specifications and such other information as required. The reviewer must use the promulgated guidelines, and may consider factors such as harmony of the proposed external design with surrounding structures and environmental considerations. Reviewers may engage outside experts, such as architects or community planners, to assist in the process.

b. Time Limitations

No activity should begin until a written application is submitted and reviewed. Final determinations on applications should be made within a reasonable time (usually 30-45 days). If no response is received, plans may be deemed approved. *Indian Beach Prop. Owners' Ass'n v. Linden*, 222 S.W.3d 682 (Tex.App.--Houston [1st Dist.] 2007, pet. denied). A reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final required submission.

c. Appeals process

As architectural control is an exercise of discretionary authority by a POA, it may be prudent to build in a due process measure of review to avoid inferences that its actions are arbitrary, capricious, or discriminatory under TPC §202.004(a). Well drafted provisions affording the association's board final authority to determine whether to take legal action when compliance with architectural control procedures and decisions cannot be achieved does not mean the association lacks authority to reverse ACC's denials. Such provisions indicate that the association, not the ACC, has the ultimate power to make architectural determinations, meaning a resident can maintain modifications despite ACC's disapproval if an association so chooses. This hierarchy supported a conclusion that ACC's architectural control decisions were not meant to be unassailable. *Corcoran, supra*.

d. Expiration of ACC by Statute

In subdivisions governed by TCP Chapter 204 (Harris, Galveston, Brazoria, and Montgomery Counties), the power of an ACC to approve or deny applications for proposed original construction or modification of a building, structure or improvement automatically vests in a POA when: 1) its term expires as prescribed by the restrictions; 2) a residence on the last available building site is completed and sold; 3) the

person or entity designated as the architectural control committee in the restrictions assigns, in writing, authority to the property owners association; or 4) an assignee of the original holder abandons its authority for more than one year. TCP § 204.011.

e. Rules

Architectural standards and guidelines may be further supplemented with additional rules, promulgated by the POA's governing body, or a committee delegated with authority subject to final approval by the board. *Pinebrook Props., Ltd. v. Brookhaven Lake Prop. Owners Ass'n*, 775 S.W.3d 487 (Tex. App.—Texarkana 2002, pet. denied).

IX. OVERVIEW OF COMMONLY USED ARCHITECTURAL RESTRICTIONS

Although nearly every aspect of the appearance and theme of a community can be dictated by use of restrictive covenants, subject to statutes and case law interpretation. The following are examples of those most prevalently employed, including applicable statutes and how courts ruled in their interpretations. The list is exemplary and not exhaustive.

A. Dwellings

1. Single Family

This term has a meaning ascribed to appearance as well as use made of a premises. *Permian Basin Centers for Mental Health and Mental Retardation v. Alsobrook*, 723 S.W.2d 774 (Tex.App.--El Paso 1987, writ ref'd n.r.e.) held that the term "single family dwelling" refers to the architectural character and form of a structure that may be built, not the use or occupancy which may be made. Further, under TPC §202.003(b), a restrictive covenant may not be construed to prevent the use of property as a "family home" (now "community home") under the Homes for Disabled Persons Location Act. Another case used the Fair Housing Act to reach the same outcome. *Meehl v. Wise*, 285 S.W.3d 561 (Tex.App.-Houston [14th Dist.] 2009, no pet.).

It is settled that the term "single family residence" is meant to prohibit apartment buildings when used as a restrictive covenant. *Silver Spur Addition Homeowners v. Clarksville Seniors Apartments*, 848 S.W.2d 772 (Tex. App.—Texarkana 1993, writ denied). Renting of a residence for weekly or weekend purposes was in violation of the single family residence language. *Benard v. Humble*, 990 S.W.2d 929 (Tex. App.—Beaumont 1999, pet. denied). Homeowners were not to permit residence by non-family members through commercial or contractual rental agreement that exceeds incidental lodging or boarding. *Cockrell v. Matlock*, No. 10-07-00283-CV (Tex.App.--Waco 2009, no pet.).

2. Residential Purpose

With respect to the use of a lot "residential purpose means: (A) the location on the lot of any building, structure, or other improvement customarily appurtenant to a residence, as opposed to use for a business or commercial purpose; and (B) includes the location on the lot of a garage, sidewalk, driveway, parking area, children's swing or playscape, fence, septic system, swimming pool, utility line, or water well and, if otherwise specifically permitted by the dedicatory instrument, the parking or storage of a recreational vehicle. TPC §209.015(2). [T]he term "dwelling" limits a property to residential use. *Davis*, *supra* at 493.

Maintaining and renting a garage apartment is not a violation of restrictions prohibiting the use of garages as businesses and prohibiting more than one residence per lot. The mere existence of an apartment above a garage was not alone a violation of the deed restrictions. *Sharp v. deVarga*, No. 03-05-00550-CV (Tex.App.--Austin 2010, pet. denied).

In *Cedar Oak Mesa, Inc. v. Altemate Real Estate, LLC*, No. 03-10-00067-CV (Tex.App.--Austin 2010, no pet.) an owner rented a log cabin on a temporary or transient basis for weekend and weekly rentals. The association brought an action against the owner to prevent it from operating the short-term, vacation rental property, claiming that the renting of the property for periods of less than six months constituted "commercial activity" prohibited by the subdivision's restrictive covenants. The court held that because the covenants could not be given a definite or certain legal meaning, they were ambiguous. They could be read as either distinguishing between commercial uses of property and property that was used as a "dwelling," or as simply limiting the number and type of improvements that could be erected on a lot to a single dwelling. Their ambiguous language could not establish whether the original parties intended to allow commercial, nonresidential uses of buildings constructed on the subject lots.

For a discussion regarding the meaning of "residential purpose," see *Benard*, *supra*.

3. Adjacent Lot

A property owners association may not adopt or enforce a provision in a dedicatory instrument that prohibits or restricts an owner of a lot on which a residence is located from using for residential purposes an adjacent lot owned by a property owner. The owner must first obtain the approval of the ACC and otherwise comply with the restrictions in the dedicatory instruments of the subdivision. When the owner sells or transfers the adjacent lot, it must either transfer the lot under the same dedicatory conditions, restore the lot to the original condition before the construction of the improvements to a state conducive

to the construction of a new residence, or sell the lot separately only for the purpose of construction of a new residence that complies with existing requirements in the dedicatory instruments. TPC § 209.015(b)-(f).

4. Maximum Height

The court held that owners' homes complied with the one-story restriction because they appeared to be one-story when viewed from the exterior. The fact that the owners chose to utilize a small portion of the attic space in the homes for use had no effect on the other property owner's view of the waterfront. Moreover, the remaining deed restrictions did not regulate the use of the interior of the homes in the subdivision with the exception that the homes be connected to an approved septic system. *Morton v. Paradise Cove Prop. Owners Ass'n*, No. 11-08-00022-CV (Tex. App.-- Eastland 2009, no pet.).

When the subdivision was created, the developers placed restrictive covenants on the property. One covenant stated that no two-story dwelling was permitted without the consent of the developers. At the time the owners purchased their lot, there was an existing two-story house. The owners tore down the house and began construction of a new two-story house. This action was brought, claiming that the owners were in violation of the covenant requiring consent of the developers to build a two-story house. By the time the construction of the new house had begun, both developers had died. The court found that the plain language of the covenant made the developers necessary for performance. The unambiguous language of the covenant required the developers' consent without providing an alternative person or entity to consent in the event that the developers were unavailable. *Hollis v. Gallagher*, No. 03-11-00278-CV2012 (Tex.App.--Austin 2012, no pet.).

5. Minimum Area

Owners obtained approval from the subdivision's architectural control committee to place a previously constructed house on their lot, subject to a condition that the house be modified by a specified date to bring it into compliance with a minimum square footage requirement. *Pfaff v. Skeen*, No. 03-11-00017-CV (Tex.App.--Austin 2012, no pet.). Restrictions required that one-story structures contain a floor area of not less than 1800 square feet and that two-story or split-level residences have a floor area of not less than 1950 square feet *Denton v. Buie*, 512 S.W.2d 744 (Tex.App.--San Antonio 1974, no pet.).

6. Building Materials

Requiring that all homes be of at least 75 percent masonry construction, in the case of split-level construction, the architectural committee lowered the masonry requirement to 50 percent. *Denton, Id.* at 746.

Gables are part of an exterior wall, and Hardiplank does not meet masonry requirements even if covering the gables. *Jamison v. Allen*, 377 S.W.3d 819 (Tex.App.--Dallas 2012, no pet.).

7. Building Completion

Owner did not violate the requirement that any building had to be completed within six months from the commencement date when the sole evidence presented by the association was in the nature of painting, staining, or siding. *Hicks v. Falcon Wood Prop. Owners Ass'n*, No. 03-09-00238-CV (Tex.App.--Austin 2010, no pet.).

8. Conformity and Harmony of Design

The association maintained that the ACC has the discretionary authority, pursuant to the restrictive covenants, to approve only "custom" houses since those are the only houses which could be "compatible with the overall character and aesthetics of the subdivision." The ACC rejected a large homebuilder's plans because they "replicated" the same basic plan; but one floor plan of a purportedly "custom" house could be identical to another's. *Gettysburg Homeowners Association v. Olson*, 768 S.W.2d 369 (Tex.App.--Houston [14th Dist.] 1989, no pet.).

9. Manufactured Housing

In *Jennings v. Bindseil*, 258 S.W.3d 190 (Tex.App.-Austin 2008, no pet.), the court discussed the applicability of modern manufactured housing to older restrictions prohibiting mobile homes and trailers.

B. Submission of Plans

The Texas Supreme Court found that the better reasoned view is that covenants requiring submission of plans and prior consent before construction are valid insofar as they furnish adequate notice to the property owner of the specific restriction sought to be enforced. *Davis v. Huey*, 620 S.W.2d 561 (Tex. 1981). Restrictions can be waived by an ACC if submission of plans requirements are not strictly enforced. *Pilarcik, supra* at 480. Plan submission restrictions requiring detailed descriptions of location and dimension details of improvements were upheld in *Hardee v. Westminster Glen Phase I Homeowner's Ass'n, Inc.*, No. 03-00-00445-CV (Tex. App.--Austin 2001, no pet.); *Alsatian Heights Homeowners Ass'n v. Rodriguez*, No. 04-08-00317-CV (Tex.App.--San Antonio 2009, no pet.); *Pheasant Run Homeowners Ass'n v. Kastor*, 47 S.W.3d 747 (Tex.App.--Houston [14th Dist.] 2001, pet. denied) upheld submission for modification of existing structures; New construction of home must meet design guidelines. *Edberg, supra*.

The trial court imposed a permanent injunction against the homeowners to "not to make any

improvements, changes or substantial repairs on or to the exterior of the property without first submitting a written application for architectural approval." The homeowners argued, inter alia, that the language was vague and too broad and prevented them from making any changes to the exterior of their property. The court of appeals agreed. The only issue at trial concerned the erection of one shed. By prohibiting any change to the exterior of the property about which there was no complaint by the association, the language of the injunction exceeded the scope of the pleadings, evidence, trial court's finding, and language of the declaration. *Webb v. Glenbrook Owners Ass'n*, 298 S.W.3d 374 (Tex.App.--Dallas 2009, no pet.).

C. Placement of Improvements

1. Re-platting and Subdividing

Given that the lots can be subdivided, nothing prohibits building a second home on the new lots created by subdividing the existing lots, provided that the set back requirements can be met. *Herbert v. Polly Ranch Homeowners Ass'n*, 943 S.W.2d 906 (Tex. App.--Houston [1st Dist.] 1996, no pet.).

The restrictive covenant, for purposes of Tex. Prop. Code Ann. § 202.003 (2007), contained no express prohibition on re-platting or subdividing and it listed prohibited actions, which did not include restrictions on re-platting or subdividing. The court found no such prohibition, so long as the manner in which the re-platting or subdividing was done complied with existing restrictions. The re-platting scheme proposed violated no express restrictions. *Sharp, supra*.

A group of property owners sought a declaratory judgment to determine: (1) whether the lots could be subdivided to build single family residences on the subdivided portions without the consent of the other lot owners; (2) when the owners could amend the restrictions; and (3) how the votes of the owners of the subdivided portions of the lots were to be calculated. The trial court held: (1) the lots could be subdivided to construct single family residences on the subdivided portions of such lots without joinder of the owners of the other lots in the subdivision; (2) a majority of lot owners could amend or terminate the restrictions upon filing within one year of a date certain; and (3) the subdivided portions of lots together have only one vote. The restrictions provided that the lots be used only for single or multi-family residences, or condominiums, and may be subdivided to provide building sites for multifamily residences or for condominiums, without the joinder of the owners of other lots. The court held that the restrictions contained no express prohibition against subdividing to construct single family residences. The court further held that the language "owners of subdivided portions of lots shall together have but one vote per portion as if each

subdivided portion were one lot" gave one vote to the owner of a single family dwelling on a portion of a subdivided lot, and prevented multiple owners of multi-family residences located on one portion of a subdivided lot from having more than one vote for their portion. *Crispin, supra* at 81.

2 Set-Back

In a dispute related to the placement of a fence, the court found no error in the finding that the minimum setback line along the street at issue was 25 feet. The restrictive covenants stated that no fence could be erected nearer to the street than the "minimum building setback line." The plain meaning of the term "minimum building setback line" in the context of a street was the minimum distance that a structure could be built from the street, which in the current case meant the setback lines depicted on the recorded property plats that reflected the minimum building lines from particular streets established by the City of Houston. *Uptegraph, supra* at 930.

In *Schroeder v. Ranch Escondido Cmty. Improvement Ass'n*, 248 S.W.3d 415 (Tex.App.--Beaumont 2008, no pet.), the court upheld the right of a POA to impose a "harmonious sight-line" that the building set-back line indicated on the plat of this subdivision filed in the county clerk's office. The plat clearly showed the line's location twenty-five feet from the edge of the platted street, which is sixty feet wide.

The fact that only twenty feet of the street's platted width has actually been paved does not render the set-back line's location ambiguous. *Moran v. Mem'l Point Prop. Owners Ass'n*, 410 S.W.3d 397 (Tex.App.--Houston [14th Dist.] 2013, no pet.).

D. Roofs and Roofing

After describing one manner in which approval would be deemed, in the event the committee failed to approve or disapprove submitted plans within 30 days after submission, the article continued by describing another manner of deemed approval: the association's failure to file suit before the roof was complete. *Buckner v. Lakes of Somerset Homeowners Ass'n*, 133 S.W.3d 294 (Tex.App.--Fort Worth, 2004, no pet.).

1 Composition

Members of homeowners' association, initiated the action against homeowners alleging that their installation of a composition shingle roof violated a restrictive covenant. The owners were unsuccessful in their attempt to obtain approval from the architectural committee regarding the composition roof. The court determined that a proposed interpretation of the subdivision covenant required the court to ignore the express and direct prohibition against composition-type shingles language contained within the covenant,

pursuant to Tex. Prop. Code Ann. § 202.2002(a) (1995). *Pilarcik, supra* at 478.

2 Wood Shingles

With regard to TCP §5.025 which states that to the extent a deed restriction applicable to a structure on residential property requires the use of a wood shingle roof, the restriction is void, the court in held that the practical disadvantages of other alternatives to wood shingles for a structure of a particular design do not establish that the restriction in question is void. *Hoyer, supra* at 229. The fact that 51 of the 55 houses in the subdivision have wood shingle roofs is not proof as a matter of law that the practical effect of enforcing the covenant is to force homebuilders to use wood shingle roofs. Even if this Court were to strike out the portion of the covenant dealing with wood shingles, the appellant can still use slate or other permanent type of materials. *Stergios v. Forest Place Homeowners' Association, Inc.*, 651 S.W.2d 396, 400 (Tex.App.--Dallas 1983, writ ref'd n.r.e.).

3 Regulation of Certain Roofing Materials

Pursuant to **TCP §202.011**, a POA may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner who is otherwise authorized to install shingles on the roof of the owner's property from installing shingles that are designed primarily to:

- be wind and hail resistant;
- provide heating and cooling efficiencies greater than those provided by customary composite shingles; or
- provide solar generation capabilities;
- and when installed: resemble the shingles used or otherwise authorized for use on property in the subdivision; and
- are more durable than and are of equal or superior quality to the other shingles; and
- match the aesthetics of the property surrounding the owner's property.

E. Other Appearance and Use Restrictions

1 Temporary Facilities

During the construction of a dwelling, a camper or recreation vehicle may be kept on the property for up to six (6) months, so long as said camper or recreation vehicle is hooked up to an approved septic system. The six-month period corresponds to the six-month deadline for completing construction of the dwelling. *Hicks, supra*.

2 Fences and Gates

The exercise of the committee's discretion was not conditioned on a city requiring that the fence exceed the height restriction. The committee's construction of

the covenant at issue was not unreasonable or an abuse of discretion. *Ballew v. Ndudi*, No. 07-08-0019-CV (Tex.App.--Amarillo 2009, no pet.).

Because owner did not submit a development plan prior to constructing his fence, there was no prior approval by the ACC. Because owner failed to obtain prior approval, he violated the CCRs, and the ACC had the power to deny approval of the fence because of its powers granted by the CCRs. *Hardee, supra*.

In *Litvin v. Kennedy*, 290 S.W.2d 707 (Tex..App.-Eastland 1956, no writ), the defendants erected a fence in violation of building restrictions before the plaintiffs purchased the adjoining property, and the plaintiffs' grantor had taken no action to enforce the restrictions. Even though the plaintiffs were the subsequent grantees of the grantor, the court found that building restrictions were for the benefit of the grantor's land and as such, the plaintiffs' rights were not waived. *Id.* at 708.

The court found that the right to relief for the removal of the perpendicular fence was not waived because restrictions were not enforced in the past. *Garlington v. Boudreaux*, 921 S.W.2d 550 (Tex.App.--Beaumont 1996, no writ).

Property owners association sought to enforce a restriction prohibiting construction of a fence within 25 feet of the platted building set-back line. Ruling that the covenant was not ambiguous, the court defined the term contained in the restriction: A "fence" is "a barrier intended to prevent escape or intrusion or to mark a boundary; [especially] such a barrier made of posts and wire or boards." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 456 (1991). A "wall" includes "a masonry fence around a garden, park, or estate" or "a structure that serves to hold back pressure (as of water or sliding earth)." A "hedge" is commonly defined as "a fence or boundary formed by a dense row of shrubs or low trees." Based on these definitions, the court found that the restriction unambiguously required the placement of a "boundary or barrier" within 25 feet of the edge of the platted street, regardless of whether the boundary was made of "masonry, boards, wire, or densely planted shrubbery." *Moran, supra* at 404.

3. Driveways

The court determined that the association had standing to sue the owner. Further, the association was assigned the authority to enforce deed restrictions under Tex. Prop. Code Ann. § 202.004(b). However, it did not possess a right to deny the driveway plans. The evidence showed that the association was not authorized to exercise architectural control authority at the time, and it did not show the construction was otherwise contrary to an action of an architectural control committee acting with authority in the deed restrictions. Therefore, the rejection of the plans and

the suit to remove the driveway represented an arbitrary and capricious act. *Anderson, supra* at 391.

4. Swimming Pools and Spas

A permanent injunction was entered requiring appellants to remove a pool because of location on the property in *Collum v. Neuhooff*, 507 S.W.2d 920 (Tex.App.—Dallas 1974, no pet.).

5. Accessory Buildings

The court upheld a restriction that sheet metal or metal panels used in construction of an outbuilding have factory-applied paint or be factory anodized. *Hubanek v. Cromeens*, No. 13-04-00390-CV (Tex.App.--Corpus Christi 2005, no pet.).

Homeowners received approval to build a boathouse, a garage, and a home on Lot 39, but only built the garage and boathouse. The POA filed suit seeking to enforce a restrictive covenant that required the homeowners to build the house on Lot 39 or demolish the garage. The court found that the design guidelines inappropriately lacked a deadline for commencing construction, but that Tees actually had the extra time to build that they originally anticipated needing. *Tees v. E. Lake Woods Homeowners Ass'n*, No. 12-04-00020-CV (Tex. App.--Tyler 2006, no pet.).

Homeowner did not violate the restrictive covenant by converting the attached garage into a family den. *Woodland Trails North Community Improv. Asso. v. Grider*, 656 S.W.2d 919 (Tex.App.--Houston [1st Dist.] 1983, no pet.).

6. Color

It is clear from the breadth of the restrictions that the subdivision is concerned with virtually every aspect of the appearance and value of the neighborhood. It is not surprising that specific color restrictions for repainting are addressed by the committee or that guidelines are formulated to address them. *Tien Tao, supra* at 529.

While the restrictions in this case did not require the owner's trim to be painted a specific color, the restrictions did require that any exterior painting be done neatly and completely, in a professional manner, in a color that matches the color of the house, with paint appropriate for house exterior. In other words, owners may not paint the trim of their home in a "haphazard or inharmonious" way. *Quinn v. Harris*, No. 03-98-00117 (Tex.App.—Austin 1999, pet. denied).

7. Vehicle and Boat Storage

A covenant was not capable of supporting a 24-hour rule that the injunction adopted. It was unclear as to how much time had to elapse before storage became semi-permanent. There was no evidence that the covenant was drafted with the intent of proscribing

boat storage for time periods beyond 24 hours consecutively, and thus the trial court erred in finding that a boat was semi-permanently stored when it was parked without a screen for more than 24 hours. Thus, the trial court abused its discretion in ordering the homeowner to stop storing his boat in this way. *Wiese v. Heathlake Community Ass'n, Inc.*, 384 S.W.3d 395 (Tex.App.--Houston [14th Dist.] 2012, no pet.).

8. Lot Appearance

Homeowners filed suit to enforce the deed restrictions, alleging that the owners violated the restrictions by: (1) attaching plywood boards and barbed wire to their fence; (2) attaching "No Trespassing" signs to their fence; (3) leaving tires in their front yard; (4) parking vehicles on the lawn; (5) pouring a cement addition to their concrete driveway; (6) placing a hedge of bushes and plastic flowers beyond the front boundary of the house and refusing to mow or trim the grass growing around the hedge; (7) purposefully killing the grass in their front and side yards; (8) putting green paint only on the trim of their house facing the street; (9) scattering trash on the front and side of their house; and (10) leaving dirty or bloody undergarments hanging on their clothesline for months. Owners contend that they did not substantially violate the deed restrictions; therefore, the trial court abused its discretion in issuing the permanent injunction. The court described the evidence relating to the numerous ways in which the owners breached several deed restrictions. Based on this evidence, it found the owners' contention that they did not substantially breach the deed restrictions to be without merit and the trial court did not abuse its discretion in issuing a permanent injunction. *Quinn, supra* at 14.

9. Antennae and Satellite Dishes

The court held that the installation of the unscreened satellite dish, and the condition of house pillars were breaches of restrictive covenants and a permanent injunction was necessary because the breach was substantial; and although appellant had complied with the restrictive covenants, it was conceivable that he could return to noncompliance. *Miller v. First Colony Cmty. Servs. Ass'n*, No. 01-91-00900, (Tex.App.—Houston [1st Dist.] 1993, no writ).

The Federal Communication Commission regulations prohibit restrictions on use of television satellite dishes in areas under the exclusive use and control of the homeowner, if they impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service or direct broadcast satellite service. The devices concerned are direct broadcast satellite antennae and multipoint distribution systems less than one meter in diameter, and television broadcast

antennae, regardless of size. A POA may impose reasonable restrictions for camouflaging if reception is not impaired. 47 C.F.R. Section 1.4000.

In *River Oaks Place Council of Co-Owners v. Daly*, 172 S.W.3d 314 (Tex.App.—Corpus Christi 2005, no pet.), the court held that Daly did not have exclusive use or control of the air space above his patio, so the FCC regulation would not prevent the association from prohibiting Daly's installation of a satellite on a mast of his patio.

10. Flag Display

Subject to some limitations, POAs may regulate but can't prevent owner from flying flags of US, Texas, or military. A POA may require compliance with federal & state recommended guidelines for flag displays and may enforce reasonable provisions relating to flagpoles, lights, and noise. **TPC § 202.011.**

11. Certain Restrictive Covenants Prohibited

Pursuant to TCP § 202.007, POAs may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from implementing or installing solid-waste composting of vegetation, rain barrels or rain harvesting systems, efficient irrigations systems, or drought-resistant landscaping or water-conserving natural turf. A provision that violates this subsection is void.

This section does not apply to a POA that is located in a municipality with a population of more than 175,000 that is located in a county in which another municipality with a population of more than one million is predominantly located; and manages or regulates a development in which at least 4,000 acres of the property is subject to a covenant, condition, or restriction designating the property for commercial use, multifamily dwellings, or open space.

a. Compost

Includes grass clippings, leaves, or brush, or leaving grass clippings uncollected on grass. A POA may regulate the requirements, including size, type, shielding, and materials for, or the location of a composting device if the restriction does not prohibit the economic installation of the device on the property owner's property where there is reasonably sufficient area to install. This sections does not require such a device to be installed on common area, or in an area other than the fenced yard or patio.

b. Rain Barrels and Rain Harvesting Devices

This subsection does not require a POA to permit a rain barrel or rain harvesting system to be installed in the common area or located between the front of the property owner's home and an adjoining or adjacent street; or if the barrel or system is of a color other than

a color consistent with the color scheme of the owner's home or displays any language or other content that is not typically displayed by such a barrel or system as it is manufactured. A POA may regulate the size, type, and shielding of, and other materials used in construction of a rain barrel, rain harvesting device, or other appurtenance that is located on the side of the house, or at any other location visible from the street, another lot, or common area, if the restrictions does not prohibit the economic installation of the device or appurtenance on the owner's property and there is reasonably sufficient area on the owner's property in which to install it.

c. Landscaping

A POA may not enforce a restriction that prohibits an owner from using drought-resistant landscaping or water-conserving natural turf; but it may restrict the type of turf used in the planting of new turf to encourage or require water-conserving turf. A POA may still restrict regulate installation or use of gravel, rocks or cacti, and yard and landscape maintenance if the restrictions or requirements do not restrict or prohibit turf or landscaping design that promotes water conservation. This subsection does not prohibit a POA from requiring an owner to submit a detailed description or plan for the installation of drought-resistant landscaping or water-conserving natural turf for review and approval to ensure maximum aesthetic compatibility with other landscaping in the subdivision; but a POA may not unreasonably deny or withhold approval or unreasonably determine that it is incompatible.

d. Irrigation Systems

This sections speaks to the implementation of efficient irrigation systems and includes underground drip or other drip systems. It does not prohibit a POA from regulating the installation of efficient irrigation systems, including establishing visibility limitations for aesthetic purposes.

12. Signs

TCP §202.009 states that an association may not enforce or adopt a restrictive covenant that prohibits a property owner from displaying one or more signs advertising a political candidate or ballot or item for an election on or after the 90th day before the date of the election to which the sign relates or before the 10th day after the election date. It may require a political sign to be ground-mounted or limit display to one sign for each candidate or ballot item per owner.

A POA may enforce or adopt a covenant that prohibits a sign that: (1) contains roofing material, siding, paving materials, flora, one or more balloons or lights or any other similar building, landscaping, or nonstandard decorating component; (2) is attached in

any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object; (3) includes the painting of architectural surfaces; (4) threatens the public health or safety; (5) is larger than four by six feet; (6) violates a law; (7) contains language graphics, or any display that would be offensive to the ordinary person; (8) is accompanied by music or other sounds or by streamers or is otherwise distracting to motorists.

In a memorandum opinion, the court affirmed an injunction except for the prohibition against posting of signs referring to POA, because that content-specific restriction violated free-speech rights. An injunction which was content specific in prohibiting property owners from displaying signs referring to opposing party in the lawsuit violated free-speech rights, and the court deleted it from the injunction proscribing nuisances. *Guetersloh v. Rolling Fork Owners Comm.*, No. 14-95-01272-CV (Tex.App.--Houston [14th Dist] 1996).

13. Solar Energy Devices

Owners may install a "solar energy device" in certain locations on their lots. This section prohibits POAs and their Architectural Control Committees from withholding approval of certain solar devices unless it substantially interferes with the use and enjoyment of land. Some oversight is allowed by POA/ACC, in that detailed specifications for roof installations may be requested. Developers may prohibit installations during development period. **TCP § 202.010.**

14. Religious of Display of Certain Religious Symbols

POAs cannot restrict residents from installing certain religious items on a front door or door frame of a residence motivated by a resident's "sincere religious belief." No religious item may individually or in combination exceed twenty-five (25) square inches, and shall not extend past the outer edge of the door frame of the dwelling. Notwithstanding, the display or affixation of a religious item on a dwelling that threatens public health or safety, violates a law, or contains language, graphics, or any display that is patently offensive to a passerby is prohibited. This section does not authorize an owner to use a material or color for an entry door or door frame, or make an alteration to the door or door frame of the Owner's dwelling that is not authorized by the POA/ACC. **TCP § 202.018.**

15. Condominium

The court found that the association acted in an arbitrary, capricious, and discriminatory manner in denying two different applications: one with architectural drawings and specifications to construct a

dual fire door between the utility rooms of the two units, allowing access from one unit to the other; and a second with a proposal to add radiant barrier paint and insulation in the shared attic space above the two units in accordance with the procedures identified in the condominium declaration. The proposed modifications did not affect any other unit and were not visible from outside the units. *Rankin v. Covington Oaks Condo. Owners Ass'n*, No. 04-04-00861-CV (Tex.App.--San Antonio 2005, no pet.).

16. Drop Dead Provisions

The court found that if the ACC did not approve or disapprove of the submitted plans within 30 days, the plans were deemed approved in accordance with the declaration, so a subsequent suit to enjoin activities completed in accordance with such plans would be pointless. *Buckner, supra* at 296. "[T]he covenants dictate default consequences in the event the ACC does not act swiftly enough." *Pilarcik, supra* at 480.

17. Variance

Many dedicatory instruments give a POA or an ACC the power to grant variances from the provisions of the restrictions, usually on a basis of extraordinary circumstances (e.g. unusual lot configuration for placement of a residence) or hardship. The court found that where the approving ACC members signed the variances in accordance with the covenants, and after determining in their sole and absolute discretion that the necessary conditions had been met, the variances were valid. *La Ventana Ranch Owners Ass'n v. Davis*, 363 S.W.3d 632, 636 (Tex.App.--Austin 2011, pet. denied). Special care should be taken in granting variances. The trial court did not err in finding that a restrictive covenant barring the construction of a garage were waived because most of the non-conforming structures had been approved by the ACC. *Lay v. Whelan*, No. 03-03-00115-CV (Tex.App.--Austin 2004, no pet.). An ACC did not waive a composition shingle prohibition altogether by granting a variance; it waived the prohibition only with regard to the Pilarcik's alterations. The restriction remains in full force and effect until or unless the ACC decides to waive the restriction, and then only to the extent the restriction is waived. *Pilarcik, supra* at 478.

X. ENFORCEMENT OF RESTRICTIVE COVENANTS ACTIONS

Because this is a topic for an entire treatise, which has been done by better presenters than I, the following is a brief overview of remedies and defenses to enforcement of architectural related restrictions.

A. Presumption of Reasonableness

An exercise of discretionary authority by a property owners association or other representative

designated by an owner of real property concerning a restrictive covenant is presumed reasonable unless the court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory. TCP § 202.004(a).

This section does not define the scope of an association's discretionary authority. We conclude that [trial court's] interpretation is arbitrary on its face when evaluated in light of the declaration's language as a whole. *Weise, supra* at 278. A presumption is simply a rule of procedure or an administrative assumption that may be overcome when positive evidence to the contrary is introduced. *Green v. Ransor, Inc.*, 175 S.W.3d 513, 516 (Tex.App.-Fort Worth 2005, no pet.). Therefore a showing, by a preponderance of the evidence, that the property owner's association exercised its discretionary authority concerning a restrictive covenant in a way that was arbitrary, capricious, or discriminatory merely destroys the presumption that the association acted reasonably. *Uptegraph, supra* at 933.

B. Prerequisites

1. Notice Required Before Enforcement Action

TPC §§ 209.006 and 215.016 require that before imposing a fine on, suspending the right to use a common area, or filing suit against an owner for a violation of a dedicatory instrument, a POA must give written notice to an owner by certified mail, return receipt requested, (1) describing the violation that is the basis for the fine or suspension and any amount due the association from the owner; (2) informing the owner that he or she; (a) has a reasonable period to cure the violation and avoid the fine or suspension unless the owner was given reasonable notice and a reasonable opportunity to cure a similar violation within the preceding six months; (b) may request a hearing under TPC §§209.007 and 215.017 on or before the 30th day after the date the owner receives the notice; and (c) may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief act (50 U.S.C. app. Section 501 *et seq.*), if the owner is serving on active military duty.

2. Hearing Before Board

TCP §§ 209.006 and 209.007 allow an owner to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the board of the POA or before the board if the board does not appoint a committee. The POA shall hold the hearing not later than 30 days after the date the board receives the owner's request for a hearing and shall notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing.

3. Alternative Dispute Resolution

If the POA files a suit seeking a temporary restraining order or temporary injunctive relief, no hearing need be afforded to an owner but a party to the suit may file a motion to compel mediation. TCP § 209.007(d).

4. Suspension of Right to Use Common Area

These sections do not apply to a temporary suspension or a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the subdivision. The temporary suspension is effective until the board makes a final determination on the suspension action after following the procedures prescribed in TPC §209.007. Because the association sought a temporary injunction, the notice provisions of TCP §209.006 are not applicable. *Tees, supra*.

C. Self-help

A dedicatory instrument may give the POA or the ACC the right to enter an owner's lot and repair, maintain and restore a lot or remove a violation, at the owner's expense, in the event the owner of any lot shall fail to maintain the premises, but it is advisable to get a court order before exercising a self-help remedy.

In a previous action between the owner and the association, a judgment of contempt had been entered against the owner, which authorized the association to enter upon the owner's property to bring the property into compliance with the court's judgment. The wrecking company removed the owner's garage, its contents, and foundation pipes, causing damage to the foundation slab. Owner sued the homeowners association and a wrecking company for damages done to the owner's property. *Gray v. Kirkwood S. Comm.*, No. 01-02-00145-CV (Tex.App.--Houston [1st Dist.] 2003, no pet.).

A property owners association may remove a sign displayed in violation of a restrictive covenant permitted by TCP §§ 202.009 and 202.018.

D. Injunction

Generally, the necessary elements of an injunction are: (1) a wrongful act; (2) the existence of imminent harm; (3) the existence of irreparable injury; and (4) the absence of an adequate remedy at law. However, when an injunction is sought to enforce a restrictive covenant, the movant is not required to show proof of irreparable injury. Instead, the movant need show only that the defendant intends to do an act that would breach the covenant. *Munson, supra* at 815. A party must substantially violate a deed restriction before the trial court may issue a permanent injunction. And because an injunction is an equitable remedy, the trial court must weigh the respective conveniences and

hardships of the parties and balance the equities. *Indian Beach, supra* at 690. In determining whether it would be inequitable to enforce restrictive covenants against a particular lot owner in a residential subdivision, the equities of the defendant lot owner must be weighed against the equities favoring the plaintiff (and other lot owners) who purchased or acquired their properties on the strength of the covenants. *Giles, supra* at 427.

1. Contempt

An owner violated an injunction by permitting workers to begin pouring the slab of a four-plex building on his property and continued with the construction of the building when he had not submitted a written request in proper form to the Architectural Control Committee. The Texas Supreme Court held that the order clearly states that appellant was being punished in part for an act that occurred before the injunction and struck the 180 day contempt sentence. *Ex parte James Craig Guetersloh*, 935 S.W.2d 110 (Tex. 1996). A *habeas corpus* petition from a contempt action was granted then reinstated and remanded by a petition brought by a property owners association from violation of permanent injunction prohibiting an attorney who owned a lot in the subdivision, from violating restrictive covenants burdening his property. *In re Nunu*, 960 S.W.2d 649 (Tex. 1997).

E. Declaratory Judgment

An action for declaratory judgment that is a suit against a homeowner to enforce compliance with a deed restriction does not implicate the rights of other homeowners. Accordingly, joinder of all other homeowners is not required. *April Sound Management Corp. v. Concerned Property Owners for April Sound, Inc.*, 153 S.W.3d 519, 526 (Tex. App.—Amarillo, no pet.). A declaration regarding an association's authority to override the ACC's decision denying permission to a particular homeowner for the construction of a basketball court will not affect the rights of other homeowners. *Corcoran, supra*. The failure to join all property owners affected by a restrictive covenant in a declaratory judgment action does not deprive the trial court of jurisdiction to enter the declaratory judgment. *Indian Beach, supra* at 697. A party may not use a declaratory judgment action to seek the same relief afforded under another of its causes of action in order to obtain attorney's fees. Thus, if the declarations obtained in a judgment merely duplicate issues already before the trial court, the party may not recover fees. *Tanglewood, supra* at 69.

F. Civil Penalties

Under TPC §202.004(c), a court may assess civil damages for the violation of a restrictive covenant in an amount not to exceed \$200 for each day of the violation. Although individual property owners are not

expressly excluded, subsection 202.004(b) specifically provides that a property owners association or other representative designated by an owner of real property may sue to enforce a restrictive covenant; individual property owners are nowhere identified in the statute as persons or entities authorized to initiate, defend or intervene in litigation affecting the enforcement of a restrictive covenant. These two subsections plainly contemplate enforcement actions by property owners' associations or owners' representatives. When subsection 202.004(c) is considered in the context of the statute's other provisions, it is evident that the legislature intended the civil damages provided in the subsection to be available only to the entities expressly named in the statute and to no others. Any other construction would be inconsistent with the other provisions of the statute. *Hawkins v. Walker*, 233 S.W.3d 380, 389-90 (Tex.App.-Fort Worth 2007, no pet.).

There was no abuse of discretion in the trial court's refusal to award civil damages under Tex. Prop. Code §202.004 when there was no evidence of owner's knowingly, intentionally and deliberately disregarding the restrictive covenants. *Sanchez v. Southampton Civic Club, Inc.*, 367 S.W.3d 429, 436 (Tex.App.—Houston [14th Dist.] 2012, no pet.).

Notably, the amount of damages that may be assessed under section 202.004(c) is not related to the showing of any type of injury or harm or the extent of such injury or harm; rather, it is related to the number of days that the violation takes place, without any reference to the nature, extent, or existence of any type of injury or harm. Nothing in section 202.004 indicates that the damages that the trial court may assess under subsection (c) are intended to be compensation for any actual harm or injury from the violation of the restrictive covenant. A showing of actual harm is not a prerequisite for a court to assess the \$200 per day. *Uptegraph, supra* at 397-398. The trial court did not act arbitrarily or unreasonably in denying civil damages. Both parties prevailed on some issues concerning the restrictive covenants and the by-laws, while losing other issues. *Air Park-Dallas Zoning Comm., supra* at 912.

Under TEX. LOC. GOV'T. CODE §§ 212.156, the City of Houston may bring a civil action to recover a civil penalty for a violation of a restriction.

G. Defenses

1. Waiver and Abandonment

In order to establish waiver, the defendant has the burden of proving that the enforcer voluntarily and intentionally relinquished its right to enforce restrictive covenants. To carry that burden, appellant must prove the violations then existing were so extensive and material as to reasonably lead to the conclusion that the restrictions had been abandoned. Among the factors to

be considered are the number, nature and severity of the existing violations, any prior acts of enforcement, and whether it is still possible to realize to a substantial degree the benefits sought to be obtained by way of the covenants. The failure to object to trivial violations does not preclude enforcement of the covenants. *Dempsey v. Apache Shores Prop. Owners Ass'n, Inc.*, 737 S.W.2d 589, 595 (Tex.App.--Austin 1987, no writ).

In reaching its holding that the architectural control committee can permissively waive a covenant *as to the applicant*, and not in its entirety, the Texas Supreme Court relied on a permissive waiver provision in the restrictions by the ACC, and concluded:

The architectural control committee's approval of construction plans without requiring strict adherence to the submission of construction plans implies that the architectural control committee has waived the requirement that those plans be submitted. That waiver is within the authority given to the architectural control committee in the restrictive covenants. *Pilarcik, supra* at 480.

This supports the argument that, with the permissive waiver language, an ACC may use its discretionary authority to allow a violation in certain instances without waiving the restrictions as to the entire subdivision.

To defeat enforcement of the restrictive covenant at issue, the property user "must prove that violations then existing are so great as to lead the mind of the "average man" to reasonably conclude that the restriction in question has been abandoned and its enforcement waived. *Martin v. Romero*, No. 09-10-00496-CV (Tex.App.—Beaumont 2011, no pet.); *Finkelstein v. Southampton Civic Club*, 675 S.W.2d 271, 278 (Tex.App.--Houston [1st Dist.] 1974, no pet.). We find a more reasonable interpretation of the applicable law to be that in order to support a waiver of residential restrictions the proposed use must not be substantially different in its effect on the neighborhood from any prior violation. To put it another way, the prior violation which has been carried on without objection, if insignificant or insubstantial when compared to the proposed or new use, will not support a waiver of the new and greater violation. *Sharpstown Civic Ass'n, Inc. v. Pickett*, 679 S.W.2d 956, 958 (Tex. 1984).

In *Jim Rutherford Invs., Inc. v. Terramar Beach Cmty. Ass'n*, 25 S.W.3d 845 (Tex.App.—Houston [14th Dist.] 2000, pet. denied), the court noted that the restrictions contain a severability clause, stating that one violation does not invalidate all of the restrictions. The court looked at the number of lots and homes in

the subdivision (54) and the number of other violations. Rutherford could only point out one other violation of the side set-back restriction. The court held that one violation is not so great as to lead to an abandonment of the restriction. *Id.* at 851.

On the issue as to whether the association acquiesced to similar violations by other members of the subdivision to the extent that the restrictions had been abandoned or the right to enforce the restrictions had been waived, the court upheld an enforcement paragraph of the declaration which provided: "Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter." *Quinn, supra.*

It is, of course, well settled that restrictions on the use of land may become unenforceable because the owners of protected lots have remained inactive in the face of prior violations of the agreements. In cases where enforcement of restrictions has been denied because of prior uncontested violations, the courts have spoken in terms of acquiescence, waiver, estoppel, abandonment, and, sometimes, changed conditions. No serious effort has been made by most courts to delineate the contours of the various doctrines, and where enforcement is denied because of prior violations, the various doctrines are used almost interchangeably. The doctrine of changed conditions, perhaps, should be limited to cases where the changed circumstances are the result of developments outside the protected area, since, if the changed conditions are the result of violations within the restricted area, one or more of the other doctrines would seemingly be applicable. *Ortiz v. Jeter*, 479 S.W.2d 752, 756 (Tex.App.--San Antonio 1972, ref n.r.e.).

2. Estoppel

The following elements must be shown to establish a defense of estoppel: (1) false representations or concealment of material facts; (2) made with actual or constructive knowledge of the facts; (3) to a party without knowledge or the means to obtain knowledge of the real facts; (4) and made with the intention that such misrepresentation or concealment should be acted on; (5) so that the party to whom it was made must have relied on or acted on it to his or her prejudice. The party relying on estoppel has the burden of proof as to each of these elements. *Dempsey, supra* at 596. The doctrine applies when it would be unconscionable to allow a party to maintain a position inconsistent with one to which the party acquiesced, or from which the party accepted a benefit. *Cimarron Country Prop. Owners Ass'n v. Keen*, 117 S.W.3d 509, 511 (Tex.App.—Beaumont 2003, no pet.). Estoppel only applies when one party changes its position materially based upon the actions of another party. *Jim Rutherford, supra* at 852. While allegations of waiver and estoppel based on disputed facts present

jury questions, a court can rule on those defenses as a matter of law when the facts are clearly established. *Tanglewood, supra* at 68.

3. Quasi-estoppel

The owners originally held title to two lots. The association claimed that upon selling one lot, the owners split the lots in two, which resulted in a violation of the restrictive covenant because the owners' porch encroached on the side easement. When the owners refused to move it, the association brought this action. The trial court granted the association summary judgment and fees, but the court reversed and rendered judgment in the owners' favor, plus reversed and rendered on the attorney fee issue. The court found that the owners conclusively proved all the elements of the affirmative defense of quasi-estoppel. The association clearly acquiesced to the construction of the porch in question as early as 1984. It was inconceivable to the court as to how or why the association came forward now and expected to claim a violation of the restrictive covenants when it clearly acquiesced to the initial violation. *Hough v. Brownsville Winter Haven Prop. Owners Ass'n*, No. 13-06-086-CV (Tex.App.-- Corpus Christi 2007, pet. denied). The court of appeals concluded that the term "exterior walls" includes gables, and the doctrine of quasi-estoppel prevented the association from arguing that the owners used unapproved materials on the "exterior walls" because the owners used the same material on their gables. *Jamison, supra* at 821.

4. Changed Conditions

A person cannot complain of changed conditions that occur before they purchase their lot. *Oldfield v. City of Houston*, 15 S.W.3d 219 (Tex.App.—Houston [14th Dist.] 2000, pet. denied). Restrictions on a border lot would be enforced if those restrictions still served their purpose with respect to the interior lots and that zoning changes do not abrogate restrictions. That the owner would be deprived of the most valuable use of their property was insufficient to void restrictions which still benefited the interior lots. *Indep. American Real Estate, Inc. v. Davis*, 735 S.W.2d 256 (Tex.App.—Dallas 1987, no writ).

5. Arbitrary, Capricious and Discriminatory

The presumption of reasonableness created by TPC § 202.004(a) may be rebutted, and the burden to show that an association acted in an arbitrary, capricious and discriminatory manner is on the owner. Therefore a showing, by a preponderance of the evidence, that the property owners' association exercised its discretionary authority concerning a restrictive covenant in a way that was arbitrary, capricious, or discriminatory merely destroys the

presumption that the association acted reasonably. *Uptegraph, supra* at 918.

6. Limitations

Courts apply TEX. CIV. PRAC. AND REM. CODE § 16.051 (2008) residual limitations period to enforcement of restrictive covenants actions, which states: "Every action for which there is no express limitations period, except an action for the recovery of real property, must be brought not later than four years after the day the cause of action accrues." The statute of limitations applicable to the new violation started to run when construction of the new house started, and thus the neighbor did not show that the landowner's claim was barred under § 16.051.

A cause of action for enforcement of deed restrictions accrues upon breach of the restrictive covenant. *Girsh v. St. John*, 218 S.W.3d 921, 925 (Tex.App.—Beaumont 2007, no pet.). However, once a violation of a restrictive covenant has ceased, the enforceability of the restrictive covenant is renewed, and limitations does not bar enforcement of any future violations. See *Daniels v. Balcones Woods Club, Inc.*, No. 03-03-00310-CV (Tex.App.—Austin 2006, pet. denied); *Schoenhals v. Close*, 451 S.W.2d 597, 599 (Tex.App.—Amarillo 1970, no writ) (limitations period revived when violation of restrictive covenant ceased).

7. Laches

Laches is an equitable remedy that prevents a plaintiff from asserting a claim due to a lapse of time. The defense of laches requires proof of (1) a party's unreasonable delay in asserting a legal or equitable right, and (2) a good-faith detrimental change of position by another because of the delay. The party asserting laches has the burden of proving both of these elements. Moreover, as an equitable theory, laches is subject to the doctrine of unclean hands, which requires that a party seeking equity must come to court with clean hands. A party with unclean hands is not permitted to pursue equitable relief. The doctrine of unclean hands bars equitable relief sought by one whose conduct in connection with the same matter or transaction has been unconscientious, unjust, or marked by a want of good faith, or one who has violated the principles of equity and righteous dealing. See *Fox v. O'Leary*, No. 03-11-00270-CV (Tex.App.—Austin 2012, no pet.) for a discussion of equitable remedies. In *Flume v. Bassett*, No. 04-10-00876-CV (Tex.App.—San Antonio 2011, no pet.) the court found that a delay of less than one year was not an unreasonable delay in asserting a claim.

8. Attorney's Fees

Pursuant to TCP § 209.008(a)&(b) a property owners association may collect reimbursement of

reasonable attorney's fees and other reasonable costs incurred by the association relating to collecting amounts, including damages, due the association for enforcing restrictions or the bylaws or rules of the association only if the owner is provided a written notice that attorney's fees and costs will be charged to the owner if the violation continues after a date certain. An owner is not liable for attorney's fees incurred before the conclusion of a hearing under TCP § 209.007, or before the date by which an owner must request a hearing.

In an action based on a breach of a restrictive covenant pertaining to real property, the court shall allow to a prevailing party who asserted the action reasonable attorney's fees in addition to the party's costs and claim. TCP § 5.006.

The prevailing party in an action to enforce the declaration, bylaws, or rules of a condominium is entitled to reasonable attorney's fees and costs of litigation from the non-prevailing party. TCP § 82.161.

The county may be awarded court costs and attorney's fees in a successful action under this chapter. TCP § 203.005.

In an action based on breach of a restrictive covenant, the prevailing party is entitled to reasonable attorney's fees, costs, and actual damages. TCP §§ 215.009(b) and 215.010 (Las Colinas).

In any proceeding under TEX. CIV. PRAC. AND REM. CODE § 37 (Uniform Texas Declaratory Judgments act), the trial court may award costs and reasonable and necessary attorney's fees as are equitable and just. Whether the fees are reasonable and necessary is an issue of fact to be determined by the fact-finder with the expert testimony of an interested witness, standing alone being sufficient to support the reasonableness and necessity of a fees award. *La Ventana Ranch, supra* at 649.

XI. CONCLUSION

Restrictive covenants regarding architectural standards must be carefully drafted to meet the requirements of statutes, case law, and objectives of the developer to realize the protections for which they are intended, *i.e.* to preserve the common scheme and homogeneity of the community. Further, they must be applied in a manner which is not arbitrary, capricious or discriminatory. Great care should be taken that assignment of architectural powers are strictly adhered to under the dedicatory instrument to continue the effectiveness and intent for which the restrictions were promulgated.

Design Guidelines are essential in modern communities to buttress the basic restrictive covenants contained in the Association Declaration, as they will fill in the gaps and form a more solid basis for enforcement. Attached to the article as Appendices is a

set of Guidelines and forms for which the presenter would like to acknowledge the contribution of Robert D. Burton.

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Air Park-Dallas Zoning Comm. v. Crow Billingsley Airpark, Ltd., 109 S.W.3d 900 (Tex.App.—Dallas 2003, no pet.)

Alsatian Heights Homeowners Ass'n v. Rodriguez, No. 04-08-00317-CV (Tex.App.--San Antonio 2009, no pet.)

Anderson v. New Prop. Owners' Ass'n of Newport, Inc., 122 S.W.3d 378 (Tex.App.—Texarkana 2003, pet. denied)

April Sound Management Corp. v. Concerned Property Owners for April Sound, Inc., 153 S.W.3d 519, 526 (Tex. App.—Amarillo, no pet.)

Ashcreek Homeowner's Ass'n v. Smith, 902 S.W.2d 586, 588-89 (Tex.App.--Houston [1st Dist.] 1995, no writ)

Bank United v. Greenway Improvement Ass'n, 6 S.W.3d 705, 707 (Tex.App.-Houston [1st Dist.] 1999, pet. denied)

Benard v. Humble, 990 S.W.2d 929, 930 (Tex.App.--Beaumont 1999, pet. denied)

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Buckner v. Lakes of Somerset Homeowners Ass'n, 133 S.W.3d 294 (Tex.App.--Fort Worth, 2004, no pet.)

Cimarron Country Prop. Owners Ass'n v. Keen, 117 S.W.3d 509, 511 (Tex.App.—Beaumont 2003, no pet.)

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Corcoran v. Atascocita Community Improvement Association, Inc., No. 14-12-00982-CV (Tex.App.--Houston [1st Dist.] 2013, pet. denied)

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Davis v. City of Houston, 869 S.W.2d 493 (Tex.App.--Houston [1st Dist.] 1993, writ denied)

Davis v. Huey, 620 S.W.2d 561 (Tex. 1981)

Dempsey v. Apache Shores Prop. Owners Ass'n, Inc., 737 S.W.2d 589 (Tex.App.--Austin 1987, no writ)

Denton v. Buie, 512 S.W.2d 744 (Tex.App.--San Antonio 1974, no pet.)

Edberg v. Laurel Canyon Ranch Architectural Review Comm., No. 04-10-00395-CV (Tex. App.-San Antonio 2011, pet. denied)

Evans v. Pollock, 796 S.W.2d 465 (Tex. 1990)

Finkelstein v. Southampton Civic Club, 675 S.W.2d 271 (Tex.App.--Houston [1st Dist.] 1974, no pet.)

Flume v. Bassett, No. 04-10-00876-CV (Tex.App.--San Antonio 2011, no pet.)

Fox v. O'Leary, No. 03-11-00270-CV (Tex.App.-- Austin 2012, no pet.)

Garlington v. Boudreaux, 921 S.W.2d 550 (Tex.App.--Beaumont 1996, no writ)

Gettysburg Homeowners Asso. v. Olson, 768 S.W.2d 369 (Tex.App.--Houston [14th Dist.] 1989, no pet.)

Gonzalez v. Atascocita North Cmty. Improvement Ass'n, 902 S.W.2d 591 (Tex.App.--Houston [1st Dist.] 1995, no writ).

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Guetersloh v. Rolling Fork Owners Comm., No. 14-95-01272-CV (Tex.App.--Houston [14th Dist] 1996)

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Hicks v. Falcon Wood Prop. Owners Ass'n, No. 03-09-00238-CV (Tex.App.--Austin 2010, no pet.)

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Tien Tao Ass'n v. Kingsbridge Park Community Ass'n, 953 S.W.2d 525 (Tex. App.--Houston [1st Dist.] 1997, no pet.)

Tulk v. Moxhay, 2 Phillips 774, 41 English Reporter 1143 (1848)

Uptegraph v. Sandalwood Civic Club, 312 S.W.3d 918, 925 (Tex.App.—Houston [1st Dist.] 2010, no pet.)

Wayne Harwell Props. v. Pan American Logistics Center, Inc., 945 S.W.2d 216 (Tex.App.--San Antonio 1997, no writ)

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Young v. City of Houston, 756 S.W.2d 813 (Tex.App.--Houston [1st Dist.] 1988, writ denied)

Architectural and Design Guidelines

I. Introduction

Any notice or information required to be submitted to Community Association Architectural Control Committee under these Design Guidelines hereunder will be submitted to the Community Association Reviewer, 1111 Community Association Blvd., _____, Texas 78701, Phone: (XXX) XXX-XXXX, Fax: (XXX) XXX-XXXX.

Property Subject To:

Lots _ through __, Block __, and Lots __ through __, Block __, Planned Community, a subdivision located in _____ County, Texas, according to the map or plat recorded in Document No. _____, in the Official Public Records of _____ County, Texas.

Applicable Development Area Declaration:

Declaration of Covenants, Conditions and Restrictions, recorded as Document No. XXXXXXXXXX in the Official Public Records of _____ County, Texas.

A. Background

_____ is a master planned community located in _____ County, Texas. The community is subject to the terms and provisions of that certain Community Association Master Covenant, recorded in the Official Public Records of _____ County, Texas (the "Covenant"), and the Development Area Declaration described above (the "Development Area Declaration"). The Covenant and each Development Area Declaration includes provisions governing the construction of improvements and standards of maintenance, use and conduct for the preservation of the community.

B. Reviewer and Review Authority

Article 6 of the Covenant includes procedures and criteria for the construction of improvements within the Community. Section ____ of the Development Area Declaration provides that no Improvements may be placed maintained erected or constructed within the Development without the prior written approval of the Reviewer.

The Reviewer consists of members who have been appointed by PLANNED COMMUNITY LLC, a Texas limited liability company (the "Declarant"). Declarant has a substantial interest in ensuring that improvements within the development maintain and enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market and sell all or any portion of the community, and as a consequence thereof, the Reviewer acts solely in Declarant's interest and shall owe no duty to any other Owner or to Community Association, Inc. (the "Association"). Until expiration or termination of the Development Period, the Association does not administer the review and approval of Improvements within the Development.

Article __ of the Covenant includes procedures and criteria for the construction of improvements within the community. Section ____ of the Development Area Declaration provides that any and all improvements must be erected, placed, constructed, painted, altered, modified or remodeled in strict compliance with the requirements of the Design Guidelines, and Section __ of the Covenant and Section ____ of the Development Area Declaration provides that no Improvements may be constructed without the prior written approval of the Reviewer.

These Design Guidelines will apply only to Lots within the Development Areas which will be used for residential purposes.

II. Governmental Requirements

Governmental ordinances and regulations are applicable to all Lots within the community. It is the responsibility of each Owner to obtain all necessary permits and inspections. Compliance with these Design Guidelines is not a substitute for compliance with the applicable ordinances and regulations. Please be advised that these Design Guidelines do not list or describe each requirement which may be applicable to a Lot within the community. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot prior to submitting plans to the Reviewer for approval. Furthermore, approval by the Reviewer should not be construed by the Owner that any Improvement complies with the terms and provisions of all encumbrances which may affect the Owner's Lot. Certain encumbrances may benefit parties whose interests are not addressed by the Reviewer.

The Reviewer shall bear no responsibility for ensuring plans submitted to then Reviewer comply with any applicable building codes, zoning regulation and other government requirements. It is the responsibility of the Owner to secure any required governmental approvals prior to construction on such Owner's Lot.

III. Interpretation

In the event of any conflict between these Design Guidelines, the Covenant or the Development Area Declaration, the Covenant and the Development Area Declaration (in that order) shall control. Terms used but not defined in these Design Guidelines shall have the meaning subscribed to such terms in the Covenant.

IV. Amendments

The Reviewer, acting alone, may amend these Design Guidelines. All amendments shall become effective upon recordation in the Official Public Records of _____ County, Texas. Amendments shall not apply retroactively so as to require modification or removal of work already approved and completed or approved and in progress. It is the responsibility of each Owner to ensure that they have the most current edition of the Design Guidelines and every amendment thereto.

V. Architectural Review Process

A. Objective

The objective of the review process is to promote aesthetic harmony in the community by providing for compatibility of specific designs with surrounding buildings, the environment and the topography. The review process strives to maintain objectivity and sensitivity to the individual aspects of design.

B. Responsibility for Compliance

An applicant is responsible for ensuring that all of the applicant's representatives, including the applicant's architect, engineer, contractors, subcontractors, and their agents and employees, are aware of these Design Guidelines and all requirements imposed by the Reviewer as a condition of approval.

C. Submittals, Approval and Review Fees

Requests for approval of proposed new construction, landscaping, or exterior modifications must be made by submitting the information and materials outlined in the Plan Review Process, set forth herein. No Improvements may be commenced until the Owner has received a written "Approval" from the Reviewer. The Reviewer may adopt a schedule of fees for plan review.

D. Timing

The Reviewer will attempt to review all applications and submittals within thirty (30) days. Please allow at least thirty (30) days prior to installation or construction for the Reviewer to review the related applications. Please be advised that in the event that any plans and specifications are submitted to the Reviewer and the Reviewer fails to either approve or reject such plans and specifications for a period of thirty (30) days following such submission, the plans and specifications will be deemed disapproved.

E. Inspection

Upon completion of all approved work, the Owner must notify the Reviewer. The Reviewer may inspect the work at any time to verify conformance with the approved submittals.

F. Responsibility for Compliance

An applicant is responsible for ensuring that all of the applicant's representatives, including the applicant's architect, engineer, contractors, subcontractors, and their agents and employees, are aware of these Design Guidelines and all requirements imposed by the Reviewer as a condition of approval.

VI. Architectural and Aesthetic Standards

A. Plan Repetition

The Reviewer may, in its sole and absolute discretion, deny a plan or elevation proposed for a particular Lot if a substantially similar plan or elevation exists on a Lot in close proximity to the Lot on which the plan or elevation is proposed. The Reviewer may adopt additional requirements concerning substantially similar plans or elevations constructed in proximity to each other.

For Example:

- Plan can be repeated every third Lot (example: Plan A, Plan B, Plan C, and Plan A).*

PLAN A	PLAN B	PLAN C	PLAN A
PLAN D	PLAN E	PLAN F	PLAN B
- Across the Street: Same plan cannot be placed on a Lot across the street or diagonal from any other plan (example above: Plan B).*

B. Brick Color and Masonry Stone Repetition

The Reviewer may, in its sole and absolute discretion, deny proposed brick or masonry for a particular Lot if substantially similar brick or masonry exists on a Lot in close proximity to the Lot on which the brick or masonry is proposed. The Reviewer may adopt additional requirements concerning substantially similar brick or masonry constructed in proximity to each other.

For Example:

- Similar brick or masonry can be repeated every third Lot (example: Plan A, Plan B, Plan C, and Plan A).*

PLAN A	PLAN B	PLAN C	PLAN A
PLAN D	PLAN E	PLAN F	PLAN B

- Across the Street: Same brick or masonry cannot be placed on a Lot across the street or diagonal from any other brick or masonry (example above: Brick B).

C. Building Materials

- All building materials must be approved in advance by Reviewer, and only new building materials (except for used brick) shall be used for constructing any Improvements
- All projections from a dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways must, unless otherwise approved by the Reviewer, match the color of the surface from which they project.
- No vertical siding or wood shake siding will be permitted.
- No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any Improvements.

D. Masonry Requirements

- The exposed surface of the exterior walls of each primary residence shall be constructed of seventy-five percent (75%) masonry, exclusive of roofs, eaves, soffits, windows, gables, doors and trim work; and (ii) the second floor of each primary residence shall be constructed of twenty-five percent (25%) masonry, exclusive of roofs, eaves, soffits, windows, gables, doors and trim work. Only brick, stucco and natural stone shall be considered masonry. Notwithstanding the foregoing, on all Lots which share a common boundary line or are otherwise adjacent to Elm Drive and Pine Way (the "Primary Streets"): (i) the exposed surface of the exterior walls of the first and second floor of each primary residence facing the Primary Streets shall be constructed of one hundred percent (100%) masonry, exclusive of roofs, eaves, soffits, windows, gables, doors and trim work. In the event of a dispute as to whether a Lot shares a common boundary line or is otherwise adjacent to a Primary Street, the determination of the Reviewer shall be final and conclusive. Notwithstanding the foregoing, on all Lots facing the public right-of-way: (ii) the exposed surface of the exterior walls of the first and second floor of each residence facing the public right-of-way shall be constructed of one hundred percent (100%) masonry, exclusive of roofs, eaves, soffits, windows, gables, doors and trim work. In the event of a dispute as to whether a Lot faces a public right-of-way, the determination of the Reviewer shall be final and conclusive. No masonry with gray color tones other than mortar will be permitted.

Masonry, as used herein, consists of brick, stone, cultured stone or stucco or other similar products approved by the Reviewer. Hardi-Plank and other cementitious materials may be permitted with a master set pre-approval by the Reviewer. Roofs, eaves, soffits, windows, gables, doors, garage doors and trim work are not required to be constructed of masonry.

- No foundation of a residence may:
 - (i) be exposed more than twenty-four inches (24") above final grade along: (a) the front elevation of the residence; or (b) each side elevation of the residence within fifteen feet (15') from the front elevation of the residence; or
 - (ii) may be exposed more than thirty-six inches (36") above final grade at any other point on the residence.

If a foundation would not otherwise comply with the preceding sentence, the foundation shall be built to include a finished wall matching the exterior wall of the primary dwelling structure located on the Lot, which will extend to within twenty-four inches (24") (if at a point described in (i) above), or thirty-six inches (36") (if at a point described in (ii) above) above final grade. If the exterior of the elevation adjacent to the exposed foundation is constructed of stucco, the Reviewer

will have the authority to require the use of stone, in a color approved in advance by the Reviewer, to conceal the exposed portion of the foundation. In the event of a dispute as to the front or side elevation of a residence, the determination of the Reviewer shall be final and conclusive.

- **Exposed Foundations.** Exposed portions of the foundation on all sides of the house must be concealed by extending the exterior stone or brick to within at least twenty-four inches (24") of the finished grade. If the exterior of the elevation adjacent to the exposed foundation is constructed of stucco, the Reviewer will have the authority to require the use of stone, in a color approved in advance by the Reviewer, to conceal the exposed portion of the foundation. Remaining exposed slab area must be parged/sand finished. Exposed areas of slabs visible from streets may require textured/painted finish at the sole discretion of the Reviewer. Exposed slab on the front of the house and, on corner Lots the entire exposed side of the slab facing the street, must have textured, painted finish.
- **Projections.** All projections from a dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, porches, railings and exterior stairways must match the color of the surface from which they project, unless otherwise approved by the Reviewer.
- **Prohibited Elements:**
 - o Vertical siding or wood shake siding (wood siding accents may be permitted if approved by the Reviewer).
 - o Highly reflective finishes on exterior surfaces (other than non-mirrored glass or on surfaces of hardware fixtures).
 - o Mirrored glass.
 - o No vivid/bright colors.
 - o Gray brick.

E. Square Footage

The minimum living square footage for each residence, exclusive of open or screened porches, terraces, patios, decks, driveways, and garages, is two thousand and five hundred (2,500) square feet.

Aesthetic Appeal.

The Reviewer may disapprove the construction or design of a home on purely aesthetic grounds. Any prior decisions of the Reviewer regarding matters of design or aesthetics will not be considered to establish a precedent for any future decision of the Reviewer.

Calculation. For the purpose of calculating total square footage, open or screened porches, terraces, patios, decks, driveways, garages, storage facilities and walkways shall be excluded. Other detached accessory uses such as cabanas or garages are permitted, but will not count toward the minimum square footage requirement. The calculation of square feet shall be measured from outside surface to outside surface.

F. Siting/Setbacks

The following setbacks shall apply to each Lot other than a corner Lot:

- Front Lot line: 20 feet
- Rear Lot line: 20 feet
- Side Lot line: 5 feet

The following setbacks shall apply to each corner Lot:

- Front Lot line: 20 feet
- Rear Lot line: 20 feet
- Side Lot line - Side of Lot adjacent to, or facing the street: 15 feet
- Side Lot line - Side of Lot adjacent to, or facing any other Lot: 5 feet
- Corner lots that share a common side line with a landscape easement on the street side of the lot are only required to have a 5 foot setback from the landscape easement.

In the event of a dispute as to whether a Lot is considered a corner lot hereunder, the determination of the Reviewer shall be final and conclusive.

Notwithstanding any provision to the contrary in these Design Guidelines, a covered porch shall be permitted to extend to a point no closer than ten feet (10') from the rear boundary line of a Lot.

The Reviewer must approve the encroachment of any flatwork, i.e. driveway, porch, etc. over the side building setbacks.

The Reviewer reserves the right to stipulate additional building or improvement setbacks attributable to any Lot. The Reviewer further reserves the right to grant variances to the setbacks set forth herein in accordance the Covenant.

G. House Width

The width of the single family residence constructed on a Lot shall be no less than seventy-five percent (75%) of the width of the Lot.

H. Temporary/Accessory Structures

Owners will generally be permitted to erect one (1) accessory structure on their Lot providing the accessory structure, such as a pool cabana, garden building, storage building, or home office is approved in advance by the Reviewer. In no event will the total square footage of any approved accessory structure be interpreted to reduce the minimum square footage requirements of the principal residential structure as set forth in these Design Guidelines.

Unless otherwise approved in advance and in writing by the Reviewer, an accessory structure: (i) may be no greater than 10' by 12' (120 square feet) as measured by the dimensions of the foundation of the accessory structure and from the finished grade of the Lot to the highest portion of the accessory structure; (ii) the exterior of the outbuilding must be constructed of wood or masonry. and may not be constructed of metal or plastic; (iii) must utilize roof materials that match the roof materials incorporated into the principal residential structure constructed on the Lot; (iv) have a pitched roof of the same pitch the principal residential structure constructed on the Lot; (v) the siding must be of at least the same quality/color as that used on the principal residential structure constructed on the Lot; (vi) the paint must match the color of the trim of the principal residential structure constructed on the Lot; (vii) the shingles must be either the same as on the principal residential structure

constructed on the Lot or wood shake shingles; and (viii) no accessory structure may be located nearer than five (5) feet from an interior (side) lot line.

Temporary storage structures also known as "pods" are allowed with the prior written approval of the Association Management office provided that:

- Structure is located in the driveway of the Lot; and
- Structure is not placed on any Lot for more than seven (7) days.

The Reviewer shall be entitled to determine, in its sole and absolute discretion, whether a structure or shed on any Lot complies with the foregoing requirements relating to size, height, fence enclosure and construction materials. No accessory structure will be approved unless a principal residential structure has been constructed on the Lot or the accessory structure is being constructed at the same time as the principal residential structure. The Reviewer may adopt additional requirements for any accessory structure on a case by case basis as a condition to approval.

I. Prohibited Elements

The following architectural elements are prohibited within the community unless expressly approved in writing by the Reviewer:

Roofs

- Excessively pitched roofs.
- Mansard, gambrel or chalet roofs.
- Flat roofs.
- Roofs that are too steep or too shallow for the style of the home.
- Shed roofs except as incidental to the main roof.

Design Elements

- Unnecessarily prominent chimneys and other roof penetrations.
- Vents or skylights facing the street.
- White or bubble skylights.
- Mirrored glass.

Materials and Colors

- Wood siding (wood siding accents may be permitted if approved by the Reviewer).
- Cultured stone.
- Gray brick.

J. Building Height

Proposed heights must be compatible with adjacent structures and be compatible with existing or anticipated structure heights on Lots located above or below the Lot on which the proposed residence will be constructed and must be approved in writing by the Reviewer, prior to commencement of construction.

- **Structure Height.** Unless otherwise approved in advance by the Reviewer, no building or residential structure may exceed thirty-five feet (35') in height as measured as the vertical distance between the finished floor elevation at any point within the structure and the highest ridge, peak or gable (exclusive of chimneys and ventilators).
- **Eaves.** In addition, the height of any eave on any structure may not exceed thirty-four feet (34') above the natural grade (as measured from the center point of the home finished floor elevation) at any point on the exterior wall of the residence.
- **Views.** Views are neither guaranteed, preserved nor protected.

K. Room Additions

Any room additions must be approved in writing by the Reviewer.

Additions to a residence will be considered for approval by the Reviewer if they meet the following:

- All materials used match those of the principal residential structure, including siding, brick, windows, and paint color, shingles, etc.
- Sunrooms will be considered.
- Screened Porches will be considered on a case by case basis and must meet the following minimum acceptable standards:
 - o The porch and related improvements must be compatible with the architectural elements of the principal residential structure. Paint colors and materials must match those of the principal residential structure.
 - o Design should reflect consideration for any adverse impact of neighboring properties.
 - o Screened porches shall be located in back yard only. The screened porch shall not encroach on any easement or building line.
 - o Screened porch shall be attached to the principal residential structure.
 - o Free standing screened porches are not permitted.
 - o Supplemental landscaping may be required as part of the Reviewer review.
 - o The roof of screened porch shall be solid decking shingled to match the principal residential structure.

L. Greenbelt/Open Space Lots

"Greenbelt/Open Space Lots" shall refer to Lots/land that has not been developed, whether it is owned by the Declarant, a Homebuilder, the Association or another Owner and is not intended for use as a single family Lot. These areas are to be considered as private property and trespassing is prohibited. Lots Adjacent to Greenbelt/Open Space Lots must comply with all of the following requirements:

- The boundary between the Lot and the Greenbelt/Open Space Lots must be fenced in a manner approved in advance by the the Reviewer.
- The fence must be 6 feet in height and be constructed of "pyrite brown" wrought iron or other decorative metal of a color and style specified by the Reviewer.
- No gate will be permitted into a Greenbelt/Open Space Lot.
- Backyards must be fully sodded with at least two 3" caliper hardwood trees installed by the Owner.

- Sheds or outbuildings will not be permitted on any Lot adjacent to Greenbelt/Open Space Lots.
- At no time are Greenbelt/Open Space Lots to be used for ingress/egress or storage.
- Greenbelt/Open Space Lots should remain in their natural state. No removal or trimming of trees is permitted.

Non-compliance with the above requirements will result in an immediate fine as outlined in the Schedule of Fines included in these Design Guidelines.

M. Roofs and Chimneys

The pitch, color and composition of all roof materials must be approved in writing by the Reviewer. Roof vents and other penetrations shall be as unobtrusive as possible and must match the principal color of the roof unless approved in advance by the Reviewer.

- **Accepted Roof Pitch:** The roof of the primary residence erected on a Lot shall have a pitch of no less than 6:12, unless otherwise approved in advance by the Reviewer. The roof pitch of dormers, porches and other similar accessory structures attached to the primary residence shall be exempt from this requirement, but nonetheless subject to approval by the Reviewer.

- **Accepted Roof Materials:** roofing materials shall be limited to non-reflective metal, clay tile or composition roofs with an architectural profile and shall be expressly approved by the Reviewer and shall have a minimum warranty of thirty (30) years. Notwithstanding the foregoing, three tab composition shingle roofs are prohibited. In addition, roofs may be constructed with "Energy Efficiency Roofing" with the advance written approval of the Reviewer. For the purpose of the Section, "Energy Efficiency Roofing" means shingles that are designed primarily to: (i) be wind and hail resistant; (ii) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (iii) provide solar generation capabilities. The Reviewer will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (a) resemble the shingles used or otherwise authorized for use within the community; (b) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (c) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth in the Covenant. In conjunction with any such approval process, the Owner should submit information which will enable the Reviewer to confirm the criteria set forth in this Section. Any other type of roofing material shall be permitted only with the advance written approval of the Reviewer.

- **Energy Efficiency Roofing.** In addition, roofs of buildings may be constructed with "Energy Efficiency Roofing" with the advance written approval of the Reviewer. For the purpose of the Section, "Energy Efficiency Roofing" means shingles that are designed primarily to: (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) provide solar generation capabilities.

The Reviewer will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth in the Restrictions. In conjunction with any such approval process, the Owner should submit information which will enable the Reviewer to confirm the criteria set forth in this Section.

- **Chimneys.** Chimney style must be appropriate for the style of the home and may be brick or other

masonry matching with the same permitted colors and materials as permitted on the body of the house; provided however, that any chimney located on the interior portion of the roof may also include cementations materials solely or in addition to the brick or other masonry.

- Other Materials. Any other type of chimney or roofing material shall be permitted only with the advance written approval of the Reviewer.

N. Driveways

The design of all driveways must be approved in advance by the Reviewer and no circular driveways shall be permitted.

Aggregate and/or stained concrete driveways are prohibited. Drives shall intersect the street at as close to 90 degrees as possible.

Driveways must permit entry by standard mid-size vehicles without "bottoming out" in the transition area between the curb and property line as wells as the driveway area between the property line and the garage.

If the driveway is raised significantly above finished grade (which will be determined by the Reviewer is its sole and absolute discretion), the exposed sides of the driveway must be screened with landscaping approved in advance by the Reviewer.

- Width. Other than the flair in the driveway necessary to connect to the garage and, for side-entry garages area required for turning/maneuvering, the minimum width of a driveway is twelve feet (12') and the maximum width of a driveway path is eighteen feet (18') within five (5) feet from the curb (to allow for connecting radius to street). The maximum width of driveway area for a turnout shall be no more than 30' wide.
- Setbacks. All driveways must be at least one foot (1') from adjacent property lines except when side-entry garages oppose one another, in which case the minimum is two and one-half feet (2 W) from adjacent Lot lines.
- Finishes. All driveways shall be surfaced with brushed concrete (in some sections this may also be exposed aggregate and/or salt finish). Asphalt driveways are prohibited.
- Features. Drives shall intersect the street at as close to 90 degrees as possible. Driveways must permit entry by standard mid-size vehicles without "bottoming out" in the transition area between the curb and property line as wells as the driveway area between the property line and the garage. Each Lot is permitted only one driveway access from the street. Driveways on comer lots abutting a cul-de-sac and another roadway must access off the cul-de-sac.
- Raised Driveway. If the driveway is raised significantly above finished grade (which will be determined by the Reviewer in its sole and absolute discretion), the exposed sides of the driveway must be underpinned (parged) and painted. When practical, landscaping to screen the raised area is recommended, upon approval in writing by the Reviewer.
- Ramps. Where driveways conflict with pedestrian walks, curbs must be saw cut and handicap ramps installed. Handicap ramps must be constructed to comply with all Texas Department of Licensing and Regulation Architectural Barriers Texas Accessibility Standards and American Disabilities Act (ADA) requirements.

Each Owner of a Lot must build or cause to be built on such Owner's Lot, in a location designated by the Reviewer, in conjunction with and at the time of construction of the principal residential structure constructed on such Lot. In constructing such sidewalk, each Owner shall be obligated to comply with Applicable Law, including any applicable requirements of the Americans with Disabilities Act. Sidewalks from the drive to the principal residential structure shall have the same pattern and material as the driveway.

O. Sidewalks

Each Owner of a Lot must build or cause to be built on such Owner's Lot, in a location designated by the Reviewer, a concrete sidewalk complying with the specifications set forth in the applicable plat, approved subdivision plans, the Documents or any other requirements in conjunction with and at the time of construction of the residence thereon.

- **Pedestrian Sidewalks.** Sidewalks that run generally parallel with the street and are considered part of the overall community sidewalk or trail system are "Pedestrian Sidewalks." Pedestrian sidewalks must be constructed in accordance with the approved subdivision plans. Pedestrian sidewalks shall be surfaced with brushed concrete.
- **Lead Walk.** The portion of sidewalk that may connect from the Pedestrian Sidewalk to the home is called the "Lead Walk." Lead Walks may be surfaced with brushed concrete or exposed aggregate or other surfaces as may be approved by the Reviewer.
- **Compliance.** All sidewalks must comply with designated widths (4' on neighborhood streets and 6' on collector) and must be adjacent to the back of the curb and comply with all Texas Department of Licensing and Regulation Architectural Barriers Texas Accessibility Standards.

P. Garages

No carports shall be placed, erected, constructed, installed or maintained on a Lot.

All garages shall be approved in advance of construction by the Reviewer. The Improvements on each Lot must contain a private, enclosed garage capable at all times of housing at least two (2) standard size automobiles. No garage may be sized to accommodate more than three (3) standard size automobiles without the approval of the Reviewer. Each garage shall have a minimum width, as measured from inside walls, of 9.6' per car and a minimum depth for each car of 20'. Garages may contain appropriately sized storage rooms, recreational workshops and tool rooms, or servants quarters or guest quarters, if approved in advance by the Reviewer. Except with respect to detached garages, interior walls of all garages must be finished (i.e., taped, bedded and painted, at a minimum). Each garage shall have garage doors that are wired so as to be operated by electric door openers. The orientation of the opening into a garage (i.e., side-entry or front-entry) must be approved in advance by the Reviewer.

All garage doors shall remain closed at all times, save and except for the temporary opening of same in connection with the ingress and egress of vehicles and the loading or placement and unloading, or removal of other items customarily kept or stored therein, when a person is in the garage or engaged in yard work, or there is another activity occurring on the Lot which is reasonably facilitated by an open garage door.

No garage shall be converted to another use (*e.g.*, living space) without the substitution, on the Lot involved, of another garage meeting the requirements of this section, and the approval of the Reviewer, and use of parking space in a garage for work areas or storage (including boxes, toys,

exercise equipment, furniture; or work benches) to the exclusion of one or more vehicles is strictly prohibited.

Interior walls of all garages must be finished with sheetrock, textured and painted at a minimum. Each garage shall have garage doors that are wired so as to be operated by electric door openers and automatic door openers are required for all garage doors.

- Prohibited Elements:
 - o Carports
 - o Open (not enclosed) automobile storage

Q. Arbors/Pergola/Patio Covers

All arbors, pergolas and patios covers shall be approved in advance of construction by the Reviewer.

Arbors and patio covers must meet the following:

- Be of cedar or a wood that is painted to match the principal residential structure constructed on the Lot (all other materials will be reviewed by the Reviewer on a case by case basis.)
- If roof is solid cover the shingles must match the principal residential structure constructed on the Lot.
- Lattice on the arbor will be considered by the Reviewer on a case by case basis.
- Approved stain color is Behr Natural #501. Behr brand is not required, but color should match.

R. Decks

All decks shall be approved in advance of construction by the Reviewer.

Backyard deck additions must meet be of cedar or a wood that is painted or stained to match the principal residential structure constructed on the Lot (all other materials will be reviewed on a case by case basis by the Reviewer).

S. Exterior Lighting

All exterior lighting must be approved in advance by the Reviewer. Exterior lighting will be kept to a minimum, but consistent with good security practices. Such illumination shall be designed and installed so as to light only the principal residential structure, landscaping, driveway areas and walkways upon a Lot. Indirect sources and horizontal cut-off fixtures are recommended to reduce glare and provide general ambient light. Soffit or tree lights must be shielded or directed towards vegetation so as to eliminate glare and source visibility.

- No exterior light whose direct source is visible from a street or neighboring property or which produces excessive glare to pedestrian or vehicular traffic will be allowed.
- Any permitted ground-level light fixtures shall be depressed or screened from public view in a manner approved by the Reviewer. No outdoor lighting shall be directed towards or focused in the Common Area, buffer zones, greenbelts or dedicated habitat or conservation easements.
- Use of other than white or color corrected high intensity lamps and exterior lights will not be allowed. Sodium, mercury vapor, or bare HID yard lights are not allowed.

T. Exterior Holiday Decorations

Lights or decorations may be erected on the exterior of the principal residential structure in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners. All lights and decorations must not be permanent fixtures of the principal residential structure without prior written approval of the Reviewer and shall be removed within thirty (30) days after the holiday has ended. Christmas decorations or lights may not be displayed prior to November 15.

U. Impervious Cover

The maximum impervious cover per lot is fifty-five percent (55%) – maximum building coverage is forty-five percent (45%). These requirements are set forth by the small lot subdivision standards for _____ County, Texas.

V. Address Markers and Mailboxes

Address markers must be readily visible from the street. The painting of addresses on the curb is not allowed. Centralized mailbox units will be provided in the community for mail pick-up and delivery.

W. Signage

Certain signage requirements are set forth in the Development Area Declaration. Further, the Documents permit Declarant to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Development Area. Upon written approval from the Reviewer, a Homebuilder may be permitted to erect and maintain such signs, flags and banners by submitting along with the application for approval the location, size, number, design and other features of the signs, flags and banners requested. If approved, such signs, flags and banners must be removed immediately upon sale of the Lot(s) for which the signs, flags and banners were displayed. Approval by the Reviewer shall not relieve Homebuilder from the obligation to apply for and obtain any other governmental permits before erecting and maintaining such signs, flags or banners in the Development Area.

X. HVAC Location and Screening

No air-conditioning apparatus may be installed on the ground in front of the principal residential structure or on the roof of the principal residential structure. No window air-conditioning apparatus or evaporative cooler may be attached to any front wall or front window of the principal residential structure or at any other location where it would be visible from any street, any other Lot or any Common Area.

Air conditioning compressors and pool equipment shall be enclosed by a structural screening element constructed of materials approved in advance by the Reviewer.

Y. Barbecue Grills

Freestanding barbecue grills are permitted only if they are stored and used in the rear yard space of the Lot that is not visible from the street.

Z. Aesthetic Appeal

The Reviewer may disapprove the construction or design of a home on purely aesthetic grounds. Any prior decisions of the Reviewer regarding matters of design or aesthetics shall not be deemed to have set a precedent if the Reviewer feels that the repetition of such actions would have any adverse effect on the community.

VI. Landscape Guidelines

A. Landscape

Detailed landscape plans for each Lot may be submitted to the Reviewer for consideration after construction of the principal residential structure thereon has begun, so long as such submission occurs at least ninety (90) days before completion of the residence. Upon written request, however, the Reviewer may waive the requirement of landscape plans for any Lot by a Homebuilder. There shall be no revisions made to approved plans without submission to, and approval by, the Reviewer of the revised plans. All introduced vegetation shall be trees, shrubs, vines, ground covers, seasonal flowers or sodded grassed which are commonly used in _____ Texas for landscaping purposes and which are approved by the Reviewer. Landscaping in accordance with the approved plans shall be installed within ten (10) days after issuance of a certificate of occupancy with respect to the principal residential structure. Extensions to the time limit may be granted by the Reviewer for up to an additional thirty (30) days on a case by case basis. The approved plans shall include permanent sodded zoysia grass or "ground cover" in all sodded areas. Winter rye shall be considered a temporary measure to reduce soil erosion through the winter season, and shall be completely removed and replaced with sodded grass according to the approved plans. Each Lot shall be landscaped, at a minimum, with: (i) full sodded front and side yards (in front of fences), with backyards to be fully sodded by the Owner within thirty (30) days after acquiring occupancy of the Lot for residential purposes, (ii) the following number of hardwood shade trees--two (2) per Lot on all Lots other than corner Lots and four (4) per corner Lot (with two (2) in the front portion of the Lot, and two (2) in the side of the Lot adjacent to the street), and ten (10) shrubs sized five gallons or more. The hardwood shade trees required by this Section shall be no smaller in size than 3" caliper. Trees and other foliage over 3' tall need Reviewer approval. After installation, landscaping (including temporary landscaping) shall be properly maintained at all times. Any Owner who wishes to plant one or more gardens upon their Lot must obtain the approval of the Reviewer of any such garden and must follow applicable requirements as to size of the Lot, visibility of the Lot from other Lots, streets or common areas, and such other matters as the Reviewer may specify in any written approval.

During construction, existing trees shall be preserved and protected to the extent possible for the intended development, as determined in the Reviewer's discretion; provided, however, that the Reviewer may require the removal of cedar trees from a Lot regardless of the size of such cedar trees. For the purposes of this section, existing trees shall be deemed to be trees of 19" caliper and above. No existing trees shall be removed within any easement areas without the Reviewer approval, which may be withheld in the Reviewer sole discretion. Further, the Reviewer may prohibit the removal of existing trees on portions of Lots adjacent to Common Area to the extent the Reviewer deems necessary to support the purpose of the Common Area. Removal of existing trees shall mean any operation, including transplanting, which removes, uproots or renders the tree incapable of sustaining a healthy and thriving condition. The Reviewer may require that any tree which, in its sole discretion, it deems to have been unnecessarily removed shall be replaced with one or more trees of a type and size approved by the Reviewer. Unless the Reviewer otherwise approves, an existing tree shall be replaced with trees aggregating at least the same number of caliper inches as the existing tree.

- Masonry retaining walls must be approved in advance by the Reviewer.
- Ground cover is defined as a planting of low plants (such as ivy) that covers the ground in place of turf. Rock or stone are not acceptable for use as a ground cover other than in flowerbed or walkway areas. The use of rock or crushed rock as a ground cover shall not be permitted.
- Landscape plans must include vegetative screening for above ground utility connections visible from the street or adjacent properties.
- Zoysia grass should be maintained at a height of two and one-half inches. Mowing heights may need to be

altered to prevent scalping in the event of an uneven grade.

- Grass will be trimmed away from sidewalks, the principal residential structure, planted areas and other obstacles. It is suggested that line trimmers, mechanical edger and chemicals are employed to keep a neat, tidy appearance.
- Four-inch caliper trees and shrubs should be pruned to avoid blocking clear view of signs, address marker, illumination by light fixtures, the flow of air vents and air conditioner compressors as well as pedestrian and vehicular traffic.

The Reviewer reserves the right to require additional landscaping for pools, cabanas and other hardscape elements that may be constructed after completion of the principal residential structure and associated landscaping. The Reviewer may, upon the Owner's completion of the installation of landscaping, conduct an on-site inspection of the property to ensure compliance with the approved plan.

B. Drought-Resistant Landscaping

General landscaping guidelines for each Lot are set forth below. Notwithstanding the subsequent provisions, the installation of drought-resistant landscaping or water-conserving turf on a residential lot, which is a landscaping procedure known as xeriscaping ("Xeriscaping") will be allowed in certain instances in accordance with that certain Xeriscaping Policy set forth in the Development Area Declaration. All landscapes and landscaping must be approved in writing prior by the Reviewer prior to installation. An approved list of plants and turf is set forth on the Plant List which may be obtained from the Reviewer.

- **Plans.** Detailed landscape plans for each Lot must be submitted to the Reviewer for consideration at least thirty (30) days before installation is planned. No significant (*i.e.*, major changes in the plant list, plant and plant bed locations, plant count, hardscape design, materials) revisions may be made to approved plans without submission to, and further approval by the Reviewer of the revised plans. Landscape plans must include vegetative screening for above ground utility connections visible from the street or adjacent properties. Hardscape elements in the landscaping must be in scale with the home and associated structures.
- **Materials.** All introduced vegetation shall be trees, shrubs, vines, ground covers, seasonal flowers or sodded grasses which are commonly used in Central Texas for landscaping purposes and which are approved by the Reviewer. An emphasis should be placed on utilizing native plants that are drought tolerant as well as deer resistant. A minimum of 2" of mulch is required for all shrub and bed areas. Turf grass shall have a minimum of 4" of native soils or improved soils. Caliche is not considered soil. An Owner must plant grass within three (3) days after top-soil for planting grass has been delivered to the Lot.
- **Installation and Maintenance.** Landscaping of new homes must be installed within thirty (30) days of completion and in any event, landscaping in accordance with the approved plans shall be completely installed prior to occupancy of a residence. Modifications of existing landscaping must be completed within fourteen (14) days of commencement. Extensions to the time limit may be granted by the Reviewer but may require a deposit. After installation, landscaping (including temporary landscaping) shall be properly maintained at all times.
- **Reservation of Future Approvals.** The Reviewer reserves the right to require additional landscaping for pools, cabanas and other hardscape elements that may be constructed after completion of the residence and associated landscaping.

- Notwithstanding any requirements to the contrary, Owners shall comply with all applicable governmentally imposed water use restrictions and shall be granted appropriate relief from any specific requirement set forth in these Design Guidelines that cannot reasonably be complied with, as determined by the Reviewer, as a result of such water use restrictions.
- Prohibited Elements.
 - Rock other than crushed granite as a ground cover (unless approved in advance by the Reviewer).
 - St. Augustine Grass.

C. Gardens, Sculptures and Fountains

Any Owner who wishes to plant one or more gardens upon their Lot must obtain the approval of the Reviewer. Sculptures and fountains are subject to approval by the Reviewer.

D. Lawn Furniture, Decorations, and Garden Maintenance Equipment

Lawn furniture, including swings/chairs/benches in good repair are allowed on front porches of the principal residential structure, but must be incorporated into a landscape theme if visible from other Lots. Swings and or benches are not allowed on driveways/front lawns etc. unless specifically approved for placement by the Reviewer.

- One (1) birdbath of a standard size is acceptable in the rear yard of the Lot without prior written approval from the Reviewer.
- Notwithstanding exterior holiday decorations, plastic lawn decorations and artificial plants are not permitted, including pink flamingos, animals, or other plastic designs/statues.
- Lawn mowers, edgers, wheelbarrows, etc. may not be left out in view of other Lots except when in use. Bulk/bag material (mulch, topsoil, etc.) may not be left out in view for longer than ten (10) days.

E. Tree Protection

Protection and preservation of trees is of significant importance to the aesthetics and environment of the community.

- Vegetative Fencing. Whenever possible and economically feasible, all trees should be preserved and protected during construction with vegetative fencing.
- Tree Removal. As used herein, the "Building Envelope" shall be defined as the area of the Lot that is allowed for construction of improvements as defined by the setbacks of the Lot. A "Specimen Tree" is defined as a tree that is healthy and with a uniform canopy, excluding Junipers and Mesquite. In the area outside the Building Envelope, a Specimen Tree that is 9" or larger in diameter measured 24" off the ground must be flagged and approved in writing by the Reviewer prior to removal.
- Oak Wilt. Sound horticultural practices, as recommended by the Texas Forest Service, are required to prevent the establishment or spread of oak wilt. Specific requirements include:

- o Tree pruning tools and blades shall be sterilized prior to and between cutting any oak trees.
- o Oak tree pruning is discouraged from February 1st to June 15th.
- o Pruned trees and/or wounds shall be immediately protected with tree paint (approved example: Treekote Tree Compound).
- o All firewood shall be covered.

F. Irrigation

The Reviewer must approve all irrigation systems prior to installation. A Homebuilder will be exempt from this Section.

- Full Yard Requirements. Full yard programmable irrigation systems may be installed on all Lots and all irrigation systems must be installed and maintained pursuant to any state or local water requirements, including any applicable Texas Commission on Environmental Quality ("TCEQ") regulations.
- Backflow Prevention Device. Each Owner is advised that TCEQ regulations require the installation of a backflow prevention device at any connection to a public drinking water supply. If a backflow prevention device is required, the Owner will be obligated to have performed a yearly inspection by a licensed TCEQ Backflow Prevention Assembly Tester.
- Drip Systems. The use of drip irrigation is encouraged. Irrigation sprinkler systems must use heads that emit large drops rather than a fine mist. All irrigation systems shall be zone based on plant watering requirements.
- Drought Management Plans. Drought management plans may be implemented, as necessary, by the Reviewer.
- Rainwater Harvesting Systems. The requirements for the installation of Rainwater Harvesting Devices are set forth in the applicable Development Area Declaration, subject to the following limitations: (i) only two 55 gallon tanks shall be permitted which must be two feet (2') in diameter and four feet (4') in height; and (ii) only located within the fenced yard of the Lot and not visible from the street.

G. Drainage

There shall be no interference with the established drainage patterns except by Declarant, unless adequate provision is made for proper drainage and such provision has been certified by a professional engineer and approved in advance by the Reviewer.

- Site Drainage. Responsibility for proper site drainage rests with the Owner. Each Owner is solely responsible for correcting any change in water flow or drainage caused by the construction of Improvements on such Owner's Lot.
- Area Drains. No area drains are allowed to extend through the curb, and any area drain opening must be behind the curb within the Lot and cannot extend to the street or right-of-way.

H. Fencing and Walls

The materials, height, location and construction of all fences must be approved in advance by the Reviewer.

- Lot Fencing. Fencing is required on the sides and rear of the lot. Courtyard walls that are architectural walls and designed for individual house plans will be considered for approval by the Reviewer.
- Retaining Walls. All retaining wall plans over four feet (4') tall or within any right-of-way must be submitted to the Reviewer for consideration and must be constructed in accordance with stamped engineered plans by a licensed engineer.
- Plans. Plans submitted for fences or walls must be drawn on an accurate copy of the site plan.
- Greenbelt Fencing. Unless otherwise approved in writing at the sole discretion of the Reviewer, all lots backing up to a greenbelt must utilize ornamental wrought iron fence (painted black) without columns along the property line adjacent to the greenbelt.
- Construction. All fencing between Lots must be Good Neighbor-style wood fencing. Good Neighbor fencing is defined as wood fencing that alternates the side the panel faces every eight feet (8'). Fences shall utilize metal posts or a minimum of 4"x 4" posts and must have at least three horizontal boards for attaching the pickets. Fences that side onto collector roads or otherwise identified high visibility locations will require the fence to be capped.
- Setbacks. The side yard fence at the point where it connects to the house must be setback a minimum of fifteen feet (15') from the front corner of the house and a minimum of ten feet (10') from the back corner of the house. All side yard fences must be installed so that they are perpendicular to the house unless circumstances on site dictate otherwise. Side yard fences must be installed so that all pickets are facing toward the street and no fence rails are seen from the street.
- Stain. All side-yard fences may only be stained using a stain that is approved in advance by the Reviewer. Any part of the fence that is visible from any street shall be routinely re-stained (no less than every four years) in the approved stain color and the Reviewer and/or the Association shall have the right to re-stain such visible portion of the fence and charge the expense to the Owner pursuant to the terms and provisions of the Covenant.
- Prohibited Elements:
 - o Shadowbox or "Pallet" type fencing
 - o Fencing of front yards.
 - o Solid walls enclosing an entire site.

I. Pools, Spas and Hot Tub Plans

The plans and specifications for each swimming pool, spa and hot tub constructed on a Lot must be approved in writing and prior to construction by the Reviewer. All applications submitted to the Reviewer for the approval of plans and specifications for swimming pools, hot tubs or spas must be accompanied by the applicable city permits

for the construction of same. Any applications submitted to the Reviewer, which do not include finalized construction permits from the applicable regulatory authority shall constitute an automatic rejection of the application. Above-ground, movable, or temporary swimming pools are prohibited. Each swimming pool constructed on a Lot must be entirely enclosed with a fence or similar structure which, at a minimum, satisfies Applicable Law. The location, color and style of the fence or enclosure must be approved in writing and in advance of construction by the Reviewer. Approval of a swimming pool, spa and hot tub and/or associated Improvements by the Reviewer will not constitute a determination by the Reviewer that the swimming pool, spa and hot tub and/or associated Improvements comply with Applicable Law or that the swimming pool, spa and hot tub and/or associated Improvements are safe for use.

No swimming pool, spa and hot tub shall be located in the front or side yard on any Lot. Unless otherwise approved in writing by the Reviewer, if the foundation or other vertical surface of the swimming pool will extend more than twenty-four inches (24") above the final grade of the Lot, the exposed foundation or vertical surface extending more than twenty-four inches (24") above the final grade will be finished in a manner that matches the exterior masonry of the principal residential structure. Application of the terms "front yard", "side yard", "foundation or other vertical surface", and/or "final grade" as to a specific Lot will be determined by the Reviewer in its sole and absolute discretion. The Reviewer may adopt additional requirements for any swimming pool, spa and hot tub and/or associated Improvements on a case by case basis as a condition to approval.

Swimming pools shall be in-ground, or a balanced cut and fill, and shall be designed to be compatible with the site and the principal residential structure as determined in the sole and absolute discretion of the Reviewer. Unless otherwise approved in writing by the Reviewer, associated swimming pool, spa, and hot tub improvements, such as rock waterfalls and slides, shall not be over six feet (6') in height. No pool or deck may be closer than five (5) feet from any Lot line. Unless otherwise approved in writing by the Reviewer, all maintenance equipment, including chemicals, plumbing fixtures, heaters, pumps, etc., associated with a swimming pool, spa or hot tub may not be visible from any adjacent street or Lot. The drains serving a swimming pool, spa and hot tub must be connected to street drainage systems. No swimming pool, spa or hot tub shall be drained onto property other than the Lot on which the swimming pool, spa and hot tub is constructed. Above ground spas and hot tubs visible from public view or from an adjacent street or Lot shall be skirted, decked, screened or landscaped in a manner which excludes pumps, plumbing, heaters, filters, etc. from view. No swimming pool, spa or hot tub will be approved unless a principal residential structure has been constructed on the Lot or the swimming pool, spa or hot tub is being constructed at the same time as the principal residential structure.

- In Ground. Swimming pools and accompanying spas shall be in-ground, or a balanced cut and fill, and shall be designed to be compatible with the site and the dwelling. All exposed concrete on "Infinity Edge" swimming pools must be properly screened through the use of landscaping and no more than three (3') feet of exposed concrete may be visible. Self-contained above-ground hot tubs require approval by the Reviewer.
- Screening: Fencing. Screening, fencing, security and maintenance are required of all swimming pools, spas and hot tubs. Additional fencing, if any is proposed in addition to the yard fencing, and/or walls around the swimming pool, spa or hot tub must be approved in advance by the Reviewer and integrated into the design of the dwelling and site. Fences must meet all governmental regulations and no pool, spa, hot tub or other similar water containing basin shall be filled with water until proper fencing is installed.
- Plans. The swimming pool, spa or hot tub plan must be drawn on a copy of an accurate site plan and shall include specific indications of distances from the water containing basin(s) and surrounding slab walks to the Lot lines and building setbacks.

- **Backwash.** Unless otherwise expressly approved by the applicable governmental agency or utility service provider, backwash from a swimming pool, spa or hot tub drain with a backwash filtering system must be contained within the Lot on which the swimming pool, spa or hot tub has been constructed and is not permitted to be discharged into any street, adjoining Lot or drainage easement.
- **Construction Deposit.** A construction deposit is required for all swimming pool, spa or hot tub construction (except for any Homebuilder that has already provided a construction deposit for the construction of the home).
- **Lot Access.** No access across another Lot or greenbelt/open space area for the purpose of building or maintaining a swimming pool, spa or hot tub is permitted without the prior written approval of the other property owner or the Reviewer in the case of greenbelts/open spaces.

J. Basketball Goals and Sporting Equipment

Basketball goals, or backboards, or any other similar sporting equipment of either a permanent or temporary nature shall not be placed on any Lot or street or where same would be visible from an adjoining street or Lot without the prior written consent of the Reviewer.

Permanent goals must meet the following criteria:

- the metal pole must be permanently mounted into the ground to the side of the driveway in a full
- upright position 25' back from the curb
- the pole, backboard and net must be maintained in good condition at all times
- poles may not be installed in front of the garage or facing into the street

Portable goals will not be allowed unless the following criteria are met:

- the goal must be placed to the side of the driveway and permanently installed to be flush with the ground and maintained at all times in a full upright position 25' back from the curb
- the pole, backboard and net must be maintained in good condition at all times
- poles may not be installed in front of the garage or facing the street
- landscape barrier, such as small shrubs must screen the base of the goal
- goals may not be rolled into the street or any other public right-of-way
- goals may not be maintained in front of the garage or facing into the street

The Reviewer shall have the authority to establish additional guidelines for the placement and design of basketball goals, backboards, or any other similar sporting equipment and the same shall be kept and maintained out of view from any street, except in accordance with any such established guidelines.

K. Playscapes and Sport Courts

Sport Courts and tennis courts are specifically prohibited on any Lot.

Playscapes or any similar recreational facilities may not be constructed on any Lot without the advance written approval of the Reviewer. The Reviewer may prohibit the installation of playscapes or similar recreational facilities

on any Lot.

Playscapes or any similar recreational facilities must comply with all the following requirements:

- Must be located where the equipment will have minimum impact on adjacent Lots and be screened from public view.
- All playscapes or any similar recreational facilities equipment must be of earth tones colors, i.e., medium to dark greens, browns, and tans.
- Bright primary colors will not be permitted.
- Views of playscapes or any similar recreational facilities must be reduced from public streets and adjoining units whenever possible.
- Playscapes or any similar recreational facilities must not be located any closer to a property line than the established building setbacks.
- Trampolines, whether portable or non-portable must be placed no closer than five feet (5') to any property line.
- Playscapes, playground equipment and trampolines are prohibited in the front yard.

If approved, portable playscapes, including but not limited to, non-permanent and/or inflatable slides, moon bounces, water parks and above ground inflatable pools or kiddie pools (collectively "Portable Playscapes") must be stored in a screened area, the rear of the Lot, or inside the garage when not in use.

In no event, shall any Portable Playscapes be visible from or in the front of any Owner's Lot for any period of time exceeding twenty-four (24) consecutive hours.

- Prohibited Elements:
 - Direct or indirect lighting of the playscape, trampoline or sport court.
 - Netting enclosures (except safety netting around a trampoline).
 - Playscapes, trampolines and sport courts may not be lighted or enclosed with netting.

VII. Erosion Control and Construction Regulations

The following restrictions shall apply to all construction activities. It is the responsibility of all Owners and/or contractors to adhere to State and Federal storm water runoff protection and prevention requirements that may be applicable to their construction activities and to obtain proper permits as may be required. Periodic inspections by a representative of the Reviewer may take place in order to identify non-complying construction activities. If items identified as not complying with the regulations are not remedied in a timely manner, fines will be levied.

A. Erosion Control Installation and Maintenance

Upon written approval by the Reviewer, it is the responsibility of the Owner to install erosion control measures prior to the start of construction and to maintain the measures throughout construction.

- Silt Fencing. Silt fencing installed to all applicable standards is required to be properly installed and maintained to protect the low sides of all disturbed areas, where storm- water will flow during construction. The purpose of the silt fence is to capture the sediment from the runoff and to permit filtered, clean water to exit the site.
- Sediment Removal. Built-up sediment will need to be removed from the silt fence after

heavy or successive rains, and that any breach in the fencing will need to be repaired or replaced immediately. If for any reason the silt fence is to be temporarily removed, a representative of the Reviewer must be contacted prior to the removal.

B. Security

Neither the Reviewer, the Association, nor the Declarant shall be responsible for the security of job sites during construction.

C. Construction Hours

Unless a written waiver is obtained from the Reviewer, construction may only take place as follows:

- Hours. Monday through Friday from 7:00 a.m. until 7:00 p.m., and on Saturdays and Sundays from 9:00 a.m. until 6:00 p.m.
- Holidays. There shall be no construction on New Year's Day, Easter, Memorial Day, July 4th, Labor Day, Thanksgiving Day, or Christmas Day.
- Waivers. Waivers may be given for the pouring of concrete slabs during the summer months.

D. Noise, Animals, Children

The use of radios, tape and CD players must be restrained so as not to be heard on an adjoining Lot or street.

Contractors and subcontractors may not bring dogs to construction sites. Contractors and subcontractors may not bring children under 16 years of age to construction sites.

E. Material and Equipment Storage

All construction materials and equipment shall be neatly stacked, properly covered and secured. Any storage of materials or equipment shall be the Owner's responsibility and at their risk. Owners may not disturb, damage or trespass on other Lots or adjacent property.

F. Insurance

The Reviewer requires an Owner to procure adequate commercial liability insurance during construction naming the Association, the Declarant and the Reviewer as additional insureds, in an amount to be determined, from time to time by the Reviewer.

G. Site Cleanliness

During the construction period, each construction site shall be kept neat and shall be properly policed to prevent it from becoming an eyesore.

- Fencing. Brightly colored construction fence must be installed before the start of construction on all side lot lines where a home is being constructed next to an existing occupied home.

- **Trash Containers.** Owners and Homebuilders shall clean up all trash and debris on the construction site. Trash and debris shall be removed from each construction site on a timely basis. The Reviewer will have the authority to require that one dumpster be provided to serve no more than two Lots. In addition to any dumpster, a trash receptacle approved in advance by the Reviewer will be located on each lot during construction. Trash receptacles must be emptied periodically and will not be permitted to overflow. Chain link fencing is not an acceptable enclosure material for temporarily containing trash. Lightweight material, packaging and other items shall be covered or weighted down to prevent wind from blowing such materials off the construction site.
- **No Dumping or Burning.** The dumping, burying or burning of trash is not permitted anywhere in the community.
- **Heavy Equipment and Debris.** When moving heavy equipment, precautions must be taken to prevent damage to pavement, curbs, and vegetation. Track loaders are not to be operated on paved or concrete surfaces. Mud, dirt and other construction debris that is tracked off the construction site shall be cleaned on a daily basis. Skid steer loaders are not to be used to clean the streets by scraping them.
- **Each Owner who is a Homebuilder must comply with the Concrete Truck Clean-Out Site provisions set forth in Section ____ of the Development Area Declaration.**

H. Sanitary Facilities

A temporary sanitary facility (chemical toilet) shall be provided and maintained for the use of construction workers.

I. Construction Parking

Construction crews shall not park on, or otherwise use, other Lots. No construction vehicle will be permitted to leak oil or otherwise damage or deface any street located within the community. The Documents permit Declarant to maintain and locate construction trailers and construction tools and equipment within the Development Area. Upon written approval from the Reviewer, a Homebuilder may be permitted to establish a construction trailer, field office or similar temporary structure by submitting along with the application for approval, a copy of the site plan with proposed locations of trailer, field office or similar temporary structure with a trash receptacle noted thereon. The trash receptacle shall be of an approved size. Such temporary structure, if approved, must be removed immediately upon completion of construction. Approval by the Reviewer shall not relieve Homebuilder from the obligation to apply for and obtain any other governmental permits before moving any such construction trailer, field office, etc. onto the Development Area.

J. Schedule of Construction Fines

Periodic inspections by a representative of the Reviewer may take place in order to identify non-complying construction activities. Listed below is the schedule of fines which may be assessed:

Premature Clearing	\$500
Construction without Reviewer Approval	\$500
Encroachment on Adjacent Properties	\$500 plus cost of repair
Violation of Rules, Restriction or Guidelines	\$50/day
Failure to Install and/or Maintain Erosion Control Measures	\$100/day

*Greenbelt/Open Space Lot violation	\$500
Sign Violation	\$50 per sign/incident

*In the event, the Association or Developer is required to repair, clean up or provide necessary service to bring the improvement into compliance, the Owner will be assessed the cost of repair, clean up, or service plus an additional 50% for time and service expended.

K. Duration of Construction

The principal residential structure residence shall be complete and available for occupancy on or before eighteen (18) months after the commencement of construction.

VIII. Plan Review Process

New residential home construction within the community will utilize the process described in this section. No Improvements may be commenced until the Owner has received a written "Approval" from the Reviewer.

A. Submittals

The Plan Review Process includes three stages of review, plus Final Approval by the Reviewer:

Stage 1- Pre-approval of standard sets of plans, elevations for multiple homes that will be allowed to be built by each builder. Alterations to the plans and plans not included in the pre-approved list must be independently approved in advance of construction.

Stage 2- Submittal of a site plan showing the specific home on the specific lot upon which it is proposed to be built. Must show compliance with all set-backs, easements, etc. Also must show location of and material to be used for driveway, sidewalks, patios, decks, and any ancillary improvements along with house siding, roof, trim colors, and siding and trim materials.

Stage 3- (Can be submitted during Stage 2) Diagram showing placement of required landscaping plants and any additional landscape improvements that may be specific to the particular house.

Final Approval- To obtain final approval, a completed Final Plan Application attached hereto must be submitted to the Reviewer, including any information or materials requested but not previously provided or submitted (can be submitted at any Stage above). Improvements on a Lot may not commence until such Final Plan Application has been submitted and executed by the Reviewer.

B. Review Fees

New or Revision House-Start Reviewer Application - \$50 per application

Submittal process: Current Reviewer application completely filled out, plot plan attached (no plans required), and a check per application mailed or delivered to the Reviewer. Revisions will be charged same as a new submittal.

Master Plans Reviewer Submittal - \$500 per package

Submittal process: These packages usually occur when a builder enters a community, or changes product. All plans are to be submitted on ledger paper 11x16 or half size sets. Plans must include all elevations, roof pitch, brick/stone/stucco/siding percentages, and dimensional page for house width. Please include a submittal letter explaining the section(s) and specifics of the review. Mail or deliver the plan sets along with a check to the Reviewer.

*****Plans are reviewed up front, and not at the time of build*****

Additional/New Reviewer Plan Review - \$50 per plan

Submittal process: Mail or deliver half size or 11x16 set of plans that includes all elevations, roof pitch, brick/stone/stucco/siding percentages, and a dimensional page. Include a submittal letter describing the request along with a check per each plan to be reviewed to the Reviewer.

Variance Reviewer Review - \$50 per variance

Submittal process: Variance request letters must include the legal address, street address, and a description of the variance, i.e. measurements, etc. Mail or deliver the letter and any supportive materials (plot plan) along with a check to the Reviewer.

C. Timing

The Reviewer will attempt to review all applications and submittals within thirty (30) days after submission. Please plan construction activities to allow sufficient time for submittals and review as outlined above, and for obtaining Final Approval prior to commencement.

REVIEWER APPLICATION

Community Association Reviewer
c/o Community Association
1111 Community Blvd.,
_____, Texas
Phone: (XXX) XXX-XXXX
Fax: (XXX) XXX-XXXX

Date: _____

Lot: _____ Block: _____ Phase: _____ Section: _____

Plan #: _____ Bedrooms: _____ Baths: _____

Address: _____

Lot Plan Attached: (Please Circle) Yes / No

1st Floor Masonry % _____ 2nd Floor Masonry % _____

Chimney: (Please Circle) Yes / No Masonry _____ Fiber Cement _____

Fencing Type: _____

Stone Manufacturer
and Color: _____

Brick Manufacturer and Color: _____

Stucco Color: _____

Roof Pitch: _____ Roof Color: _____ Year dimensional shingle _____

Paint Color: _____ Fill in the information if different from color above

Trim Color: _____ Door Color: _____

Shutters Color: _____ Garage Color: _____

Square Footage of House: _____ House Width: _____

Front Retaining Wall: (Please Circle) Yes / No Deck: Yes / No Patio: _____ square feet

Comments: _____

Builder Name/Contact Information: _____

By: _____

Site plan must be attached to include the following items:

- Site dimensions
- Square footage of all enclosed improvements
- Impervious Cover
- Property Lines with dimensions
- Building Setbacks
- Proposed finish floor elevation
- Utility boxes
- Drives, parking areas and walks
- House and accessory structures
- Easements
- Boundaries of turf areas with type of turf noted
- Locations of all proposed plants
- Plan legend including species, quantity and sizes at time of planting
- Fence location

APPROVED BY:

Reviewer: _____

(signature)

APPROVAL DATE: