

**SECRETARY'S CERTIFICATE**

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

By: \_\_\_\_\_  
Title: Secretary

STATE OF TEXAS           §

COUNTY OF TRAVIS       §

This instrument was acknowledged before me on \_\_\_\_\_ 2021, by \_\_\_\_\_, Secretary of Estates of Brentwood Homeowners Association, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.

\_\_\_\_\_  
Notary Public Signature

**AFTER RECORDING PLEASE RETURN TO:**

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

## EXHIBIT A

### ESTATES OF BRENTWOOD HOMEOWNERS ASSOCIATION, INC.

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

##### ARTICLE I Introduction

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

These procedures and guidelines are intended to assist the Architectural Control Committee (the “**Architectural Committee**”) in the review and approval or denial of an application for architectural review of proposed construction or modification of an improvement and, if applicable, the appellate review of a denied application (the “**Guidelines**”). The Guidelines have been prepared by the Cagle Pugh law firm specifically for the Architectural Committee and the Board of Directors (the “**Board**”) of Estates of Brentwood Homeowners Association, Inc., (the “**Association**”) and are based on that certain Declaration of Covenants, Conditions and Restrictions for Estates of Brentwood recorded as Document Number 128341189 the Official Public Records of Travis County, Texas, as amended from time to time (collectively, the “**Declaration**”).

##### ARTICLE II Purpose

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

##### ARTICLE III Improvements Requiring Approval of the Architectural Committee

The necessity of obtaining approval from an architectural committee is derived from a land-use restriction contained in the dedicatory instruments applicable to the community. Such land-use restriction

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will often restrict property owners from constructing or modifying certain improvements, buildings and/or structures without the advance written approval of the architectural committee. The scope of items requiring approval of the architectural committee is specified by the dedicatory instruments applicable to the community.

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

1. No satellite dish larger than three (3) feet in diameter, fence, building, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to, or change or alteration therein, be made until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same have been submitted to, and approved in writing, prior to construction, by the Committee, as to harmony of external design and location in relation to surrounding structures. No satellite dish shall be visible from the front street. (Declaration, Article VII Section 3).

### ARTICLE IV

#### Scope of Architectural Review Authority

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

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

1. The Committee shall have sole discretion with respect to taste, design and all standards that are specified in the Declaration. One objective of the Committee is to prevent unusual, radical, curious, odd, bizarre, peculiar, or irregular structures from being built on the Property. (Declaration, Article VII Section 4).

### ARTICLE V

#### Variance Authority

It is very common for a dedicatory instrument to vest an architectural committee with the power to grant a property owner a variance from compliance with one or more of the land-use restrictions in the dedicatory instrument regarding construction or modification of an improvement. When such variance

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authority is granted to an architectural committee it may be limited to certain types of land-use restrictions or the architectural committee may be restricted from granting a variance except in limited circumstances where the architectural committee determines there is good cause or justification for allowing the deviation and such variance will not have an adverse impact on the community.

The Declaration does grant the Architectural Committee the authority to grant variances if such variances are made in accordance with the general development standards as reflected in the plans, construction materials, landscaping and other matters approved by the Committee or homeowners' committee during their periods of control.

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

The variance must be in writing.

### **ARTICLE VI Time Period for Review**

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

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

### **ARTICLE VII Denial of an Application**

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

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

1. The proposed plan did not satisfy the Committee's discretion with respect to taste, design and all standards that are specified in the Declaration.
2. The proposed plan was, in the Committee's sole discretion, unusual, radical, curious, odd, bizarre, peculiar, or irregular. (Declaration, Article VII Section 4).

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

### **ARTICLE VIII Appellate Review by the Board**

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

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

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

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

EXHIBIT A-1

ESTATES OF BRENTWOOD HOMEOWNERS ASSOCIATION, INC.

Architectural Control Committee

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

[Insert Owner Name]

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

RE: Denial of application for construction or modification of improvement at \_\_\_\_\_ (the "Property") submitted to the Architectural Control Committee (the "Committee") on \_\_\_\_\_, 2021 (the "Application")

Dear [insert owner name]:

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

The proposed plan did not satisfy the Committee's discretion with respect to taste, design and all standards that are specified in the Declaration.

The proposed plan was, in the Committee's sole discretion, unusual, radical, curious, odd, bizarre, peculiar, or irregular.

The submitted Application failed to include information required by the applicable dedicatory instrument and/or requested by the Committee. Please provided the required/requested information and the Committee will reconsider the Application

Other:

\_\_\_\_\_

[if applicable – add the following provision]

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

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

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

EXHIBIT A-1

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Sincerely,

[insert name]

[insert title]