CAUSE NO. 23-2592-442

POINT NOBLE HOMEOWNERS' ASSOCIATION, INC.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
v.	§	
LINA RAMEY,	§	442ND JUDICIAL DISTRICT
Defendant/Third Party Plaintiff,	§	
v.	§	
GREG SMITH, BRENDA BARR MECKLEY, LISA LOSHELDER, and DALE SMITH,	§	
Third Party Defendants.	§	DENTON COUNTY, TEXAS

LINA RAMEY'S AMENDED AND SUPPLEMENTAL REQUIRED DISCLOSURES

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, **Lina Ramey** (*Ramey* or *Defendant*) submits the following required disclosures in connection with this lawsuit between and among Point Noble Homeowners Association, Inc. (*HOA* or *Plaintiff*), Defendant, **Greg Smith** (*Greg*), an individual, in his individual capacity for breaches of independent legal duties to Ramey, and in his capacity as a member of the Board of the HOA and president, **Lisa Loshelder** (*Loshelder*), an individual, in her individual capacity for breaches of independent legal duties to Ramey, and in her capacity as a member of the Board of the HOA, and **Brenda Barr Meckley (***Meckley***),** an individual, an individual, in her individual capacity for breaches of independent legal duties to Ramey, and in her capacity as a member of the Board of the HOA, and **Dale Smith** (*Dale*), an individual, in his individual capacity for breaches of independent legal duties to

Ramey, and in his capacity as an employee of Legacy, the HOA's management company Defendant responds to each category of information in the order presented by the Rule.

(1) **the correct names of the parties to the lawsuit**;

The names of the parties are correctly stated in the style.

RESPONSE:

(2) **the name, address, and telephone number of any potential parties**;

RESPONSE: None.

(3) **the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial)**;

RESPONSE:

Ramey's claims or defenses are set forth in greater detail in Ramey's live answer, petition, and third party petition, and supplemental petition, and certain claims and allegations will be restated in the amended pleadings filed in response to Third-Party Defendants' special exceptions. The factual and legal bases are also set forth in discovery responses, and the other pleadings and motions on file.

HOA—Breach of Contract and Declaratory Judgment

Ramey sues the HOA for breach of contract and seeks declaration regarding the interpretation of the contract, the validity of the Second Amendment, the validity and legality of certain provisions of the bylaws, and the conduct of Third-Party Defendants with respect thereto. The HOA breached, and Ramey seeks declaratory relief, against the HOA and Third Party Defendants that they cause such breaches by the HOA in breach of their duties to the HOA by, among other things, (a) imposing inapplicable or unenforceable provisions of the declaration on Ramey; (b) unreasonably, arbitrarily, and capriciously denying her applications for permission to repair and improve her home in breach of the declaration and Texas statutes and laws governing the interpretation, enforcement, and administration of the declaration; (c) failing to comply with the notice and other procedural requirements in denying Ramey's demand that the Board call an annual meeting; (d) after the Board refused to call the annual meeting on a false pretense (*i.e.,* the noticed annual meeting had achieved a quorum when it had not), failing to comply with the statutory mandate that it send notice of the special meeting called by more than 10% of the Members and improperly changing the terms of the called meeting.

Ramey also seeks a declaratory judgment that the second amendment is invalid because it does not satisfy requirements in the original declaration for amending the declaration; the HOA's failure to satisfy the requirements of Chapter 22 of the Texas Bus. Orgs. Code with respect to the call, notice, conduct of meetings and of the Residential Homeowners Protection Act codified in Chapter 209 of the Texas Property Code with respect to the HOA's unreasonable, arbitrary, capricious, and discriminatory treatment of Ramey by the HOA, the Board, and the ACC; the proper interpretation and applicability of provisions of the declaration used by the HOA as the basis for denying Ramey applications and imposing fines; and the HOA's failure to keep and provide HOA documents to members; the validity, enforceability, and manner of adoption of certain provisions of the bylaws.

The following are some examples of the HOA's unreasonable, arbitrary, capricious, and discriminatory actions in breach of the declaration and in violation of Ramey's rights under it with respect to which Ramey seeks declaratory relief.

The HOA complains that there is unauthorized artificial turf on the property in violation of Section 8.24 of the Second Amendment to the Declaration.

Defendant has requested permission to leave in place the artificial turf next to the house and its foundation due to special circumstances.

A previously unknown drainage condition caused a serious landslide. Tons of earth in Defendant's backyard became supersaturated with water and slid downhill from the backyard into the floodway easement maintained by the Army Corps of Engineers (*USACE*). Defendant has been working with the City, USACE, and their engineers to restore their backyard to usable condition, to stabilize the soil, to protect their foundation, and to manage the subsurface and surface water drainage conditions that led in the first place to the landslide in order to prevent another one. USACE also has required Defendant to remove the soil that slid into USACE' easement. This work is still in process.

The recommended measures to protect the foundation also include regrading the front yard, water management measures around and under the foundation, and installation of artificial turf near the house to minimize the use of water and to stabilize moisture levels near the foundation.

In all, over **$1,800,000** has been spent on these efforts to restore the property, prevent a recurrence, and protect against damage to the foundation of their home. The artificial turf is part of the recommended moisture control system designed to protect the foundation.

Defendant reserves all rights and remedies against the HOA and its officers, directors, and members of the Architectural Control Committee (*ACC*) for the arbitrary, capricious, and unreasonable refusal to allow the limited use of conservation grass (artificial turf) as part of the moisture control system to protect the foundation of Defendant's home.

May 15, 2023 Notice

The Board sent another letter notice letter dated May 15, 2023, complaining that the artificial turf was somehow responsible for diverting surface waters from Defendant's property

into the open drainage channel that runs roughly parallel to the road in front of the lots adjacent to the Property. This allegation is untrue.

At around 7:00 am on May 10, 2023, Mr. Smith confronted Mr. Ramey while he was taking out the trash. Mr. Smith called Mr. Ramey and his wife "f***ing pricks." Mr. Smith accused the Rameys of causing flooding of the yards up and down the street. This, too, was untrue. Mr. Ramey informed Mr. Smith that he (Mr. Ramey) would not speak to Mr. Smith and that Mr. Smith should communicate through counsel. Hence the letter of May 15.

The backstory of this unfortunate encounter follows. While the Rameys were out of the country in early May, a sprinkler head or valve began to leak, and the affected neighbor contacted Defendant by email to inform her that water from Defendant's yard was flowing onto the neighbors' yard. Defendant responded by email and asked the neighbor to take and send a couple of pictures so that Mrs. Ramey could get a visual depiction of the problem. The neighbor did not send photos. Even so, Defendant promptly had the leak repaired, and any water flows from the leak ended with the repair. Defendant believes this issue has been resolved, and, in any case, the leak had nothing whatsoever to do with the presence of the artificial turf next to the house.

In addition, the owners of the adjacent lot had placed sandbags in the culvert under their driveway in an apparent attempt to stop water flows through the drainage channel. During subsequent rains, the drainage channel apparently overflowed. The Board's April 24 letter erroneously blames the overflow on the artificial turf and excessive watering by Defendant.

The City found that the sandbags, which the neighbor illegally placed in the culvert, were responsible for any overflows. The City instructed the neighbor to remove the sandbags impeding the proper flow of water through culvert in the channel and to regrade their channel to allow the proper flow of water through it. The neighbor's sandbags, not overwatering or artificial turf, caused the overflow complained of in the Board's May 15, 2023, letter.

In this instance, and others, the HOA accused Ramey, without evidence, of acts she did not commit and violations of the declaration that did not occur.

The HOA complains that there are unauthorized changes in façade design, texture, and color, including gutters, installed in violation of Section 7.4 of the Declaration.

Ramey(also Defendant) was compelled to make emergency repairs to the stone veneer façade of the house when some of the stone veneer on the arch over the front entrance fell off unexpectedly. They made these emergency repairs to avoid undue risks of injury to persons and further damage to their home and other property.

The restoration work uses the same materials already used elsewhere on the façade. Replacement stone could not be matched to the existing stone, so Defendant used the same type and color of stucco already used on the remainder of the exterior of the house for the repair. This repair with like color and kind of materials already used on the exterior of the house cannot be deemed objectionable under any rational reading of the declaration.

The failure of the stone veneer above the arch to adhere to the substrate also prompted an inspection of the remaining veneer on the façade and on the columns at the front of the house. The inspection revealed similar adhesion failures on the columns. Again, because matching replacement stone was not available, Defendant restored the columns with the same type and color stucco used elsewhere on the exterior. Defendant requested that the HOA formally approve these necessary and appropriate repairs as installed.

Defendant replaced failing gutters and reinstalled the same type and color of gutters in the same locations. The declaration does not appear to require homeowners to seek advance approval of the replacement of functional components of their homes after necessary repairs, especially when the replacement materials are of the same type, color, and texture as the existing exterior finishes. Performing essential maintenance and repairs, which does not change the materials or exterior appearance of the house, is not within the purview of the HOA or the ACC. This complaint is yet another example of vindictive overreaching by the HOA and the ACC.

The HOA complains that there is an unauthorized fence on the property in violation of Section 8.18 of the Declaration.

The wrought iron fence depicted in **Exhibit D** of the April 24 notice is not built in a prohibited location. It is wrought iron, which is the same type of open fencing used in many of the front yards of the neighborhood, and it is less than 6 feet in height, which is also typical. It is also similar in style to other visible decorative elements on other properties, including a statue at a property on the same street.

Section 8.18 of the declaration requires that any such fencing be "residential and harmonious." It is. The declaration does not require that the fencing be uniform or identical in style to other existing wrought iron fencing in the subdivision. The HOA and the ACC failed to respond to Remey's December 14 notice within 30 days so the fence is deemed to be approved or they have waived any right or power to deny Defendant the right to install the fencing or have abused any discretion in attempting to do so. .

The HOA complains that there is an unauthorized fountain being constructed on the Property in violation of Section 7.3 of the Declaration.

The fountain in question had been standing in their front yard since shortly after Defendant bought the property nearly 20 years ago. Similar water features are found throughout the subdivision.

Defendant moved the fountain from its previous location in the front yard to allow the contractors to regrade the front yard and to install new sprinkler lines in connection with the correction of the water saturation and drainage problems that resulted in the landslide in the backyard. No consent of the HOA is required to reinstall the same fountain in the front yard in the planned location, which is not within any setback or other area where such a fountain is prohibited.

The HOA complains that there is an unauthorized tree planting scheme on the property in violation of Section 7.3 of the Declaration.

This complaint is baseless. Section 7.3 does not authorize the HOA to direct a property owner where to plant trees or require a property owner to obtain HOA approval to plant trees. The citied provisions of the Original Declaration and the Second Amendment, even if it were valid, which it is not, do not require submission of such a plan. In any case, the trees shown on **Exhibit E** to Plaintiff's notice letter are growing, are trimmed, do not protrude over neighboring properties, and are compatible with other trees of similar appearance throughout the subdivision.

The HOA complains that there is construction equipment, trash, and debris in the yard of the property in violation of Section 8.13 of the Declaration.

This complaint also is without merit. The property was not used as a dumping ground for rubbish. **Exhibit G** to Plaintiff's notice letter depicts the scaffolding erected to make repairs to the façade and materials used in making the repairs. The scaffolding has been removed. Any material used to make the repairs has been installed or removed. No violation of the cited provisions of the Declaration occurred or now exists and, even if one did exist, it was timely cured.

The HOA complains that there is an unauthorized garage wall demolition on the property in violation of Section 8.25 of the Declaration.

The old garage wall was approved years before Greg arrived in Point Noble, and that wall has stood on the property for many years. Its demolition was approved when the HOA approved the driveway improvements. The recently approved driveway relocation plans show the driveway goes through the place where the portion of the old rock wall once stood

The HOA complains that there are dead trees and shrubs on the property in violation of Section 8.25 of the Second Amendment to the Declaration.

The HOA demands removal of allegedly dead trees. Any dead trees have been removed

The HOA complains that there are unauthorized nightscape lights on the property in violation of Section 8.18 of the Declaration. The HOA demands that Defendant remove these lights.

Section 8.18 of the Declaration does not mention any prohibition on nightscape lighting on the Property. In fact, nightscape lighting has been in use at the Property for many years, and nightscape lighting is a common feature in the subdivision.

The replacement LED nightscape lighting is more energy efficient than the lighting it replaces, and such LED lighting is recommended or in some cases required as replacements for the existing lighting fixtures. Defendant requested that the HOA overrule this complaint and approve the replacement lighting as installed.

The HOA complains that there is an unauthorized rock fence and gate on the property in violation of Section 7.4 of the Declaration. The HOA demands that Defendant remove it.

This complaint, too, is unfounded. The rock fence and gate in question has been in place for many years, and it was authorized before it was built. Defendant removed a portion of the

existing rock fence in connection with the HOA's approval of the new driveway entering garages. The approved driveway could not be built without removing the portion of the wall.

Causes of Action for Breach of Independent Legal Duties

Ramey sued each Third-Party Defendant in his or her individual capacity for breach of independent duties owed to Ramey and for declaratory relief under the Uniform Declaratory Judgment Act. Third-Party Defendants, as agents of the HOA, are personally liable for [their] own fraudulent or tortious acts[,]" . . "even though they were acting on behalf of the corporation,'" subject to any applicable statutory limitations.

Defamation

A. **Third-Party Movants libeled Ramey in their dear "neighbors" letter** (the *Defamatory Letter*).[1]

1. **Statutory Elements**. A libel is a defamation expressed in written or other graphic form that tends (a) to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or (b) to impeach any person's honesty, integrity, virtue, or reputation.[2]

2. **Status**. Ramey is a private person. Third-Party Movants also are private persons.

3. **Writing**. The Defamatory Letter constitutes libel because it contains defamations and defamatory statements expressed in written or other graphic form.[3]

4. **Publication**. Third-Party Movants published the Defamatory Letter by sending it, in their "individual capacit[ies]" and not in their capacity as directors or officers or volunteers acting in the course and scope of their duties and functions to the HOA, to "neighbors" who reside in the Subdivision.

5. **Fault**. Third-Party Movants acted with negligence or, in the alternative, actual malice in making false and defamatory statements of fact or, in the alternative, statements that imply a false assertion of defamatory and verifiable facts or are capable of defamatory meaning when viewed in context, and those facts are false or incomplete.

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[1] A true and correct copy of the Defamatory Letter is attached as Exhibit xxx.

[2] TEX. CIV. PRAC. & REM. CODE § 73.001 (LexisNexis, Lexis Advance through the 2025 Regular Session of the 89th Legislature bills: SB14, SB2, SB365, SB262, SB1058, SB608, SB1409, HB135, SB1145, SB1697, SB513, SB1809, SB836).

[3]

(a) **Negligence**. Third-Party Movants failed to act with reasonable care making such false and defamatory statements of fact in the Defamatory Letter, or, in the alternative,

(b) **Actual Malice**. Third-Party Movants made such false statements in the Defamatory Letter recklessly and without knowledge of whether the statements made were true or false.

6. The statements in the Defamatory Letter are actionable because they assert or imply the existence of false, defamatory, and objectively verifiable facts, which a reasonable person would interpret in their entirety as defamatory statements.

7. The Defamatory Letter damaged Ramey. Statements in the Defamatory Letter constitute libel *per se* because the defamatory statements inherently expose Ramey to public hatred, contempt, ridicule, or financial injury, or these defamatory statements impeach her honesty, integrity, virtue, or reputation.

(a) The statements in the Defamatory Letter are derogatory, degrading, shocking, and contain elements of disgrace.

(b) The defamatory statements in the Defamatory Letter tend to and did, injure Ramey's reputation and thereby expose her to public hatred, contempt or ridicule, or financial injury.

(c) The defamatory statements in the Defamatory Letter tend to and did impeach Ramey's honesty, integrity, virtue, or reputation.

(d) Ramey was disinvited from the neighborhood book club because of the false and defamatory statements in the Defamatory Letter.

Third-Party Movants made either Negligent or Intentional Misrepresentations of Fact and Knowingly or Intentionally false entries in the records of the HOA in breach of their Fiduciary Duties to the HOA.[4]

> The elements of negligent misrepresentation are: (1) a defendant provided information in the course of his business, or in a transaction in which he had a pecuniary interest; (2) the information supplied was false; (3) the defendant did not exercise reasonable care or competence in obtaining or communicating the information; (4) the plaintiff justifiably relied on the information; and (5) the plaintiff suffered damages proximately caused by the reliance.

[4] A true and correct copy of the Defamatory Letter is attached as Exhibit xxx.

Greg, Loshelder, and Meckley each have a duty not to publish false and defamatory statements about another person. But they published a joint letter in their "individual capacity" a letter making false and defamatory statements about Ramey. Loshelder, the only one of the three Third-Party Defendants deposed thus far, testified that she made at least some of the statements in her letter without knowledge of whether the statements were true or false.

Negligent and Intentional Misrepresentations False Entries into Corporate Records

Each Third-Party Defendant has an independent legal duty to Ramey as a Member not to make false entries into the records of the HOA that adversely affected her rights and interests as a Member of the HOA. This independent legal duty to her as a Member of the HOA is separate from their fiduciary and statutory duties, in the case of Greg, Loshelder, and Meckley, to the HOA as directors and officers Greg or Dale made or caused to be made, and the other directors approved, false entries in the Minutes of the December 11, 2023, Annual Meeting. The Minutes state falsely that Dale announced the existence of a quorum at the December 11, 2023, meeting. No quorum was recognized by any Member of the Board. Greg announced more than once during the meeting that the gathering was for information purposes only.

Greg signed and filed the Second Amendment. It recites that the Town of Flower Mound Approved it, as required by the Original Declaration. But the Town has no record of the approval, and no authorized representative of the Town of Flower Mound countersigned the Second Amendment. Nor did the requisite percentage of Members required to adopt the Amendment as required by the Original Declaration.

Ramey submitted a request for approval of the ornamental fence. She confirmed he dressed it up and submitted it to the ACC. Whether he did not is still unclear, but the HOA did not respond to Ramey's submission within 30 days, which the Declaration deems to be a waiver of the HOA's objections to the fence. Dale appears to have fabricated denial letters dated on the date before Ramey's submission in an effort to obfuscate the HOA's failure to respond timely to Ramey's submission.

Ramey's Claims for Relief under the Uniform Declaratory Judgments Act.

Ramey's claims for declaratory relief against the Third-Party Defendants are not technically a "cause of action," but they are proper claims for relief under the UDJA.

The UDJA "is remedial; its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other relations; and it is to be liberally construed and administered." Declaratory remains available even when a plaintiff, like Ramey, has asserted an alternative cause of action[,]'" such as breach of contract against the HOA. Under the UDJA, "a contract may be construed either before or after there has been a breach." "'[T]he existence of another adequate remedy does not bar the right to maintain an action for declaratory judgment.'"

Conversely, "a suit under the UDJA is not confined to cases in which the parties have a cause of action apart from the [UDJA] itself." That is, "a UDJA action will lie within the [general] subject-matter jurisdiction of the district courts when there is (1) a justiciable controversy as to the rights and status of parties actually before the court for adjudication; and

(2) that will be actually resolved by the declaration sought." The controversies between the HOA, Third-Party Defendants, and Ramey are justiciable.

The controversies arising out of the Declaration involve a genuine conflict of tangible interests over the contractual and statutory rights and duties of the HOA to Ramey under the Declaration and the Texas statutes affecting the proper interpretation, validity, enforceability of the Declaration and the liability of Third-Party Defendants for their acts and omissions. The declarations Ramey seeks will resolve the extant controversies and eliminate the uncertainty moving forward.

In addition to her claims for declaratory relief against the HOA, Ramey is entitled to seek declaration as to the capacity in which each Third-Party Defendant acted, whether each one is entitled to immunity as an officer or director under the Texas Charitable Immunity and Liability Act, whether each one discharged his or her duties as a director in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the corporation, or acted in an unreasonable, arbitrary, capricious, and discriminatory manner.

Ramey seeks declaratory relief against the HOA and Third-Party Defendants.

Third-Party Defendants do not qualify for the safe harbor for their acts and omissions under TEX. BUS. ORGS. CODE § 22.221. Some acts and omissions occurred outside the scope of their duties as directors. Other were committed as officers. Others were committed in in their individual capacities. Ramey seeks a declaration that they did not meet the standard in Section 22.221 or were not acting in their capacity as directors with respect to certain acts and omissions.

Third-Party Defendants do not qualify for the safe harbor for their acts and omissions under TEX. BUS. ORGS. CODE § 22.235. Some acts and omissions occurred outside the scope of their duties as officers. Other were committed as directors. Others were committed in in their individual capacities. Ramey seeks a declaration that they did not meet the standard in Section 22.2351 or were not acting in their capacity as officers with respect to certain acts and omissions.[5]

(a) Third-Party Defendants do not qualify for the immunity under Chapter 84 of the Civil Practice and Remedies Code. The acted outside the scope of the duties to the HOA, and in violation of the standards in Section 84.004safe harbor for their acts and omissions under TEX. BUS. ORGS. CODE § 22.231. Some acts and omissions occurred outside the scope of their duties as officers. Other were committed as directors. Others were committed in in their individual

[5] *Compare* TEX. BUS. ORGS. CODE § 22.221(stating that "[a] director shall discharge the directors duties, including duties as a committee member in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the corporation") with TEX. BUS. ORGS. CODE § 22.235(b) (no parallel provision for officers)' *compare id*. at § 22.221(b) (stating that "[a] person seeking to establish liability of a director must prove that the director did not act: (1) in good faith; (2) with ordinary care; and (3) in manner he or she reasonably believed to be in the best interests of the HOA (TEX. BUS. ORGS. CODE § 22.235(b)TEX. BUS. ORGS. CODE § 22.235(b

capacities. Ramey seeks a declaration that they did not meet the standard in Section 22.231 or were not acting in their capacity as directors with respect to certain acts and omissions.

Section 84.004(a) states the essential elements of volunteer immunity under CILA. Except as provided in section 84.007 of CILA.

> **[*a*]** [A] volunteer **[*b*]** of a charitable organization **[*c*]** is immune from civil liability **[*d*]** for any act or omission **[*i*]** resulting in "death, damage, or injury **[*ii*]** if the volunteer was acting in the course and scope of the volunteer's duties or functions, including as an officer, director, or trustee within the organization."[6]

CILA only grants an eligible volunteer immunity from civil liability "for any act or omission resulting in death, damage, or injury[.]"

Section 84.007 does not apply when a volunteer commits and an act or omission that is intentional, willfully negligent, or done with conscious indifference or reckless disregard for the safety of others. Examples of such decisions include:

> Large, heavy, natural veneer stones covering the arcade between the two pillars at the front entrance of Ramey's suddenly fell more than 20 feet, shattering and spraying stone shards they hit the floor of the porch below.
>
> This failure required immediate inspection to determine the cause of the failure of the bond between the stones and the substrate. Ramey promptly obtained scaffolding to facilitate inspection, which revealed that other stones in the vicinity of those that had detached and fallen, including stones high on the two pillars, were loose and needed to be removed immediately
>
> The HOA, acting through the Board, ordered Ramey to stop the repairs, even though Ramey informed the Board of the HOA of fallen and loose stones, the need for immediate repairs, the risks of death, injury, and damage to her property from the continued presence of loose stones more than 20 feet high over the front entrance to her home
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> The HOA, through its Board, ordered Ramey to stop these "unauthorized" repairs. In so doing, Third-Party Movants, after being informed of the risks of death, injury, and damage, intentionally, in a willfully negligent manner, and with conscious indifference or reckless disregard for the safety of others ordered Ramey to stop work and, in so doing, hindered the progress and completion of the necessary repairs, thus exposing the

[6] *Id*. at § 84.004(a) ([***bracketed***] alpha-numeric designations added)

residents and guests at the Ramey Property to real and ongoing risks of death or serious injury from falling stones and exposing Ramey's property to further damage by extending the time sub-surfaces not meant for exposure to weather remained exposed.

CILA "does not limit or modify the duties or liabilities of a member of the board of directors or an officer to the organization or its members and shareholders."[7]

Jurisdiction for Declaratory Relief

This this Court has subject matter jurisdiction over Ramey's claims for declaratory and supplemental relief under the UDJA.

Texas's "trial courts are courts of general jurisdiction."[8] The Texas Constitution provides that a trial court's jurisdiction "consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, ***except*** in cases where ***exclusive***, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body."[9] By statute, trial courts, including this one, have "the jurisdiction provided by Article V, Section 8, of the Texas Constitution," and "may hear and determine any cause that is cognizable by courts of law or equity and may grant any relief that could be granted by either courts of law or equity."[10] Courts of general jurisdiction presumably have subject matter jurisdiction unless a contrary showing is made.[11] Defendants have made no contrary showing.

Ramey's Claims for Declaratory Relief are Ripe

Ripeness is a component of subject-matter jurisdiction.[12] "Ripeness is 'peculiarly a question of timing'—specifically, whether the facts have developed sufficiently that a plaintiff has incurred or is likely to incur a concrete injury."[13] A "claim need not be fully ripened at the time suit is filed."[14] Instead, a claim is ripe for judicial determination when the facts are

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[7] TEX. CIV. PRAC. & REM. CODE § 84.007(b).

[8] *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 75 (Tex. 2000).

[9] TEX. CONST. art. V, § 8 (emphasis added).

[10] TEX. GOV'T CODE §§ 24.007–.008.

[11] *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 75 (Tex. 2000).

[12] *Robinson v. Parker*, 353 S.W.3d 753, 755 (Tex.2011).

[13] *Texas Ass'n of Bus. v. City of Austin, Texas*, 565 S.W.3d 425, 432 (Tex. App.—Austin 2018, pet. filed) (citing Perry v. Del Rio, 66 S.W.3d 239, 249–51 (Tex. 2001) (quoting Regional Rail Reorganization Act Cases, 419 U.S. 102, 140 (1974)).

[14] *Lone Star Coll. Sys. v. Immigration Reform Coal. of Texas (IRCOT)*, 418 S.W.3d 263, 277 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (citing *Robinson*, 353 S.W.3d at 755).

sufficiently developed for the court to determine that an injury has occurred ***or*** is likely to occur as opposed to being contingent or remote.[15]

Ramey's claims for declaratory relief are ripe because injuries have occurred as a result of the acts and omissions of Third-Party Defendants that caused the HOA to breach its contractual and statutory obligations to Ramey. These injuries are not contingent or remote. And they are likely to occur again in the absence of declaratory relief decreeing, among other things, that:

The Second Amendment is invalid and not part of any enforceable contract between the HOA and Ramey;

Ramey is not required to submit a landscape plan and that she did not breach the contract between the HOA and Ramey, and the HOA breached the contract with Ramey ordering her to stop all planting without submitting such a plan;

The Third-Party Defendants had and breached their duties to the HOA as officers and directors, or as an employee of the management company, and their individual duty not to make, intentionally or negligently, false and misleading statements to others, including Members of the HOA, for the guidance in votes and in the conduct of the affairs of the HOA.

Third-Party Defendant acted outside the course and scope of their duties and functions as directors and officers of the HOA when the published the Defamatory Letter.

The other facts alleged and the declarations prayed for demonstrate that Ramey's claims are ripe for declaratory relief.

A Justiciable Controversy Exists

Ramey's claims for declaratory relief are ripe because injuries have occurred as a result of the acts and omissions of Third-Party Defendants that caused the A declaratory judgment is appropriate when a justiciable controversy exists concerning the rights and status of the parties, and the controversy will be resolved by the declaration sought.[16] To constitute a justiciable controversy, there must exist a real and substantial controversy involving a genuine conflict of tangible interests and not merely a theoretical dispute.[17]

The justiciable controversies between the HOA and Ramey, include, without limitation, disputes over:

a. the validity of the Second Amendment;

b. the validity of certain changes to the HOA's December 2, 2024 Bylaws;

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[15] *Robinson* , 353 S.W.3d at 755.

[16] *Save Our Springs Alliance*, at 681 (citing *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995)).

[17] *Id.*; *Vill. of Tiki Island v. Premier Tierra Holdings Inc.*, 555 S.W.3d 738, 744 (Tex. App.—Houston [14th Dist.] 2018, no pet.), *reh'g denied* (Aug. 14, 2018).

c. whether the HOA, its Board and its directors, the HOA's officers, and the HOA's ACC and its members owned and breached their respective duties to exercise their discretionary authority reasonably and not in an arbitrary, capricious, and discriminatory manner in connection with decisions, acts, and omissions pertaining to Ramey and the Ramey Lot;[18]

d. whether Third Party Defendants acted, within or outside of, the scope of their duties as officers or as directors for purposes of Section 22.221 and 22.231 of the Texas Business Organizations Code, which is pertinent to, among other things, Ramey's defamation claims against Third-Party Defendants for libel.

e. Whether Third Party Defendants acted, within or outside of, the scope of their duties as volunteer officers or as directors and are or are not entitled to immunity from civil liability under Chapter 84 of the Texas Civil Practice and Remedies Code for under and 22.231 of the Texas Business Organizations Code, which is also pertinent to, among other things, Ramey's defamation claims against Third-Party Defendants for libel.[19]

f. Whether Third Party Defendants performed their duties as officers and directors in good faith, with reasonable care, and in a reasonable belief that they were acting in the bests interest of the HOA and whether their acts and omissions in regard to the false entries in the HOA's records and other acts and omissions pertaining to the conduct of the business of the HOA at the July 2022 annual meeting, the August 2022 Board Meeting the December 2023 annual meeting, the calls by Ramey and others for a an annual meeting after the December 2023 annual meeting failed to achieve a quorum, rather than in furtherance of their personal interests acted, within or outside of, the scope of their duties as volunteer officers or as directors and are or are not entitled to immunity from civil liability under Chapter 84 of the Texas Civil Practice and Remedies Code for under and 22.231 of the Texas Business Organizations Code, which is also pertinent to, among other things, Ramey's defamation claims against Third-Party Defendants for libel.

FACTS

Ramey buys the Ramey Lot in 2007

Ramey owns the real property and residential improvements located at 1209 Noble Way (the *Ramey Lot*). The Ramey Lot is one among over 64 separate lots located within the property

[18] *See* TEX. PROP. CODE § 202.004 (LexisNexis 2025)

[19] See 84.004 & 84. 007.

(the *Subdivision*), which is described on **Exhibit A** to the Original to the Declaration of Covenants, Conditions, and Restrictions for Point Noble (the *Original Declaration*) as Document Number 96-R0020378 in the official public records of Denton County, Texas.

On March 31, 1997, the Declarant recorded the First Amendment to the Declaration of Covenants, Conditions, and Restrictions for Point Noble (the *First Amendment*) as Document Number 97-R0019971 in the official public records of Denton County, Texas.

2. The Original Declaration and the First Amendment together constitute an enforceable contract between Ramey, as the Owner of the Ramey Lot, and the Plaintiff, the Point Noble Homeowners' Association, Inc. (the *Association* or the *HOA*), the non-profit corporation establish pursuant to the Original Declaration. Ramey, as the owner of the Ramey Lot, is party to this contract and is entitled to enforce it against the HOA.

3. The term, declaration, beginning with a lower case

Ramey Served on the HOA's ACC, and,
as and Owner, Requested Required ACC Approvals

4. At the request of the Declarant, Ken Hodge, Ramey served as a Member of the Architectural Control Committee (the *ACC*) for a number of years. Declarant asked Ramey to serve because she is a registered professional civil engineer and is knowledgeable about the types of issues that come to the attention of the ACC.

5. From 2007 until November of 2022, Ramey had never been in conflict with the ACC or the HOA any violations of the Original Declaration, as amended by the First Amendment. Ramey maintained her home and landscape.

a. Ramey made changes to the rear deck area; changed statuary in the front and back yard; planted trees, shrubs, and plants in the front and back yard; set out and removed planters in the front and back yard. She never filed a landscape plan. Neither the HOA nor the ACC ever asked her to do so. Neither the HOA nor the ACC objected when she changed the landscape without seeking ACC approval or filing a landscape plan. While serving on the ACC, the ACC never asked a homeowner to do get permission or submit a landscape plane before planting trees, shrubs, or altering the home's landscape.

b. Without ACC approval or objection, Ramey placed the petrified wood fountain in her front yard more than 10 years before she moved it closer to the entrance of her home in late 2022 or early 2023.

c. Without ACC approval or objection, Ramey operated nightscape lighting in her yard for over a decade, including the orbs that so offended Greg when he noticed them. Nightscape lighting is ubiquitous throughout the Subdivisions.

d. Ramey changed the configuration of the rock wall and gate, which now stands behind a row of holly bushes, more than ten years before Greg moved into the neighborhood. Ramey obtained the approval of the ACC before installing the rock wall and gate.

6. Ramey's dealings as a member of the ACC with other Members of the HOA, as well as her dealings as a Member of the HOA with the members of ACC, were cordial and neighborly.

The Catastrophic May 2021 Mudslide

7. The Ramey Lot sits atop a cliff roughly 30 feet above the shore of Lake Grapevine. Depending on the lake level, the base of the cliff below the Ramey Lot runs essentially parallel to and about 50 or 60 feet East of the usual waterline along the Western shore of Lake Grapevine.

8. In May of 2021, the retaining wall at rear of Ramey's back yard failed suddenly and catastrophically. The retaining wall itself, improvements in the back yard, such as the back fence, patios, concrete steps, and tons of earth slid from Ramey's back yard into the floodway easement below the cliff onto the shore, which is managed by the United States Army USACE of Engineers (USACE) .

9. The Town and USACE required Ramey to clear the rock, mud, and debris that had slid into floodplain. Ramey was instructed to replace the failed retaining wall with a roughly 30-foot-high retaining wall and to install piers and other structural supports to prevent another catastrophic mudslide.

10. Due to the exigent circumstances created by the failure of the retaining wall, the ensuing mudslide, and the increased risk of injury and death to persons and to the house itself, however, USACE and the Town dispensed with the usual permitting process and related red tape. Instead of putting people and property in jeopardy, both USACE and the Town facilitated and encouraged the prompt repair and restoration of the failed retaining wall and related improvements at the rear of the Ramey's house.

11. Ramey retained Professional engineers, geotechnical, and drainage specialists. These professionals recommended, and Ramey implemented, numerous other measures to minimize water flows toward and under the house, including, without limitation, installing a new drainage system along the foundation at the front of the house, minimizing moisture near the foundation of the house by using dry plantings and conservation grass, restoring the original grade in the front yard to prevent water from flowing toward the foundation of the house, and other such measures to minimize moisture near the foundation of the house.

Radical Changes at the HOA

12. In mid-2021, Greg bought a home on Noble Way cattycorner to Ramey's home. He took up full time residence there toward the end of 2021.

13. At the first annual meeting held after he bought his home, Greg nominated himself to serve as a director of the HOA. Until Greg took office, the HOA operated on a neighborly basis. This longstanding tradition of neighborliness ended when Greg took office.

The Second Amendment is Not Part of any Enforceable Contract between the HOA and Ramey

14. The HOA breached its contract with Ramey soon after Greg took control of the HOA.

a. The Original Declaration mandates that any amending instrument be "signed by Owners constituting not less than seventy-five percent (75%) of the votes of the Association and counter-signed by a duly authorized representative of the Town . . .." [20].

b. Section 209.0041(h) of the Texas Property Code may have lowered the 75% approval threshold in the Original Declaration to **67%**. But this statute did not eliminate the requirement in the Original Declaration that the requisite percentage—either **75%** or **67%**—of Owners and Members voting in favor of any amendment ***sign*** the amending instrument. Only Greg signed the Second Amendment.

c. The Original Declaration also mandates that an authorized representative of the Town of Flower Mound (the *Town*) countersign any amendment to the Original Declaration. The Second Amendment that Greg filed of record does not satisfy this requirement.[21] No representative of the Town signed the Second Amendment.

d. To establish that the Second Amendment is a valid and enforceable part of the contract between the HOA and Ramey, the HOA has the burden of proof to show "all necessary legal requisites were established to yield an effective binding and mutually enforceable restriction."[22]

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[20] Original Declaration at § 10.2.

[21] *See Syx v. LTG Vegan Ltd.*, No. 05-05-00854-CV, 2006 WL 2077567, at *2 (Tex. App.—Dallas July 27, 2006, pet. denied) (stating that "[f]or a subsequent instrument to amend original restrictive covenants, the instrument creating the original restrictions must establish both the right to amend such restrictions and the method of amendment.")

[22] *Bijan Youssefzadeh, Mussa, Inc. v. Brown*, 131 S.W.3d 641, 644-45 (Tex. App.—Fort Worth 2004, no pet) (citing *McCart v. Cane*, 416 S.W.2d 463, 465 (Tex. Civ. App.—Fort Worth 1967, writ ref'd n.r.e.)); *see also Dyegard Land Partnership v. Hoover*, 39 S.W.3d 300, 308 (Tex. App.--Fort Worth 2001, no pet.) (stating that "[w]ords used in a restrictive covenant may not be enlarged, extended, stretched, or changed by construction. Rather, words and phrases used in the covenant must be given their commonly accepted meaning.").

> When the power to amend the land use restriction is reserved in the developer, the amendment of a restrictive covenant must be in the precise manner authorized by the dedicating agreement. The same 'precise manner' requirement should logically be required when the amendment mechanism lies other than with the developer.[23]

The HOA did not, and cannot now, meet this burden. The Second Amendment does not satisfy in the "precise manner" either of these important procedural requirements set forth in the Original Declaration for amending it.[24] Because it does not, the Second Amendment is not a valid or enforceable part of the contract the HOA and Ramey.

15. Moreover, the Second Amendment was not approved by a favorable vote of **67%** of the Members at the July 19, 2022, Annual Meeting. The Board was scrambling for 5 ballots after the Meeting adjourned.

a. The Agenda for the August 9, 2022, Board Meeting reflects that, at the time of the Board Meeting, the Second Amendment still needed 5 votes to pass.

b. Ramey became a party to the Original Declaration, as amended by the First Amendment, when she took title to the Ramey Lot in January 2007. The Original Declaration, the contract between the HOA and Ramey, established the contractual prerequisites for amending this contract. To be effective as an amendment to the Original Declaration, as previously amended by the Second Amendment, the HOA must comply with the amendment procedures in the Original Declaration in a "precise manner" and rigidly perform "all necessary legal requisites" set forth in the Original Declaration and applicable law to amend the contract between the HOA and Ramey. Because the HOA failed to perform the prerequisites in the "precise manner" set forth in the Original Declaration, the Second Amendment is not enforceable as a contract between the HOA and Ramey. The HOA cannot enforce the Second Amendment against Ramey, and Ramey cannot be in breach of its terms. The Second Amendment simply is not part of the enforceable contract between the HOA and Ramey or any other Member of the HOA.

The HOA breached the contract between the HOA and Ramey

16. The HOA breached its contract with Ramey in connection with its review and denial of her submissions to the ACC and her appeal to the Board. The HOA, the ACC, and the Board either had no discretion to deny Ramey's requests or no power to require her to submit a request under the declaration and breached its non-discretionary obligations had no

[23] *Bijan*, 131 S.W.3d at 644-45.

[24] *See Syx v. LTG Vegan Ltd.*, No. 05-05-00854-CV, 2006 WL 2077567, at *2 (Tex. App.—Dallas July 27, 2006, pet. denied) (stating that "[f]or a subsequent instrument to amend original restrictive covenants, the instrument creating the original restrictions must establish both the right to amend such restrictions and the method of amendment.")

contractual right to require certain submissions prohibit Ramey's from taking certain actions, planting trees or shrubs, or making other changes to her landscape, or exercised their discretionary authority in an arbitrary, capricious, discriminatory, and unreasonable manner.

Ornamental Fence

17. The ACC and the Board acted in an arbitrary, capricious, discriminatory, and unreasonable manner with regard to Ramey applications to install the ornamental fence and their denials of permission to do so. The HOA, ACC, and the Board denied Ramey's application to install the ornamental fence on the ground that it was located in front of the house set back or the 50 foot setback line. The proposed location of the ornamental fence was not in a prohibited location. The HOA, the ACC, and the Board's decisions to deny Ramey's applications were unreasonable, arbitrary, capricious, and discriminatory.

18. In the alternative, the express terms of **Section 7.7** of the Original Declaration, which is entitled, **Failure of the Committee to Act**, permits Ramey to erect the ornamental fence:

> In the event that any plans and specifications are submitted to the Architectural Control committee [sic] as provided herein, and such Committee shall fail either to approve or reject such plans for a period of thirty (30) days following such submission, approval by the Committee shall not be required, and full compliance with this Article shall be deemed to have been had.

19. Ramey submitted her application for approval of the ornamental fence on December 14, 2022. The ACC failed either to approve or to reject such plans for a period of thirty (30) days following her submission. The ACC did not deliver its denial letter until January 20, 2023. Under the express terms of the Original Declaration, "approval by the Committee shall not be required, and full compliance with this Article shall be deemed to have been had." The HOA and the Board denied the appeal and continues to deny Ramey to right to maintain the ornamental fence in a location permitted by the declaration, even though "approval of the Committed shall not be required, , and full compliance with this Article shall be deemed to have been had." Doing so, constitutes a breach of contract by the HOA.

Artificial Turf and Foundation Plantings

20. The HOA breached its contract with Ramey by refusing to approve the use of artificial turf near the foundation of her home and by insisting that Ramey plant shrubbery along the foundation. In light of the risks to the foundation to her home caused by the drainage and moisture issues and the risk of failure of the retaining wall, and the absence of any legitimate aesthetic concern or other articulable rationale that that the presence of turf or the absence of foundation planting would be detrimental to the HOA, the Subdivision, or its

Members, the decisions of the HOA were arbitrary, capricious, discriminatory, and unreasonable and constitute a breach of the HOA's obligations to Ramey under the declaration.

Other Landscaping

21. The HOA breached its contract with Ramey by prohibiting her from planting trees, shrubs, and other plants in her front yard any by requiring her to submit and landscape plan. There is no requirement in the declaration that:

a. Ramey submit or obtain approval of a landscape plan or that Ramey obtain ACC or HOA permission before she plants trees or shrubs.

b. Ramey submit or obtain approval of the HOA, the ACC, or the Board (i) before she moved a fountain that stood in her front yard for over a decade to a less prominent place in her front yard partially screened from view or (ii) to replace old nightscape lighting in her front yard with new, more energy efficient LED lighting fixtures.

Facade

22. The HOA materially breached its contract with Ramey by requiring that submit a request for and obtain ACC approval before making emergency repairs to the façade of her home using the same type, color, and texture of the previously approved material that had been present on the façade for nearly two decades.

a. Ramey was compelled to replace damaged gutters. The HOA asserts that Ramey is in material breach of the enforceable contract between the HOA and Ramey because she did not obtain prior approval to remove damaged gutters and to replace the damaged gutters with the new gutters fabricated using the same type, color, and texture of gutter material. This does not constitute a breach or, in the alternative, does not constitute a material breach of the enforceable contract between the HOA and Ramey.

b. The decisions of the HOA in regard to the gutters constitute a material breach of the enforceable contract between the HOA and Ramey because the HOA's decisions in this regard are arbitrary, capricious, discriminatory, an unreasonable.

c. Ramey was compelled to make emergency repairs to the stone veneer façade of the house when some of the stone veneer on the arch over the front entrance detached unexpectedly. She made these emergency repairs to avoid undue risks of injury to persons and further damage to their home and other property.

23. The restoration work uses the same, previously approved materials, used on the facade when the house was built and still in use elsewhere on the façade when the veneer stones fell from the arcade above the front entrance of the Ramey's home.

24. Replacement stone could not be matched to the existing stone, so Ramey used the same type, color, and texture of stucco already present on the remainder of the exterior façade of the house for the repair. The repair introduce no new type, color, or texture of material to the façade.

25. The failure of the stone veneer above the arch to adhere to the substrate also prompted an inspection of the remaining veneer on the facade and on the columns at the front of the house. The inspection revealed similar adhesion failures on the columns. Again, because matching replacement stone was not available, Ramey restored the columns with the same type, color, and texture of stucco used elsewhere on the exterior. After completing the repairs, Ramey requested that the HOA formally approve these necessary and appropriate repairs as installed.

26. HOA's decisions in regard to these repairs and the continued assertion that they were commenced and completed without advance approval of the HOA, in the absence of any articulated, much less rational concern about the repairs themselves, are arbitrary, capricious, discriminatory, an unreasonable and constitute a breach of the declaration.

27. No rational reading of the declaration requires a homeowner to delay essential maintenance and repairs, which do not change the materials or exterior appearance of the house, until the HOA approves the repair, especially when, as here, the conditions needing repair – falling stones—pose material risks of injury, death, or further property damage.

28. Ramey submitted applications for the driveway improvements. The HOA granted the application.

29. Ramey's application showed the path of the proposed driveway and the location the portion of the rock wall she proposed to remove to make way for the driveway. Without removing the rock wall, a car could not turn onto the driveway from the street, pass over the driveway, and into the garage courtyard.

30. The site plan Ramey submitted showed the path of the driveway and the portion of the rock wall she proposed to remove. The HOA's ongoing, but factually baseless claim that the ACC did not approve demolition of the portion of the rock wall in question, is not just arbitrary, capricious, discriminatory, an unreasonable, but it also evidences bad faith, gross incompetence, and blatant indifference to the best interests of the HOA.

31. The HOA's complaints about the unauthorized rock wall, likewise, are baseless. The rock wall and gate in front of the garage doors facing the street were approved and constructed more than a decade ago. The ACC recklessly accused Ramey of the unauthorized construction of the rock wall and gate, which had stood on the Ramey Lot for over a decade before the ACC made the false and factually baseless accusations. Although the Greg led HOA, has dropped is demand that Ramey demolish it, the Greg led HOA still accuses Ramey erecting this structure as a breach of the declaration that justifies the HOA's jihad against Ramey.

32. The HOA's remaining complaints are frivolous. The following conditions do not constitute a breach of the declaration, have been addressed, or are immaterial and do not constitute a material breach of the declaration.

a. The presence of ordinary construction debris during construction, which Ramey timely cleaned up and removed, does not constitute a breach or material breach of the declaration.

b. The HOA's complaints about the chipped medallion do not evidence a material failure to maintain the property, constitute a breach of the declaration, or constitute a material breach of the declaration. A new matching medallion has not been found; if one is found, it is unlikely that it would match the other undamaged medallion; and removal of the medallion would risk damaging the stucco in the location and possibly require re-stuccoing of a large swath of the façade to match to repaired area. The chipped medallion is not an eyesore, the house is being well maintained, and the risks making matters worse too great for reasonable persons disregard.

c. The alleged—"tiki heads"—once sate on pillars behind the fence running along the back side of the pool at the rear of the Ramey's back yard. These statuary have been removed and, in any case, were never obvious or readily visible from the street without Greg's obsession, an illegitimate agenda, much effort, and a zoom lens. The HOA has never sought to police statuary in back yards of the homes in the Subdivision. As a longtime resident and former ACC member, Ramey is unaware of any other instance where the HOA, the ACC, or the Board has required a homeowner to obtain permission of the HOA ***before*** putting any kind of statuary in a homeowners' backyard. The HOA does not have the right to require a homeowner to obtain its permission before putting a statue in the homeowner's back yard. The presence of the statuary in Ramey's backyard, which the HOA mischaracterizes as "tiki heads" and which were not readily visible from the street, does not constitute a breach or material breach of the declaration. To add insult to non-injury, the HOA is still squawking about 'tiki heads," which Ramey removed months ago, along with the above ground portion of the pillars.

33. The HOA, the ACC, Board, and Third-Party Defendants decisions, acts, and omissions with regard to these and other issues are arbitrary, capricious, discriminatory, and unreasonable.

a. The declaration prohibits any director from serving on the ACC. Even though a director, Greg insinuated himself into the ACC's decisions about Ramey's applications in December 2022. Before Ramey appealed any decision of the ACC, Greg declared that the ACC and the HOA would never approve the ornamental fence and other requests then pending before the ACC. Greg's acts and omissions outside the scope his duties and functions as a director, interfered with and exercised improper influence over the ACC's decision making process.

b. Greg, Loshelder, and Meckley authorized unjustified harassment of Ramey with false, misleading, or exaggerated claims of non-compliance with the declaration and court

orders. Greg knew the Court denied the motion to sanction Ramey for leaving certain items in view from the street. Ramey put the items behind the more than six-foot high stone wall, which the HOA also falsely claims was erected without ACC approval. When the HOA notified Ramey that certain items were still in view, she moved them immediately out of view. After Greg testified, Ramey's counsel asked the Court to deny the HOA's motion before Ramey put on any evidence. The Court denied the HOA's motion for sanctions. But Greg, Loshelder, and Meckley, and this from their Defamatory Letter.

July 19, 2022, Annual Meeting
Invalid Second Amendment

34. The Original Declaration also requires that "[w]ritten notice of any meeting called for the purpose of taking any action authorized herein shall be sent to all members, or delivered to their residences, not less than thirty (30) days nor more than sixty (60) days in advance of the meeting."[25] At any such meeting called, the required quorum is two thirds (2/3) of all members or proxies entitled to vote.[26]

35. The HOA did not satisfy the notice, quorum, and other mandatory and essential requirements for amending the declaration. The Second Amendment is therefore, ineffective, void, and unenforceable.[27] In fact, the Board Meeting Agenda of a Board Meeting notice for August 9, 2022, states that "5 votes needed to pass."

Duties and Liabilities of Directors and Officers

36. The Board and each director officer of the HOA owes a fiduciary duty of care and loyalty to the HOA.[28]

37. Section 22.221(a) of the Texas Business Organizations Code sets the standard for directors in the discharge of their duty of care and loyalty.

> A director shall discharge the director's duties, including duties as a committee member, ***in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the corporation***.[29]

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[25] *Id.* at § 2.9.

[26] *Id.* at § 2.9

[27] *See id. Syx*, 2006 WL 2077567, at *2.

[28]

[29] TEX. BUS. ORGS. CODE § 22.221(b) (LexisNexis, Lexis Advance through the 2025 Regular Session of the 89th Legislature bills: SB14, SB2, SB365, SB262, SB1058, SB608, SB1409, HB135, SB1145, SB1697, SB513, SB1809, SB836, SB711, SB1426, SB897, SB384, SB1706, SB1930, SB1066, SB2065, SB1194, SB304, SB1215, SB599, SB1185, SB1468, SB1738, SB2314. ***)

Section 22.221(b) provides a director, but not an officer, who acts in the course and scope of his or her duties as a director a safe harbor from personal liability to the HOA or to a member, unless it is shown that the director's acts and omissions in the discharge of the director's duties fail to meet this standard.[30]

38. In determining whether a director breaches his or her duty of care and loyalty under this standard, a director of the HOA must make full disclosure of all pertinent information in relation to subject matter in which he or she has a personal interest.[31] The Third-Party Defendants, Greg, Loshelder, and Meckley, had a personal interest in the decisions regarding in several matters coming before them as a Board, but they did not make full disclose all pertinent information relating to their decisions affecting their acts, omissions, and decisions regarding meetings and false entries in the records of the association to maintain and extend their terms of office.

a. Third-Party Defendants, Greg, Loshelder, and Meckley, failed to discharge their duties of care and loyalty to the HOA ***in good faith***, ***with ordinary care***, a***nd in a manner the director reasonably believes to be in the best interest of the corporation*** in regard to the following decisions affecting the governance of the HOA and connected, directly and indirectly, to Ramey and her rights under the declaration.

b. Third-Party Defendants exhibited their lack of good faith, their lack of ordinary care, and their lack of any basis for any reasonable belief to be in the best interest of the HOA**.**

i. Third-Party Defendants concealed or refused to disclose the names of directors, officers, and members of the ACC; made false entries in the records of the HOA, cut off Ramey's microphone at virtual meetings, and removed Ramey's access to the HOA's Facebook page.

ii. Third-Party Defendants routinely failed to timely post notices, agenda, meeting minutes on the HOA's website and otherwise failed to conduct the meetings and business in accordance with the declaration, the bylaws, and applicable laws and statutes.

iii. In June 2024, Ramey asked the Board in June 2024 to call an annual meeting after the December 2023, Annual Meeting failed to achieve a quorum and the directors failed to call an annual meeting to decide issues discussed, but not voted on, at the informational meeting in December 2023 that did not conduct business due to lack of a quorum. The directors rejected Ramey's request and refused to call the annual meeting, stating falsely that the December 2023 Annual Meeting achieved a quorum when it had not. The directors acted to protect their incumbency rather than further the best interests of the HOA by acting in good faith, with

[30] *Id*. at § 22.221(b).

[31] *Accord Dowdle v. Texas Am. Oil Corp***.,** 503 S.W.2d 647, 651 (Tex. Civ. App.—El Paso 1973, no writ).

ordinary care, and in a manner the directors *reasonably* believed to be in the best interest of the HOA.

iv. In August 2024, Ramey and other Owners constituting more than ten percent (**10%**) of the Members of the HOA called and served notice of a special meeting to hold votes to remove the incumbent directors and on other issues, and they served notice of the special meeting to all of the Members. The Board, including Greg, Loshelder, and Meckley, refused to serve notice of the special meeting called by more than 10% of the Members at the time, place, manner, and with the agenda for the special meeting called by 10% or more of the Members. Instead, Third-Party Defendants sent notice of a counter meeting, stated in emails that the more than **10%** of members has no right to notice the special meeting, and stated, as fact, that the Board had the ***exclusive right*** to notice a special meeting called by the Members rather than a ***mandatory obligation*** to send notice of the special meeting as called.

v. Third-Party Defendants noticed the counter meeting at inconvenient time and place and on terms that made it more difficult to achieve a quorum for a vote to remove Greg, Loshelder, Meckley, and other directors. The Members' notice permitted attendance at the special meeting in person, virtually, by phone or video conference, and by proxy. The counter notice did not permit virtual attendance. Greg, Loshelder, and Meckley put their interests in holding onto office above the best interests of the HOA.

vi. Greg, Loshelder, and Meckley also demonstrated their bad faith and lack of any reasonable belief that they were acting in the best interests of the HOA when they published the Defamatory Letter libeling Ramey and impugning her honesty, integrity, and motives.

vii. The Board noticed the 2023 Annual Meeting for December 11, 2023, at 7:00 pm. The meeting was recorded. Soon after the 12.11.23 Annual began, Smith announced that a quorum had not been achieved. He also announced that the noticed meeting would proceed ***for informational purposes only***. Toward the end of the meeting, the issue of a quorum arose again. Again, Smith, the presiding officer. stated that no quorum had been achieved and that the meeting would proceed to its conclusion ***for informational purposes only***. No votes were taken. No votes were recorded in the minutes. But the minutes produced some months later falsified certain events that occurred during the meeting. In particular, the minutes reported that, at about the 15-minute mark of the meeting, a quorum was achieved and that Dale, the representative of the HOA's management company, declared that a quorum had been reached. This is untrue. Dale made no such announcement during the meeting.

39. During the 12.11.23 meeting, the Board made verbal commitments to call an annual meeting in February of 2024 to review and discuss the prior approval of capital expenses, the capital expense budget, any need to raise HOA fees, needed capital improvements, and other issues raised during the informational meeting. The Board failed to call an in annual meeting as promised in February or at any other time. The Board failed to fulfill other verbal commitments made to the members regarding governance and disclosure budgets, expenses, and other

financial information. When a member pointed out certain errors in the categorization of certain expense items, the chair, Smith, admitted that the items had been mischaracterized. It is not clear whether the board has corrected its errors.

40. The chair and the Board members present conducted the 12.11.23 annual meeting in a discriminatory, arbitrary, capricious, and discriminatory manner. The HOA breached its contract with Ramey by prohibiting her from planting trees, shrubs, and other plants in her front yard

a. During the meeting, the presiding officer, or someone acting on his behalf, cut off the microphone of certain members who voiced positions opinions contrary to Board's line. The Board muted Ramey's microphone effectively precluding her participation.

b. During the meeting, members ask the Board to disclose the names of the incumbent Board members. The chair and other members of the Board refused.

41. As a result of the failure to reach a quorum, and the Board's failure to honor its promise to call an annual meeting in early 2024, Ramey demanded in writing that the Board call an annual meeting for 2023. Counsel for the HOA responded. This response stated that the annual meeting had been called. It stated inaccurately, as did the minutes of the 12.12.23 meeting prepared by the Board or Dale or Both, for the Board, and under the direction of the Board, that a quorum had been achieved when it had not. And the response stated that the Board was under no obligation to call or hold another annual meeting. To this date, the HOA has not held a 2023 annual meeting at which a quorum was achieved. Despite its promises to call an annual meeting in 12.11.23 meeting, which failed to achieve a quorum, the Board has simply refused to call an annual meeting at which members will have an opportunity to vote to remove and replace them.

42. Because the Board failed to perform its statutory duties, Ramey and six other members eligible to vote, who together constitute 10% or more of eligible voting members of the HOA, exercised their right under section 22.155 of the Texas Business Organizations Code to call a special meeting of the HOA set for 7:00 pm on Thursday, September 26, 2024. Section 22.156 requires the HOA (the non-profit corporation) to provide notice of the place, date, and time of a special meeting properly called under 22.155(3) by not less than 10% of the members entitled to cast votes. But this statute does not empower the HOA to ***change*** the place, date, time, or purpose of the called meeting or to dispense with a provision in member's call to provide telephone and other virtual attendance options. The HOA exceeded its authority by changing the place, date, time and limiting the manner of attendance and by failing to include telephone and virtual attendance. The HOA thus breached its mandatory obligation to notice the meeting called, as called. Moreover, section 22.156(a) does not grant the HOA the exclusive right to give notice of the meeting; instead, it imposes a mandatory obligation on the HOA to notice the meeting called. It does not prohibit the members who call the meeting from giving notice of the meeting. The HOA breached this mandatory obligation to Ramey and the members who called the meeting.

43. To the extent that the Three Roques and Dale they acted within their authority as officers and Board members, and as the management agent of the HOA, in violating Ramey and the other member's rights to call and notice the special meeting by changing the terms of the meeting called, the HOA is vicariously liable under principles of agency law and respondeat superior for their actions and their false and defamatory statements about Ramey.

44. Other applicable statutes require the members to make demand on the Board to call a meeting when, for instance, the Board fails to call an annual meeting or fails to call another meeting after failing to achieve a quorum. The statute explicitly permits the 10% or more of the members eligible to vote to "call' a special meeting without the approval or participation of the Board. The statue does not require the Board to approve the call or preclude not less than 10% of the members from noticing the meeting they call. The legislature put this Bad-Board-Bypass provision to empower 10% of the HOA's members to call a meeting to conduct the business of the association when the Board, or those in control of the Board, refuse to do so. It did not expressly preclude the members from calling and noticing a special meeting or give the Three Rogues a way around the Bad-Board-Bypass provision by giving the same Board exclusive power to notice to change the place, date, time, subjects and restricting the manners of attendance.

45. The cowardly Board, on information and belief, caused Dale Smith to notice a counter special meeting on Monday, October 7, 2024, at 8:00 am after a late Sunday night Dallas Cowboys game. In his email, Dale Smith states as a material fact that not less than 10% of the HOA members who call a special meeting cannot notice the special meeting they call. He also states as a material fact that any business conducted at the special meeting called by 10% of the members is invalid and any actions taken at the meeting will not be recognized by the HOA. These statements of material fact are untrue. The board breached its duties of care and loyalty to the HOA by obstructing a proper call of a special meeting to vote on the removal and replacement of members of the Board, thus putting their own positions before the interests of the HOA.

46. Predictably members called certain members among the 10%, who noticed the meeting, expressing confusion as to the validity of the member-called special meeting on September 26. The Board deliberately interfered with the members' statutory right to call and set the place, date, and time and subject of the September 26 special meeting. This interference with Ramey and other the members' statutory, contractual, and other rights constitutes a breach of the Original Declaration, violates Ramey's statutory right to call special meetings, and the Three Rogue's reckless disregard of their duties and their actions exceeding their legal authority, are ultra vires, and, in any case, unreasonable, discriminatory, malicious, arbitrary, and capricious and without privilege or immunity from liability.

47. The Three Rogues also sent—***in their individual capacities***--another communication to certain members of the HOA repeating demonstrably false and defamatory statements about Ramey. A copy of the email communication is attached as **Exhibit C**. These statements, to the extent made in their individual capacity, were made with actual malice, are knowingly false, and deliberately interfered with the members rights to call notice and hold a special meeting to address issues neglected and recklessly ignored by the Board.

48. The Three Rogues and Dale's reckless and unreasonable disregard of their contractual, fiduciary, statutory and other duties as officers and Board members also constitutes a breach of independent legal duties thee owed to the HOA and to Ramey. They also made, in their individual, and or representative capacities, false, disparaging, and misleading statements of fact about Ramey and events surrounding this lawsuit.

CAUSES OF ACTION

Breach of Contract

Defendant incorporates the foregoing paragraphs by reference as if fully set forth herein.

The Original Declaration constitutes a valid and enforceable contract between the HOA and the homeowners of Point Noble, specifically including Ramey. Ramey performed As a homeowner within the Point Noble HOA, Ramey is a proper party to bring suit for breach of the Original Declaration. The HOA materially breached the Original Declaration by, *inter alia*:

a. by failing to provide proper notice of any alleged meeting at which any vote on the Second Amendment to the Declaration was to be held;

b. by failing to obtain a quorum for any alleged meeting to ratify the Second Amendment to the Declaration;

c. by failing to document the existence of a quorum or the vote as required by the Original Declaration and applicable statutes and laws

d. by failing to obtain the signatures of 75% of the members as required for amendments to the Declaration or, in the alternative, 67% if, and to the extent, that this maximum 67% voting threshold for amending a declaration in the Texas Proper Code are valid and binding and do not deprive owners such as Ramey of vested rights;

e. by failing to obtain the signature of an authorized representative of the Town of Flower Mound;

f. by denying approval of Ramey's plans and specifications in bad faith and in an unreasonable, arbitrary, capricious, and/or discriminatory manner in violation of the Original Declaration and applicable statutory and other legal requirements;

g. by failing to approve or disapprove proposed plans submitted to the ACC within 30 days and, by so failing, the ACC is deemed to have approved the plans submitted; despite this deemed approval the ACC prohibited Ramey from proceeding with the plans the ACC is deemed to have approved;

h. by discriminating unreasonably, arbitrarily, capriciously against Ramey by requiring her to provide a landscaping plan to the HOA for approval, which was an ultra vires act outside the authority provided by the Declaration, and which requirement applies only to "builders" before construction of new homes not to owners of existing homes;

i. by unreasonably denying approval of, and ordering Ramey to halt all plantings, landscaping, and hardscaping on her property;

j. by levying fines against Ramey that are not authorized by the Declaration for acts that do not violate the declarations;

k. by the arbitrary, capricious, and/or discriminatory decision making of the ACC, the Board, and the HOA regarding these and other matters involving Ramey and her property; and

l. by interference with Ramey's contractual rights as a member and statutory rights as a member to call a special meeting.

The Three Rogues and Dale, without just excuse, privilege, and outside the course and scope of their responsibilities as officers, directors, and/or agents of the HOA, caused the HOA to materially breach the Original Declaration in one or more of the ways alleged in this pleading and through other related means. The Three Rogues and Dale had an independent legal duty not to interfere with Ramey's right to call a special meeting and for the HOA not to discriminate against her or to subject her to arbitrary, capricious, discriminatory, and unreasonable treatment in breach of her rights under the Original Declaration, under applicable statutes, or otherwise.

Ramey has been, and continues to be, injured as a direct and proximate result of the HOA's material breaches of the Original Declaration and violation of her statutory rights in an amount to be proven at trial.

a. Damages include, without limitation, the costs of trees and shrubs purchased by Ramey that died because the HOA required the Ramey not to plant them. Ramey also seeks to recover damages for the cost to replace, trees, shrubs, and other plantings that perished because of the HOA and ACC's wrongful refusal to allow these plants to be planted.

b. Ramey also seeks to recover increased costs due to delays in construction by the ACC and the Board's wrongful refusals to approve proposed alterations and improvements.

Ramey seeks to recover her attorneys' fees and costs of Court from the HOA because of the HOA's breaches of the Original Declaration. Tex. Civ. Prac. & Rem. Code § 38.001. Ramey is equitably entitled to pre- and post-judgment interest at the maximum allowed rate under the Texas Finance Code and all other applicable law. **Uniform Declaratory Judgment Act**

Defendant Ramey incorporates the foregoing paragraphs by reference as if fully set forth herein.

Ramey brings this action asking the Court for declaratory relief under the Texas Civil Practice and Remedies Code sections 37.001, *et seq*. Ramey requests that the Court construe the provisions of the Original Declaration and determine and declare that: (1) the Second Amendment to the Declaration is void and unenforceable; and (2) the HOA and Architectural Control Committee are unreasonably, arbitrarily, and capriciously discriminating against the Ramy by demanding compliance with non-existent, inapplicable, or unenforceable provisions of the Original Declaration and by seeking to enforce the unenforceable Second Amendment and arbitrarily and capriciously refusing to allow Ramey to modify and alter features or fixtures of her home, even though she is not prohibited from doing so by the Original Declaration.

1. The Second Amendment to the Declaration is Void and Unenforceable

The Original Declaration constitutes a valid written instrument establishing the rights and legal relationships between the HOA and homeowners. A justiciable controversy exists between Ramey and the HOA over the HOA's non-compliance with the contractual mandates of the Original Declaration.

When an association alleges that the original covenants have been amended, the association bears the burden to establish the "validity and enforceability of the amended covenants" and is required to come forward with "evidence to establish both its right to amend and its compliance with the legal steps to amend the covenants."[32]

The Second Amendment to the Declaration was not properly adopted and is therefore invalid and void. Ramey denies that the HOA satisfied multiple conditions precedent to the validity of the Second Amendment to the Declaration, including, but not limited to:

a. proper notice of the meeting at which the vote was held was not given, and other procedural requirements were not observed;

b. **75%** of the members did not sign the Second Amendment as required by the Original Declaration;

c. **67%** of the members did not sign the Second Amendment as required by section 209.0041(h) of the Texas Property Code, which may have lowered the approval threshold from **75%** to **67%** in the Original Declaration;

[32] *Western Hills Harbor Owners Association v. Baker*, 516 S.W.3d 215, 221 (Tex. App.—El Paso 2017, no pet.).

d. an authorized representative of the Town of Flower Mound did not sign the Second Amendment as required by the Original Declaration.

Despite failing to comply with the requirements for amendment or modification to the Original Declaration, the HOA purports to have adopted the Second Amendment to the Declaration. But because the Second Amendment to the Declaration was not properly adopted in accordance with the terms required within the Original Declaration, the Second Amendment to the Declaration is void and unenforceable. Accordingly, Ramey seeks a judicial declaration from this Court that the Second Amendment to the Declaration is void and unenforceable.

2. The HOA' Architectural Control Committee has arbitrarily and capriciously deprived Ramey of liberty and quiet enjoyment of her domicile.

Ramey further seeks a judicial declaration from this Court that the HOA's ACC exercised its authority in an unreasonable, arbitrary, capricious, and discriminatory manner in its decisions to deny approval of requested alterations and to impose fines in the specific instances alleged in Ramey's live pleadings and otherwise. The HOA, through the ACC, has exercised its discretionary authority arbitrarily and capriciously to wage war against Ramey's and the use and enjoyment of her home.

These examples are not exhaustive.

RESPONSE:

(4) **the amount and any method of calculating economic damages**;

RESPONSE:

In breach of the declaration, the HOA prohibited Ramey from planting trees, shrubs, and plants she purchased for under $10,000 to plant in her yard, which died as a result of the HOA's wrongful prohibition on planting. Ramey seeks to recover from the HOA either her out-of-pocket costs for the dead plants or the fair market value to replace them.

Ramey seeks actual damages, mental anguish, nominal, presumed, and reputational damages for the Greg, Loshelder, and Meckley's false and misleading statements to the neighbors

(5) **the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case**;

Defendant reserves the right to supplement this disclosure.

- Lina Ramey
- Kenneth Ramey

Mrs. and Mr. Ramey may be contacted through the undersigned counsel.

- Greg, Dale, Loshelder, and Meckley may be contacted through their counsel of record
- Chase Smith (Legacy inspector and employee)
    - Legacy Southwest Property Management LLC
    - 8668 John Hickman Parkway, Suite 801
    - Frisco, TX 75034
    - (214) 705-1615
- Joyce Yarussi (ACC Member)
- Aaron Wright (ACC Member
- Mitzi Willis (ACC Member)
- Molly Axline (ACC Member)
- Scott Latimer (former President of the HOA)
- Isabel Ramey, the daughter of Lina Ramey. She may be contacted through the undersigned counsel
- Ashley Washer (employee of Accelerated Property Management) a.washer@acceleratedmgmt.com
- Any other person designated as a person with knowledge of relevant facts Ramey in response to other discovery or by another party or any person listed as a witness on that party's exhibit list
- Shanna Mizell, Mr. Whelan's assistant, will testify regarding mailing of notice requesting a

RESPONSE:

(6) **a copy–or a description by category and location–of all documents, electronically stored information, and tangible things that the responding party has in its possession, custody, or control, and may use to support its claims or defenses, unless the use would be solely for impeachment**;

- Emails and other correspondence between Defendant and the HOA and its members
- Submissions by Defendant to the HOA in connection with the proposed alterations
- Violation notices
- Copies of the Declaration and amendments
- Photographs of the property and subdivision
- Video clips

- June 20, 2023, hearing records provided to Defendant by Plaintiff's counsel and provided by Defendant's counsel to Plaintiff's counsel.
- Documents Produced in discovery

(7) **any indemnity and insuring agreements described in Rule 192.3(f)**;

RESPONSE:

- None

(8) any settlement agreements described in Rule 192.3(g);

RESPONSE:

- None

(9) **any witness statements described in Rule 192.3(h)**;

- None

RESPONSE:

(10) **in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills**;

RESPONSE:

Not applicable

(11) **in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party**; and

RESPONSE:

(12) **the name, address, and telephone number of any person who may be designated as a responsible third party**.

RESPONSE:

- None at this time.

Respectfully submitted,

/s/ Thomas M. Whelan [2025-05-28]
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I, Thomas M. Whelan, certify that on May 28, 2025, my office served the foregoing document via electronic service on counsel of record.

/s/ Thomas M. Whelan [2025-05-28]
THOMAS M. WHELAN

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Shanna Mizell on behalf of Thomas Whelan
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Envelope ID: 101332864
Filing Code Description: Amended Filing
Filing Description: (Lina Ramey's) and Supplemental Required Disclosures
Status as of 5/29/2025 9:26 AM CST

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