CAUSE NO. 23-2592-442

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

DEFENDANT LINA RAMEY'S RESPONSE TO PLAINTIFF'S MOTION FOR TRADITIONAL SUMMARY JUDGMENT

Lina Ramey (*Ramey* or *Defendant*) files her response (*Ramey's Response*) to Plaintiff's Traditional Motion for Summary Judgment (the *HOA's MSJ*) filed by **Point Noble Homeowners Association, Inc**. (the *HOA* or *Plaintiff*), which is set for hearing on **November 13, 2025, at 1:30 p.m.**

GROUNDS OF RAMEY'S RESPONSE

I. THE HOA IS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW ON ANY GROUND ASSERTED IN THE HOA'S MSJ.

The HOA's MSJ boasts that it demonstrates that "[t]here are no genuine issues of material facts as to ***any claim*** brought by the [HOA], and [the HOA] is entitled to summary judgment as to its claims against [Ramey] as a matter of

law."[1] This boast is empty. The HOA's MSJ does not—as Rule 166a(c) requires—stand on its own.[2] Instead, the HOA's MSJ falls of its own weight.[3]

A. THE UNSWORN DECLARATION OF GREG SMITH (the Greg's May 2 Declaration) DOES NOT SET FORTH SPECIFIC FACTS "***AS WOULD BE ADMISSIBLE IN IN EVIDENCE***".[4]

The HOA's MSJ fails to carry its initial summary judgment burden.[5] To meet its initial burden to show it is entitled to judgment as a matter of law, the HOA must conclusively establish ***every*** essential element of each claim brought by the HOA on the specific grounds asserted in the HOA's MSJ.[6] Greg's May 2

[1] *See* HOA's MSJ at pp. 1-2. Quotations from the HOA's MSJ in Ramey's Response generally substitute "the HOA" for "Plaintiff", and "Ramey" for "Defendant" without bracketing the substitution. Quotations from the Original Declaration, the First Amendment, and the Second Amendment substitute "the HOA" in place of references to "the Association".

[2] *McConnell v. Southside Indep. Sch. Dist*., 858 S.W.2d 337, 343 (Tex. 1993) (stating that "summary judgments must stand or fall on their own merits, and the non-movant's failure to answer or respond cannot supply by default the summary judgment proof necessary to establish the movant's right" to judgment).

[3] *See* A*medisys, Inc. v. Kingwood Home Health Care, LLC*, 437 S.W.3d 507, 511-12 (Tex. 2014) (stating that "the movant does not satisfy its initial burden, the burden does not shift[,] and the non-movant need not respond or present any evidence."); s*ee also State v. Ninety Thousand Two Hundred Thirty-Five Dollars and No Cents in U.S. Currency ($90,235)*, 390 S.W.3d 289, 292 (Tex. 2013) (citing *City of Houston v. Clear Creek Basin Auth*., 589 S.W.2d 671, 678-79 (Tex. 1979) (discussing evolution and purpose of shifting burdens in summary judgment practice).

[4] *See* TEX. R. CIV. P. 166a(f).

[5] *See Clear Creek Basin Auth*., 589 S.W.2d at 678-79.

[6] *See* TEX. R. CIV. P. 166a(c).

Declaration is the only evidence supporting the HOA's MSJ. The HOA's MSJ stands or falls on *Greg's May 2 Declaration*. It falls, hard.

Greg's statements in his declaration are uniformly conclusory.[7] The statements do not provide the underlying facts to support his conclusory opinions.[8] Conclusory statements in affidavits are insufficient to raise a fact issue or to conclusively establish one, even if Ramey did not object.[9] But Ramey objects and asks that the Court sustain Ramey's objections to the conclusory statements in the *Greg's May 2 Declaration*.[10]

Exhibits 1 (D) through 1 (H) to *Greg's May 2 Declaration* cannot supply the underlying facts missing from the narrative statements in Greg's declaration.[11] Exhibits 1 (D) through 1 (H) to *Greg's May 2 Declaration* consist of letters prepared and sent by the HOA's counsel in anticipation of this litigation or in the midst of

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[7] *Anderson v. Snider,* 808 S.W.2d 54, 55 (Tex.1991) (Greg's declaration reads very much like the lawyer's conclusory affidavit in *Anderson*, which the Supreme Court found insufficient to raise a genuine issue of material fact); *Brownlee v. Brownlee,* 665 S.W.2d 111, 112 (Tex. 1984).

[8] *Anderson*, 808 S.W.2d at 55.

[9] *Ryland Group, Inc. v. Hood*, 924 S.W.2d 120, 122 (Tex. 1996);

[10] *Ortega v. CACH, LLC*, 396 S.W.3d 622, 632 (Tex. App.—Houston [14th Dist.] 2013, no pet) (stating that "there is no legitimate basis upon which the trial court's overruling of [the party's]] hearsay objection to [documents prepared in anticipation of litigation] can be supported").

[11] *Paragon General Contractors, Inc. v. Larco Constr., Inc. 227 S.W.3d 876, 883 (Tex. App.*—Dallas 2007, no pet.)

it. No statement in these letters offered by the HOA as evidence of the truth of the matters asserted therein is admissible over a hearsay objection.[12] Ramey objects to the admission of Exhibits 1 (D) through 1 (H) for the truth of the matters asserted as hearsay.

Moreover, these documents are not admissible under Rule 803(6) of the Texas Rules of Evidence as the HOA's business records. The HOA's counsel prepared and sent these letters in anticipation of this litigation or during this litigation. Under Texas law, Exhibits 1 (D) through 1 (H) are not business records of the HOA, and they are not admissible as the HOA's business records under Rule 803(6) of the Texas Rule of Evidence.[13] Ramey, therefore, objects to the admission of Exhibits 1 (D) through 1 (H) for the truth of the matters asserted because they are hearsay.

There is no legitimate basis for overruling Ramey's objection to their admission.[14] These letters are not admissible the HOA's business records for the

[12] *See* TEX. R. EVID. 801. Ramey reserves the right to offer Ex. 1(D)-(H) for limited purposes other than for the truth of the matters asserted.

[13] *Ortega* 396 S.W.3d at 632(stating that "there is no legitimate basis upon which the trial court's overruling of [the party's]] hearsay objection to [documents prepared in anticipation of litigation] can be supported")..

[14] *Id*.

truth of the matters asserted under the exception to the hearsay rule codified in Rule 803(6).

Ramey also objects to admission of photographs in Exhibits 1(D) through 1(H). Greg's May 2 Declaration does not authenticate the photographs as fair and accurate depictions of the conditions depicted in these photos. These undated photographs are not admissible to show the existence of any violation.

B. THE HOA'S ATTORNEYS' FEES AFFIDAVIT IS MISSING THE EXHIBIT DOCUMENTING THE TIME ENTRIES AND ACTIVITIES OF THE HOA'S COUNSEL.

The attorneys' fees affidavit supporting the HOA's request for attorneys' fees refers to, but does not attach, the exhibit cataloguing counsel's time entries, describing the legal services performed, and setting forth the underlying facts that inform counsel's opinions.[15] The cannot meet its burden to establish the reasonableness, amount, segregation obligations, and other factual predicates for recovery of attorneys' fees required under Texas law, including certain of the authorities recited in the affidavit itself. Ramey object to this affidavit for these

[15] TEX. R. CIV. P. 166a(f); *see also Brown*, 145 S.W.3d at 752 (When an affidavit in a summary judgment proceeding refers to other papers, sworn or certified copies of those papers must be attached to the affidavit.)

reasons, and Ramey, therefore, asks the Court to defer any ruling on such issues until the exhibit has been provided to opposing counsel, opposing counsel has had a reasonable opportunity to review the evidence and to present controverting evidence to the extent necessary or appropriate.[16]

II. THE HOA'S MSJ FAILS TO CONCLUSIVELY ESTABLISH EACH ESSENTIAL ELEMENT OF THE HOA'S BREACH OF CONTRACT CAUSES OF ACTION AGAINST RAMEY.

To prove each essential element of its causes of action for breach of contract against Ramey, the HOA must establish that: (1) a valid contract exists between the HOA and Ramey; (2) Ramey materially breached an enforceable obligation in that contract; (3) the HOA performed its obligations to Ramey or tendered performance; (d) that Ramey's breach caused damages, and (e) that the HOA performed the conditions precedent denied by Ramey in her Third Amended Original Answer.[17]

A. THE HOA FAILED TO MEET ITS INITIAL SUMMARY JUDGMENT BURDEN TO CONCLUSIVELY ESTABLISH EACH ESSENTIAL ELEMENT OF ITS CAUSES OF ACTION AGAINST RAMEY FOR BREACH OF CONTRACT.

[16] *See* TEX. R. CIV. P. 166a(f).

[17] *Cheung-Loon, LLC v. Cergon, Inc.*, 392 S.W.3d 738, 745 (Tex. App.—Dallas 2012, no pet.) (stating that trial court erred in granting summary judgment because movant failed to present evidence the movant met conditions precedent to recovery under the contract as a matter of law).

1. ***The Second Amendment is not a part of any existing contract between the HOA and Ramey***.

Before the HOA can establish that Ramey breached the Second Amendment, the HOA must first conclusively establish as a matter of law that the Second Amendment is part of a contract between HOA and Ramey. 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 that "all necessary legal requisites were established to yield an effective binding and mutually enforceable restriction."[18]

> 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.[19]

The HOA did not present as a ground of its entitlement to summary judgment or

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[18] *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.").

[19] *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.")

present admissible evidence conclusively establishing as a matter of law that the HOA preformed the conditions precedent prescribed in Section 10.2 of the Original Declaration in the precise manner required for validly amending the HOA's dedicatory instruments.[20]

The HOA's summary judgment evidence does not conclusively establish that: (1) 67% of the members signed the Second Amendment; (2) an authorized representative of the Town of Flower Mound signed it;[21] and (3) 67% or more of the owners eligible to vote voted in favor of the Second Amendment.[22] In fact, the Second Amendment itself shows that it did not satisfy these signature requirement in the precise manner prescribed in Section 10.2 of the Original Declaration. Because the HOA failed to conclusively establish that it performed these conditions precedent, or that satisfying these conditions was otherwise excused, the HOA is not entitled to judgment as a matter of law on any cause of action for breach of contract or its claims for declaratory relief predicated on the

[20] *See* May 2 Greg Dec. ¶ 9, Ex. 1(A) (Original Declaration § 10.2); *see also Syx*, No. 05-05-00854-CV, 2006 WL 2077567, at *2.

[21] *Greg's May 2 Declaration*, Ex. 1(A) (Original Declaration), Ex. 1(B) (First Amendment), and Ex. 1(C) (Second Amendment).

[22] *See* Ramey Dec. ¶47, Depo. Ex. 4 (July 2022 HOA Annual Meeting and August 2022 Board Meeting records).

validity of the Second Amendment.

2. ***In the alternative, even if the Second Amendment were enforceable against Ramey, the HOA did not conclusively establish that Ramey materially breached any enforceable contractual obligation to the HOA predicated on the Second Amendment***.

a. **Unauthorized artificial tur**f.[23]

The April 24, 2023, letter (Exhibit 1(E)) to the Greg's May 2 Declaration asserts that "**[t]here is unauthorized artificial turf on your client's property. This is in violation of Article 8, Section 24 of the Second Amendment**."

i. **Article 8, section 8.24 of the Second Amendment** provides:

> **Section 8.24. Landscaping**. All Lots on which a dwelling is built must landscape the front, side and/or any portion of the Lot exposed to public view. Minimal allowable landscaping must consist of the landscape requirements set forth on **Exhibit "A"** to this Second Amendment. This landscaping must be complete during the first Spring (April-May) or Fall (September-October) season after closing or after the [HOA] delivers notice to the Owner of non-compliance. Extensions can be applied for and granted by the Architectural Control Committee in extenuating circumstances. Written application must be submitted by the applicant to the committee for such consideration.
>
> . . . .
>
> **Exhibit "A"**
> **Minimum Landscape Requirements**
>
> Planting beds are to be well-defined and with varied lengths and widths to create diversity and visual interest. A single row of foundation planting is not acceptable. Planting beds are to be covered

[23] HOA's MSJ ¶ 8.a.

with 2" deep mulch or decorative rock. Rock and mulch should both be used to create variety and provide delineation between beds. Plants should be spaced to prevent massing, except where landscaping is used for screening purposes. ***Use of decorative planters is permitted***.

All yards shall be planted with sod to cover the entire front yard, side and rear yards up to the fence, less any landscaped area. Landscape beds and trees should comprise no less than 15% of the front yard, less sidewalks and driveways. The ACC may consider a reduced percentage on oversized or atypical lots, so long as the proposed landscape plan is consistent with the scale of the residence.

The builder or homeowner shall install a full irrigation system in each yard (front and back) to the specifications of the City. If decorative planters are used, they must be connected to the irrigation system to ensure plant material remains healthy.

A minimum of 5, three-inch (3") caliper ten -foot (10') shade trees shall be planted in the front yard of each lot. One additional three-inch (3") caliper shade tree shall be planted in the side yard of each comer lot. Caliper sizing shall be measured at four feet (4') from the base of the tree.

Each ***builder*** must submit a landscape plan for approval by the ACC prior to commencement of construction. Once complete, the landscaping must be maintained in accordance with the current plan on file with the ACC.[24]

ii. **Article 8, Section 24 of the Second Amendment does not explicitly prohibit the use of conservation grass**.

Even if the Second Amendment was part of an existing contract between the HOA and Ramey, which Ramey denies, Article 8, Section 24 of the Second

[24] *Greg's May 2 Declaration*, Ex. 1(C) (Second Amendment).

Amendment, does not expressly prohibit the use of conservation grass.[25] The HOA has not presented any ground, argument, or evidence explaining how or why it does so.

b. **No landscaping with regard to the grass or the foundation of the property**

The April 24, 2023, letter (Exhibit 1(E)) asserts "**[t]here is no landscaping with regard to the grass or foundation of the property. This is a violation of Article 8 section 8.25 of the Second Amendment[.]**" But, for the reasons stated above, the Second Amendment is not part of any agreement between the HOA and Ramey.

i. **The HOA's denial of Ramey's request for relief from the foundation planting requirement, if that requirement is valid, is arbitrary, capricious, or discriminatory**.[26]

Ramey requested permission not to plant plants near her foundation, for the compelling reasons stated in the Ramey Declaration.[27] But the HOA refused. This exercise of discretionary authority is arbitrary, capricious, and

[25] *Tarr v. Timberwood Park Owners Ass'n*, 556 S.W.3d 274, 285 (Tex. 2018) ("When a restrictive covenant "unambiguously fail[s] to address the property use complained of . . . , [n]o construction, no matter how liberal, can construe a property restriction into existence when the covenant is silent as to that limitation.").

[26] TEX. PROP. CODE § 202.004 (a) ("An exercise of discretionary authority by a property owners' association concerning a restrictive covenant is presumed reasonable unless the court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory.'"); *see also id*. at §§ 209.001-017 (The Texas Residential Property Owners Protection Act).

[27] Ramey Dec. ¶ 11; *see generally id*.at ¶¶1-17.

discriminatory for substantially the same reasons as its denial of Ramey's request to use conservation turf near her foundation. Ramey's summary judgment evidence raises a genuine issue of material fact on the issue of whether the HOA's decision with respect to this and other related enforcement issues is arbitrary, capricious, and discriminatory.

c. **Dead trees and shrubs**

The April 24, 2023, letter (Exhibit 1(E)) asserts "**[t]here are dead trees and shrubs on the property which must be removed. This is a violation of Article 8 section 8.25 of the Second Amendment[.]**" But, again, this provision of the Second Amendment is not part of any enforceable contract between the HOA and Ramey.

The HOA's Motion does not specifically allege, and its summary judgment does not prove, which tree or shrub was dead, rather than dormant or stressed, for how long, and whether Ramey did or did not remove it within the time permitted, and whether the HOA performed the other specific facts required to establish that Ramey violated an enforceable restriction and that the HOA satisfied the conditions precedent to the HOA's lawful exercise of its remedies, if any.

The HOA's MSJ does not specify what alleged breaches, when they started, or how long they have continued are the basis for the HOA's claims for $200 per day fines, or how or why a landscaping violation would trigger such fines.

The HOA's pervasive pattern of arbitrary, capricious, discriminatory enforcement decisions deny this HOA of any presumption of reasonableness on this issue as well.

d. **Unauthorized garage wall demolition**[28]

The April 24, 2023, letter (Exhibit 1(E)) asserts **"[t]here is an unauthorized garage wall demolition on the property. This is a violation of Article 8 section 8.25 of the Second Amendment[.]**" This provision of the Second Amendment is not part of any agreement between the HOA and Ramey.

This assertion is arbitrary and capricious as well. The HOA approved construction of the new driveway, which could not be constructed without demolishing the wall to create the new entrance to the courtyard and permit the planting of a holly hedge in front of the old gate, which the HOA also approved.

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

[28]

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.

Nor does the HOA's MSJ state whether this, or any other particular alleged violation, remains the factual or legal basis for its claim for $200 per day fine from April 24, 2023, to the present for an alleged but non-existent violation.

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.

3. ***The HOA did not conclusively establish that the HOA performed its obligations or tendered performance.***

Ramey's Third Amended Original Answer denies that the HOA performed conditions precedent other than those in Section 10.2. The HOA bears the initial burden to conclusively establish that it performed these conditions precedent. But the HOA's MSJ does not assert as a ground for summary judgment that it performed the conditions precedent denied by Ramey, and the HOA proffers no proof that it did so. The HOA thus failed to meet its initial summary judgment burden on this essential element of its breach of contract and other claims, which depend on the performance of these conditions precedent.

III. HOA'S ALLEGED VIOLATIONS OR BREACH OF SECTION 7.3 OF THE ORIGINAL DECLARATION

> When a restrictive covenant "unambiguously fail[s] to address the property use complained of . . . , [n]o construction, no matter how liberal, can construe a property restriction into existence when the covenant is silent as to that limitation.[29]

[29] T*arr v. Timberwood Park Owners Ass'n*, 556 S.W.3d 274, 285 (Tex. 2018) (acknowledging that Texas courts of appeals are divided on the issue but stating "[a] day may come when we must choose between strictly or liberally construing restrictive covenants. But it is not this day."); *Severs v. Mira Vista Homeowners Ass'n*, 559 S.W.3d 684, 700 (Tex. App.—Fort Worth 2018, pet denied) (affirming trial court's judgment that homeowners' association had authority to waive restriction on construction of second story in favor of free use of land for one lot owner over objection by owner by nearby lot in same subdivision); *Dyegard Land Psh'p v. Hoover*, 39 S.W.3d 300, 309 (Tex.

1. ***Unauthorized tree planting scheme***.[30]

The April 24, 2023, letter (Exhibit 1(E)) asserts that an "unauthorized tree planting scheme on the property violates Article 3, Section 7.3" of the Original Declaration.[31] Section 7.3 provides:

> **Section 7.3. Approval of Plans and Specifications.** No Satellite Dish, fence, building, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to, or change or alteration ***therein***, be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to, and approved in writing, by the Architectural Control Committee, as to harmony of external design and location in relation to surrounding structures and topography.[32]

But a tree is not a Satellite Dish. A tree is not a fence. A tree is not a building, or a wall, or other structure. A tree is not a man-made structure like every other man-made structure one the list. Section 7.3's prohibition on commencing, erecting, or maintaining such a man-made structure, or making an exterior addition to, or change or alteration therein (*i.e.*, to the antecedent man-made structure) "until the plans and specifications showing the nature, kind, shape, height, materials and

App.—Fort Worth 2001, not pet.) (stating that because it discerned no conflict between section 202.003(a) of Texas Property Code and common law rules of construction the Fort Worth Court of Appeals applied the common law rule for construing deed restriction in favor of free use of land).

[30] HOA's MSJ ¶ 8.f.

[31] Exhibit 1(E) (the 04.23.23 Notice of Violation ¶6).

[32] Exhibit 1(A) (Original Declaration § 7.3) (emphasis added).

location of the same have been submitted to, and approved in writing, by the Architectural Control Committee" does not apply to planting trees.

Section 7.3 of the Original Declaration does not require Ramey to seek HOA approval to plant a tree or trees. This photograph fairly and accurately depicts the alleged "tree planting scheme" that so offends the arbitrary, capricious, discriminatory, and unreasonable but idiosyncratic aesthetic preferences of the HOA. But this "scheme" does not violate Section 7.3 of the Original Declaration because the words in 7.3 do not require Ramey to submit plans and specifications to plant those trees.

The question is, asks Ramey, is whether the HOA "***can*** make words mean so many different things." The HOA's answer is in the form of a question, "***who*** is to be master--that's all." A word means, the HOA believes, what the HOA says it means. A "tree" is just a "structure" omitted from a list composed exclusively of man-made structures, nothing more and nothing less. If true, the HOA's answer means, words in contracts have no meaning, the law means nothing, and the HOA is master of all, and the members are slaves.

The HOA's enforcement actions against Ramey based on this patently erroneous reading of Section 7.3 is arbitrary, capricious, discriminatory, unreasonable, and vindictive, especially in light of the HOA's inability to articulate any rational objection to the appearance of the tree planting scheme itself. Planting trees without ACC approval is not a violation of Section 7.3 of the Original Declaration or breach of any other enforceable dedicatory instrument.

2. ***Unauthorized fountain construction***.[33]

The April 24, 2023, letter (Exhibit 1(E)) asserts that there is "**unauthorized fountain construction on the property. This violates Article 3, Section 7.3" of the Original Declaration**.[34]

The fountain stood in Ramey's front yard for over a decade. She moved it to a less conspicuous location, behind trees, and farther away, and less visible, from the street. The HOA's arbitrary, capricious, discriminatory pattern and practice of exercising discretionary authority deprives the HOA of any presumption that its decision in this regard is reasonable.

[33] HOA's MSJ ¶ 8.f.
[34] Exhibit 1(E) (the 04.23.23 Notice of Violation ¶6).

IV. SECTION 7.4. STANDARDS. ALLEGEDLY UNAPPROVED CONSTRUCTION

The April 24, 2023 Violation Notice (**Exhibit 1(E)**) asserts that Ramey violated Section 7.4 of the Original Declaration in three instances: (1) an unauthorized rock wall and gate; (2) an unauthorized rear deck addition, and (3) unauthorized changes to the façade design, texture, and color, including gutters. Section 7.4 of the Original Declaration provides.

> **Section 7.4. Standards.** The committee shall have sole discretion with respect to taste, design and all standards that are specified herein.[35] One objective of the Committee is to prevent unusual, radical, curious, odd, bizarre, peculiar or irregular ***structures*** from being ***built*** on the Property. Notwithstanding, the board shall require approval of ***exterior material*** as to type and color of brick, stone, stucco, shingles, *etc*.

Parsing Section 7.3 is unnecessary to dispense with the first totally groundless assertion of breach.

[35] *See* TEX. CIV. PRAC. & REM. CODE § 37.007 ("If a proceeding under this chapter involves the determination of an issue of fact, the issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.").

1. ***Unauthorized rock fence and gate***.[36]

The April 24, 2023 Violation Notice (**Exhibit 1(E)**) falsely asserts "**there is an unauthorized rock fence and gate on the property which must be removed. This is a violation of Article 7, Section 7.4 of the Declaration.**"[37]

Ramey bought the house on Ramey Lot in 2007.[38] Ramey constructed the rock wall and gate before with the approval of the ACC, of which she was a member at the time. The portion of the wall with the gate still stands in Ramey's front yard as it has for over a decade. Ramey built the rock wall and gate ***with the approval of the ACC.*** The HOA's live pleadings, the HOA's MSJ, and the Greg's May 2 Declaration, however, still assert that the ACC did not approve the rock wall and gate and demand that Ramey remove it. This proves by more than a preponderance of the evidence that the HOA's exercise of any discretionary authority conferred on the ACC and the HOA by Section 7.4 of the Original

[36] HOA's MSJ ¶ 8.l.

[37] Exhibit 1(E) ¶ 12 (To the extent that Greg asserts in the May 2 Greg. Dec. that he has personal knowledge these facts, he admitted in his deposition that he did not. Greg. Depo. Greg asserts in his declaration, again falsely, that counsel's April 24, 2023, letter is a business record of the HOA, but it is not for several reasons. It was prepared in the midst of this litigation. The statement in the letter dated April 24, 2023, concerning the rock wall and gate was ***not*** recorded at or near the time of events, which occurred more than a decade before the supposed event was "recorded" in counsel's notice letter. *See* TEX. R. EVID. 803(6); TEX. R. CIV. P. 166a(h).

[38] Exhibit 1 (E) ¶ 12

Declaration on this question remains arbitrary, capricious, discriminatory, and unreasonable to this day.[39]

Even if the construction of the rock wall and gate were unauthorized and performed in violation of Section 7.4 of the Declaration, which is not the case, the alleged but non-existent breach occurred when construction started as early as circa 2007-2008, but not later than completion of construction more than a decade ago. The alleged, but nonexistent breach, if any, occurred no later than the date Ramey completed these structures.. The HOA did deliver notice that these alleged violations occurred until April 24, 2023, when it demanded that Ramey remove them.[40] The HOA's claims, if any, for this alleged breach or violation on the dedicatory instruments in this lawsuit filed on March 27, 2023, are barred by the four-year statute of limitations.[41]

2. ***Unauthorized rear deck addition***.[42]

The April 24, 2023 Violation Notice (**Exhibit 1(E**)) asserts that "[t]here is an unauthorized rear deck addition including tiki heads on pillars visible from the

[39] *See* TEX. PROP. CODE § 202.004.
[40] Exhibit 1 (E) ¶ 12.
[41] TEX. CIV. PRAC. & REM. CODE §§ 16.004, 16.051 (residual four-year statute of limitations)
[42] Exhibit 1 (E) ¶ 3.

street. This is a violation of Article 7, section 7.4 of the Original Declaration. The photograph (Exhibit C) that purports "to show this" violation does not. Instead, it shows saw-cut sections of the old driveway ***during the demolition process*** stacked temporarily in the approximate location of the old driveway before being hauled off for disposal.[43] It does not depict Ramey's backyard or the restoration of the improvements damaged in the May 2021 mudslide.

The photographs in **Depo. Ex. 1** fairly and accurately depict the condition of what remained of the deck in Ramey's backyard in the immediate aftermath of the May 2021 mudslide.[44]

The photographs in **Depo. Ex. 2** fairly and accurately depict the retaining wall Ramey reconstructed in the aftermath of the catastrophic May 2021 mudslide to prevent a repeat of this catastrophic event.[45] T

The photographs in **Depo. Ex. 3** fairly and accurately depict the allegedly unauthorized rear deck addition, minus the statues, which the HOA mischaracterizes as "tiki heads," after Ramey rebuilt the retaining wall, installed

[43] Ramey Dec. ¶ 1, Depo. Ex.1.
[44] Ramey Dec, ¶ 2-4, Depo. Ex.2.
[45] Ramey Dec. ¶ 5, Depo. Ex.3.

piers, and restored the deck area atop the piers rather than unstable earth. Ramey prosecuted this work in cooperation and at the direction of the United States Army Corps of Engineers (*USACE*), the Town of Flower Mound, and in the plain sight of anyone who passed by from May of 2021 through November of 2023 in full view of ACC and its Board. On at least one occasion, Greg told Ramey that the restoration of the back yard was not his or the HOA's concern. Ramey has long since removed the statutes, even though they were never readily visible with the naked eye from the street and, in any case, these statues did not violate Section 7.4 of the Original Declaration.

Section 7.4 applies to "structures" that are "built" on the property. The HOA, Greg in particular, took offense to the statues, which the HOA refers to incorrectly as "tiki heads". These statutes are personal property, ***not*** structures. They were ***not*** built on Ramey's property. Rather, they were placed atop piers installed in Ramey's back yard to stabilize the earth and the retaining wall

systems after the catastrophic May 2021 mudslide. Ramey removed them. In any case, Section 7.4 applies to structures,[46] not statues or trees.

3. ***An unauthorized rock wall and gate.***

The April 24, 2023 Violation Notice (**Exhibit 1(E**)) asserts "**[t]here is an unauthorized rock fence and gate on the property which must be removed. This is a violation of Section 7.4 of the [Original Declaration]**."

The HOA's assertion is not only untrue but also baseless in law or fact. Ramey constructed the rock wall and gate in question, with the permission of the HOA, more than a decade before the HOA asserted this claim that the construction of this wall and gate was unauthorized.[47] This assertion, like so many others, demonstrates that HOA's pattern and practice of enforcing the dedicatory instruments against Ramey has been, and continues to be, arbitrary, capricious, and discriminatory.[48]

The HOA's ongoing pursuit of this claim is troubling. It appears, based on the face of the HOA's live pleading, the HAO's MSJ, and Greg's statements based

[46] *Mitchell v. Gaulding*, 483 S.W.2d 41, 42 (Tex. Civ. App.—Waco 1972, writ denied n.r.e.) (holding that 125-foot radio tower supported by guy wires was a "structure" under residential deed restriction in question)

[47] Ramey Dec. ¶¶ 24-35

[48] TEX. PROP. CODE § 202.004

on his personal knowledge and penalties of perjury in the Greg's May 2 Declaration that the HOA continues to press this claim against Ramey in pursuit of a judgment against her for breach of contract, declaratory relief, and fines of $200 a day.

As to the HOA's claims for breach of contract, the evidence proffered in support of the HOA's MSJ fails to conclusively establish as a matter of law that any particular acts and omissions alleged by the HOA would violate or breach this provision; how or why the act or omission did or could do so; and, if the alleged breach were an actual breach, whether Ramey cured the alleged breach or violation within the time permitted after the HOA delivered proper notice in compliance with the dedicatory instruments and Texas law of an actual violation or breach.[49] In the absence of such proof, the HOA failed to meet its initial summary judgment burden on its claims for breach of this prevision of the contract.

As to the HOA's requests for declaratory relief, the HOA requests indefinite, general declarations that fail to specify what valid provision in which

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dedicatory instrument, properly interpreted and subject to applicable law, Ramey violated or how the general declaration would terminate the controversy or end the uncertainty.[50] The HOA's MSJ assumes, but does not conclusively establish, the legal or factual predicates for its declaratory judgment claims.[51]

The HOA's MSJ fails to ask to Court to make any specific or intelligible declaration ***determining*** any contested "question of *construction* or *validity*" of the dedicatory instruments in question.[52] The requested declarations are too vague and indeterminant " to terminate the uncertainty or controversy giving rise to" this proceeding.[53]

4. ***Unauthorized changes in façade design, texture, and color, including gutters.***

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

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[50] TEX. CIV. PRAC. REM. CODE § 37.007 ("If a proceeding under this chapter involves the determination of an issue of fact, the issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.")

[51] TEX. CIV. PRAC. REM. CODE § 37.007

[52] TEX. CIV. PRAC. REM. CODE § 37.004(a).

[53] *Id.*

undue risks of injury to persons and further damage to their home and other property.

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

Replacement stone, however, 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 introduces no new type, color, or texture of material to the façade.

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.

HOA's decisions in regard to these repairs and the continued assertion that they were commenced and completed without advance approval of the HOA. No different type, color, and texture of stucco was used to execute the repairs. Treating emergency repairs as violations is arbitrary, capricious, discriminatory, and unreasonable.

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.

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,

alternatively, does not constitute a material breach of the enforceable terms of the Second Amendment.

The decisions of the HOA in regard to the gutters also 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, and unreasonable.[54]

V. THE HOA FAILED APPROVED RAMEY'S DECEMBER 14, 2022, REQUEST TO INSTALL THE ORNAMENTAL FENCE BY FAILING TO APPROVE OR REJECT HERE REQUEST WITHIN 30 DAYS OF SUBMISSION

Section 7.7 of the Original Declaration, which is entitled, **Failure of the Committee to Act**, provides:

> 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

[54] *Li v. Pemberton Park Cmty. Ass'n* 631 S.W.3d 701, 703 (Tex. 2021) (reversing summary judgment against homeowner, remanding case to trial court, and holding that homeowner raised a fact issue on whether association's enforcement of restrictive covenants was "arbitrary, capricious, or discriminatory" under Texas Property Code section 202.004(a)) and reversing summary judgment against homeowner), *appeal after remand*, *Li Li v. Pemberton Park Cmty. Ass'n*, 652 S.W.3d 891, 899 (Tex. App.—Houston [14th Dist. 2022, no pet) (holding homeowner's summary-judgment evidence raises a genuine fact issue as to whether the Association's exercise of discretionary authority in enforcing the restrictive covenants was arbitrary, capricious, or discriminatory, and therefore unreasonable and reversing trial court's summary judgment in favor of association).

> Committee shall not be required, and full compliance with this Article shall be deemed to have been had.

Ramey submitted her request for approval of the ornamental fence on December 14, 2022. The ACC failed either to approve or to reject such plans and specifications for a period of thirty 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 compliance with this Article shall be deemed to have been had." Because the ACC failed 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 by Ramet "shall be deemed to have been had."

VI. THE HOA IS NOT ENTITLED TO DECLARATORY RELIEF

The HOA did not meet its burden to show it is entitled to the nebulous declaratory relief sought in the HOA's MSJ. The HOA's requests for declaratory relief merely duplicate its breach of contract action.[55] The HOA's MSJ repeats—

[55] *Berryman's S. Fork, Inc. v. J. Baxter Brinkmann Int'l Corp.*, 418 S.W.3d 172, 197 (Tex. App.—Dallas 2013, pet. denied); *Cheung-Loon, LLC*, 392 S.W.3d at 744-45.; see also *MBM Fin. Corp. v. Woodlands Operating Co., L.P.*, 292 S.W.3d 660, 669 (Tex. 2009) (holding that declaratory relief claims that are "part and parcel" of breach of contract claims and merely restate the issues already before

nearly verbatim—the same non-specific allegations in support of its claims for breach of contract and for declaratory relief.[56] It relies on the same evidence. But it does not ask the Court for any specific declaratory relief that would terminate any existing controversy in a way different from its contract claim or provide certainty in future disputes. For example: Is an owner a builder? If not, must an owner submit a landscape plan? Is a tree a structure under Section 7.3 of the Original Declaration? If not, must an owner submit plans and specifications before planting a tree? The HOA's requests for declaratory relief are too vague, ambiguous, and indeterminant to terminate the existing controversies between the parties or to resolve any future uncertainty about the validity or construction of the dedicatory instruments.[57] They add nothing to its breach of contract claim.

Moreover, the declarations requested by the HOA are simply too vague

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the court are duplicative and that attorney's fees for such claims cannot be recovered under the UDJA in such cases if they cannot be recovered for breach of contract).

[56] *See* HOA's MSJ at pp. 7-8.

[57] *Compare* TEX. CIV. PRAC. & REM. CODE §37.003(c) (authorizing trial court to grant declaratory relief when such relief "will terminate the controversy or remove an uncertainty") *with id*. at § 37.008 (stating that "[t]he court may refuse to render or enter a declaratory judgment or decree if the judgment or decree would not terminate the uncertainty or controversy giving rise to the proceeding."); *see also Crawford v. City of Houston*, 600 S.W.2d 891, 894(Tex. Civ. App.--Houston [1st Dist.] 1980, writ ref'd n.r.e.) (stating that trial court has discretion to refuse to enter a declaratory judgment or decree if the judgment or decree would not terminate the uncertainty or controversy giving rise to the proceeding).

and indeterminant to enforce.[58] The HOA's requested declarations fail to "spell out the details of compliance in clear and unambiguous terms so that the person will know exactly what he is expected to do."[59] In essence, the HOA's MSJ asks the Court to issue an improper advisory opinion—the HOA is right, Ramey is wrong—rather than proper declaratory relief.[60]

VII. SUPPORTING EVIDENCE

The pleadings, evidence, deposition exhibits, affidavits, declarations, and other matters on file, which support Ramey's Response, include the following materials:

A. **APPENDIX A**: Ramey filed **Appendix A** in support of Ramey's Response to Third-Party Defendants' First Motion for Summary Judgment.

Exhibit 1: Transcript of Temporary Injunction Hearing dated March 8, 2024.

Exhibit 2: Transcript of Hearing on Plaintiff's Second Motion for Sanctions and to Show Cause dated July 25, 2024.

Exhibit 3: Deposition of Greg Smith (*Greg Depo.*).

Exhibit 4: Deposition of Dale Smith (*Dale Depo.*).

Exhibit 5: Deposition of Lisa Loshelder (*Loshelder Depo.*).

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[58] *Ex parte Reese*, 701 S.W.2d 840, 841-42 (Tex. 1986) (citing *Ex parte Slavin*, 412 S.W.2d 43, 44 (Tex. 1967) for proposition that a "proper judgment must spell out the details of compliance in clear and unambiguous terms so that the person will know exactly what he is expected to do."); *see Save Our Springs Alliance v. City of Austin,* 149 S.W.3d 674, 681 (Tex. App.—Austin 2004, no pet.) (citing *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995)).

[59] *Ex parte Slavin*, 412 S.W.2d at 44.

[60] HOA's MSJ at pp. 8-9 ("The Association asks the Court for a declaratory judgment that Ramey's conduct ***as outlined above and incorporated by reference from the attached letters*** violates the terms of the restrictive covenants.")

Exhibit 6: Deposition of Brenda Barr Meckley (*Meckley Depo.*).

Exhibit 7: Deposition exhibits first marked in depositions of Loshelder (Exhibits: 1-39), Dale (Exhibits: 40—56, 38a), Greg (Exhibits: 57-59), and Meckley (Exhibits: 60-67).

Exhibit 9: Declaration of Kenneth Ramey (*Kenneth Dec*.).

B: RULE 166a(d) NOTICE OF INTENT TO USE DISCOVERY PRODUCTS NOT ON FILE.

Ramey intends to present at the hearing video recordings or transcripts of the portions of the Greg Depo., the Dale Depo., the Loshelder Depo., and the Meckley Depo. containing the audio recordings of the December 11, 2023, meeting played during each witness's deposition, the questions asked of each witness about the recording and its contents, and the witness's answers to those questions

C, ADDITIONAL EVIDENCE

Declaration of Lina Ramey (September 18, 2025) (*Second Ramey Dec*.) filed on September 19, 2025

Affidavit of Greg Smith (the *First Greg Aff*.), which Third-Party Defendants filed in support of Third-Party Defendants' Motion for Summary Judgment on May 1, 2025.

Affidavit of Greg Smith (the *Fourth Greg Aff*.), which Third-Party Defendants filed in support of Third-Party Defendants' TCPA Motion to Dismiss.

D. EVIDENTIARY RESPONSE FILED ON NOVEMBER 6, 2025

Declaration of Lina Ramey and attached Exhibits

PRAYER

Ramey prays that the Court deny Plaintiff's Traditional Summary Judgment, grant Ramey's objections to Plaintiff's summary judgment evidence, and grant Ramey such other and further relief, including that available under Rule 166a, as Ramey may be justly entitled.

Respectfully submitted,

/s/ Thomas M. Whelan [2025-11-06]
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ATTORNEYS FOR LINA RAMEY

CERTIFICATE OF SERVICE

I, Thomas M. Whelan, certify that on November 6, 2025, my office served the foregoing document via electronic service to all parties on the service list.

/s/ Thomas M. Whelan [2025-11-06]
THOMAS M. WHELAN

AI CERTIFICATION

I, the undersigned attorney of record or self-represented litigant in the above-entitled and numbered cause pending in the District Courts of Denton County, Texas, hereby certify as follows:

I have reviewed and understand the Standing Order Regarding Use of Artificial Intelligence issued by the Denton County District Courts, and I will comply with that Order throughout this case.

Any information created or contributed to by generative artificial intelligence-including, but not limited to, language, quotations, sources, citations, arguments, and legal analysis- was, before submission to this Court, independently verified as accurate using traditional (non-AI) legal sources by a human being.

I understand that I remain personally responsible for all filings and submissions to this Court, and that I may be subject to sanctions under the Texas Disciplinary Rules of Professional Conduct, the Texas Rules of Civil Procedure, the Texas Civil Practice and Remedies Code Chapter 10, the inherent power of the Court, or for contempt of court, for failing to comply with the Court's Standing Order or this certification

/s/ Thomas M. Whelan [2025-11-06]
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Filing Code Description: Defendant'S
Filing Description: Lina Ramey's Response to Plaintiff's Motion for Traditional Summary Judgment
Status as of 11/7/2025 1:47 PM CST

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