

CITY OF AUSTIN
Board of Adjustment
Decision Sheet
F-1

DATE: Monday June 14, 2021

CASE NUMBER: C15-2021-0036

☐ Y ☐ Thomas Ates
☐ Y ☐ Brooke Bailey
☐ Y ☐ Jessica Cohen
☐ Y ☐ Melissa Hawthorne
☐ - ☐ Don Leighton-Burwell (no vote/late)
☐ Y ☐ Rahm McDaniel
☐ Y ☐ Darryl Pruett
☐ Y ☐ Agustina Rodriguez
☐ - ☐ Michael Von Ohlen
☐ Y ☐ Nicholl Wade
☐ - ☐ Vacant
☐ - ☐ Kelly Blume (Alternate)
☐ Y ☐ Carrie Waller (Alternate)
☐ - ☐ Vacant (Alternate)

APPLICANT: Ron Thrower

OWNER: Chalice McGee

ADDRESS: 6141 JUMANO LN

VARIANCE REQUESTED: The applicant is requesting a variance(s) from Section 25-2-899 (D) (E) (F) (*Fences as Accessory Uses*) to increase the height permitted from 6 feet (required) to 8 feet (requested) in order to maintain a recently constructed 8 ft. fence in an “SF-2-NP”, Single-Family Residence-Neighborhood Plan zoning district. (West Oak Hill Neighborhood Plan)

Note: The Land Development Code 25-2-899 (D) Except as otherwise provided in this section, a solid fence constructed along a property line may not exceed an average height of six feet or a maximum height of seven feet.

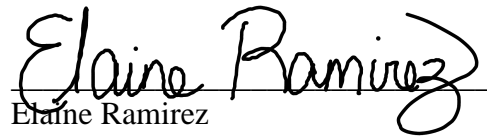
(E) states: a solid fence along a property line may be constructed to a maximum height of eight feet if each owner of property that adjoins a section of the fence that exceeds a height of six feet files written consent to the construction of the fence with the building official; and (2) a structure, including a telephone junction box, exists that is reasonably likely to enable a child to climb over a six foot fence and gain access to a hazardous situation, including a swimming pool.

(F) A solid fence may be constructed to a maximum of eight feet in height if the fence is located on or within the building setback lines.

BOARD’S DECISION June 14, 2021 **POSTPONED TO JULY 12, 2021**

FINDING:

1. The Zoning regulations applicable to the property do not allow for a reasonable use because:
2. (a) The hardship for which the variance is requested is unique to the property in that:
 - (b) The hardship is not general to the area in which the property is located because:
3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:


Elaine Ramirez
Executive Liaison

Diana Ramirez for
Jessica Cohen
Chairman

BOA GENERAL REVIEW COVERSHEET

CASE: C15-2021-0036

BOA DATE: June 14th, 2021

ADDRESS: 6141 Jumano Ln

COUNCIL DISTRICT: 8

OWNER: Chalice McGee

AGENT: Ron Thrower

ZONING: SF-2-NP (West Oak Hill)

LEGAL DESCRIPTION: LOT 8 BLK C LEGEND OAKS SEC 7

VARIANCE REQUEST: maintain an 8 ft. fence recently constructed

SUMMARY: code violation issued

ISSUES: triangular shaped lot and topography

	ZONING	LAND USES
<i>Site</i>	SF-2-NP	Single-Family
<i>North</i>	SF-2-NP	Single-Family
<i>South</i>	SF-2-NP	Single-Family
<i>East</i>	SF-2-NP	Single-Family
<i>West</i>	SF-2-NP	Single-Family

NEIGHBORHOOD ORGANIZATIONS:

Austin Independent School District
 Austin Lost and Found Pets
 Bike Austin
 Circle C Neighborhood Assn.
 Covered Bridge Property Owners Association, Inc.
 East Oak Hill Neighborhood Association
 Friends of Austin Neighborhoods
 Legend Oaks II Home Owners Association
 Neighborhood Empowerment Foundation
 Oak Hill Association of Neighborhoods (OHAN)
 Oak Hill Neighborhood Plan – COA Liaison
 Oak Hill Neighborhood Plan Contact Team
 Oak Hill Trails Association
 SELTexas
 Save Barton Creek Assn.
 Save Our Springs Alliance
 Sierra Club, Austin Regional Group
 TNR BCP – Travis County Natural Resources
 Western Oaks Property Owners Association



June 3, 2021

Chalice McGee
6141 Jumano Ln
Austin TX, 78749

Property Description: LOT 8 BLK C LEGEND OAKS SEC 7

Re: C15-2021-0036

Dear Chalice,

Austin Energy (AE) has reviewed your application for the above referenced property, requesting that the Board of Adjustment consider a variance(s) from the following section of the Land Development Code;

Section 25-2-899 (D) (E) (F) (*Fences as Accessory Uses*); to increase the height permitted from 6 feet (required) to 8 feet (requested) in order to maintain a recently constructed 8 ft. fence in an "SF-2-NP", Single-Family Residence-Neighborhood Plan zoning district. (West Oak Hill Neighborhood Plan)

Austin Energy **does not oppose** the requested height variance for the eight ft. fence, provided any proposed and existing improvements follow Austin Energy's clearance criteria requirements, the National Electric Safety Code and OSHA. Any removal or relocation of existing electric facilities will be at owners /applicants' expense.

Please use this link to be advised of our clearance and safety requirements which are additional conditions of the above review action: <https://austinenergy.com/wcm/connect/8bb4699c-7691-4a74-98e7-56059e9be364/Design+Criteria+Manual+Oct+2015.pdf?MOD=AJPERES>




If you require further information or have any questions regarding the above comments, please contact our office.

Thank you for contacting Austin Energy.

Eben Kellogg, Property Agent

Austin Energy
Public Involvement | Real Estate Services
2500 Montopolis Drive
Austin, TX 78741
(512) 322-6050



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

NOTIFICATIONS

CASE#: C15-2021-0036
LOCATION: 6141 JUMANO LANE



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

1" = 124'



Board of Adjustment General/Parking Variance Application

DevelopmentATX.com | Phone: 311 (or 512-974-2000 outside Austin)
For submittal and fee information, see austintexas.gov/digitaldevelopment

WARNING: Filing of this appeal stops all affected construction activity.

This application is a fillable PDF that can be completed electronically. To ensure your information is saved, [click here to Save](#) the form to your computer, then open your copy and continue.

The Tab key may be used to navigate to each field; Shift + Tab moves to the previous field. The Enter key activates links, emails, and buttons. Use the Up & Down Arrow keys to scroll through drop-down lists and check boxes, and hit Enter to make a selection.

The application must be complete and accurate prior to submittal. ***If more space is required, please complete Section 6 as needed.*** All information is required (if applicable).

For Office Use Only

Case # _____ ROW # _____ Tax # _____

Section 1: Applicant Statement

Street Address: 6141 Jumano Lane, Austin, TX 78749

Subdivision Legal Description:

Legeng Oaks, Section 7

Lot(s): 8 Block(s): C

Outlot: _____ Division: _____

Zoning District: SF-2-NP

I/We Ron Thrower, Victoria Haase on behalf of myself/ourselves as
authorized agent for Chalice McGee affirm that on
Month May, Day 6, Year 2021, hereby apply for a hearing before the
Board of Adjustment for consideration to (select appropriate option below):

☐ Erect ☐ Attach ☐ Complete ☐ Remodel ☒ Maintain ☐ Other: _____

Type of Structure: an 8ft, solid privacy fence

Portion of the City of Austin Land Development Code applicant is seeking a variance from:

25-2-899 -FENCES AS ACCESSORY USES - See last page of application.

Section 2: Variance Findings

The Board must determine the existence of, sufficiency of, and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional supporting documents.

NOTE: The Board cannot grant a variance that would provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.

I contend that my entitlement to the requested variance is based on the following findings:

Reasonable Use

The zoning regulations applicable to the property do not allow for a reasonable use because:

an average 7 foot fence is not adequate to provide a secure condition and reasonable privacy to safely occupy the yard at the subject property in a manner consistent with safe haven conditions of sanctuary normally accustomed to people living on their property. The topographic differences between the proximate properties warrant privacy conditions to provide shelter and refuge in a manner that is reciprocal to all proximate properties.

Hardship

a) The hardship for which the variance is requested is unique to the property in that:

the elevation change proximate to the property line is greater than 2 feet and in some areas as much as 4feet with the subject property being lower in elevation and with more topography in the rear yard than adjoining properties. The sight lines to other backyards is not desired or needed. The approximate location to place a fence to provide reasonable use of the narrow backyard area is to place the 8 foot fence nearest to the property line to avoid dead space between fences as much as possible.

b) The hardship is not general to the area in which the property is located because:

this lot is a triangular shaped lot lending to a unique back and sideyard configuration and the topographic change between proximal rear yards is unlike other lots in this area.

Area Character

The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

All lots in this subdivision have the same character of wooden privacy fences that vary in height of 6ft and greater and the Homeowner's Association gave approval for the 8ft fence to be constructed (see exhibits). An 8ft privacy fence continues to permit residential uses of the subject and adjacent properties and effectively provides greater support to the purpose of SF-2 zoning district by providing greater privacy to separate, individual residential uses of low to moderate density.

Parking (additional criteria for parking variances only)

Request for a parking variance requires the Board to make additional findings. The Board may grant a variance to a regulation prescribed in the City of Austin Land Development Code Chapter 25-6, Appendix A with respect to the number of off-street parking spaces or loading facilities required if it makes findings of fact that the following additional circumstances also apply:

1. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specific regulation because:

2. The granting of this variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because:

3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

4. The variance will run with the use or uses to which it pertains and shall not run with the site because:

Section 3: Applicant Certificate

I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Applicant Signature:  Date: 05/06/2021

Applicant Name (typed or printed): A. Ron Thrower

Applicant Mailing Address: P.O. Box 41957

City: Austin State: TX Zip: 78704

Phone (will be public information): (512) 476-4456

Email (optional – will be public information): [REDACTED]

Section 4: Owner Certificate

I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Owner Signature:  Date: 05/06/2021

Owner Name (typed or printed): Chalice McGee

Owner Mailing Address: 6141 Jumano Lane

City: Austin State: TX Zip: 78749

Phone (will be public information): (781) 888-2522

Email (optional – will be public information): [REDACTED]

Section 5: Agent Information

Agent Name: A. Ron Thrower

Agent Mailing Address: P.O. Box 41957

City: Austin State: TX Zip: 78704

Phone (will be public information): (512) 476-4456

Email (optional – will be public information): [REDACTED]

Section 6: Additional Space (if applicable)

Please use the space below to provide additional information as needed. To ensure the information is referenced to the proper item, include the Section and Field names as well (continued on next page).

Additional Space (continued)

Land Development Code section 25-2-899 -FENCES AS ACCESSORY USES (D) A solid constructed along a property line may not exceed an average of six feet or a maximum of seven feet (required) to a maximum height of 8 feet (requested)

Land Development Code section 25-2-899 -FENCES AS ACCESSORY USES (E) A solid fence along a property line may be constructed to a maximum height of eight feet if each owner of property that adjoins a section of the fence that exceeds a height of six feet files a written consent to the construction of the fence with the building official (required) to if a owner of the property that adjoins a section of the fence that exceeds a height of six feet files a written consent to the construction of the fence with the building official....

Land Development Code section 25-2-899 -FENCES AS ACCESSORY USES (F) A solid fence may be constructed to a maximum of eight feet in height if the fence is located on or within the building setback lines (required) to on or as near as possible to the property line (requested).

May 6, 2021

Board Members,
Elaine Ramirez, Board Liaison
City of Austin, Board of Adjustment

RE: C15-2021-0036 – 6141 Jumano Lane

Dear Mrs. Ramirez and Board Members,

The application submitted here-in is made to request variances to § 25-2-899 - FENCES AS ACCESSORY USES. The purpose of the variances is to maintain an 8ft privacy fence constructed on the subject property this past fall of 2020 by the current property owner, after receiving approval from the subdivision Homeowner's Association. The 8ft fence was constructed to provide privacy due to unnecessary communication between adjacent property owners. Austin Police Department has a record of various disturbances (see attachments) near the subject tract that warrant a need for maintaining and maximizing privacy at this general area.

The variances requested are as follows:

§ 25-2-899 - FENCES AS ACCESSORY USES.

(D) ...a solid fence constructed along a property line may not exceed an average height of six feet or a maximum height of 7 feet.

Requested variance: a maximum height of 8 feet.

(E) A solid fence along a property line may be constructed to a maximum height of eight feet if each owner of property that adjoins a section of the fence that exceeds a height of six feet files a written consent to the construction of the fence with the building official...

Requested variance: if a owner

(F) A solid fence may be constructed to a maximum of eight feet in height if the fence is located on or within the building setback lines.

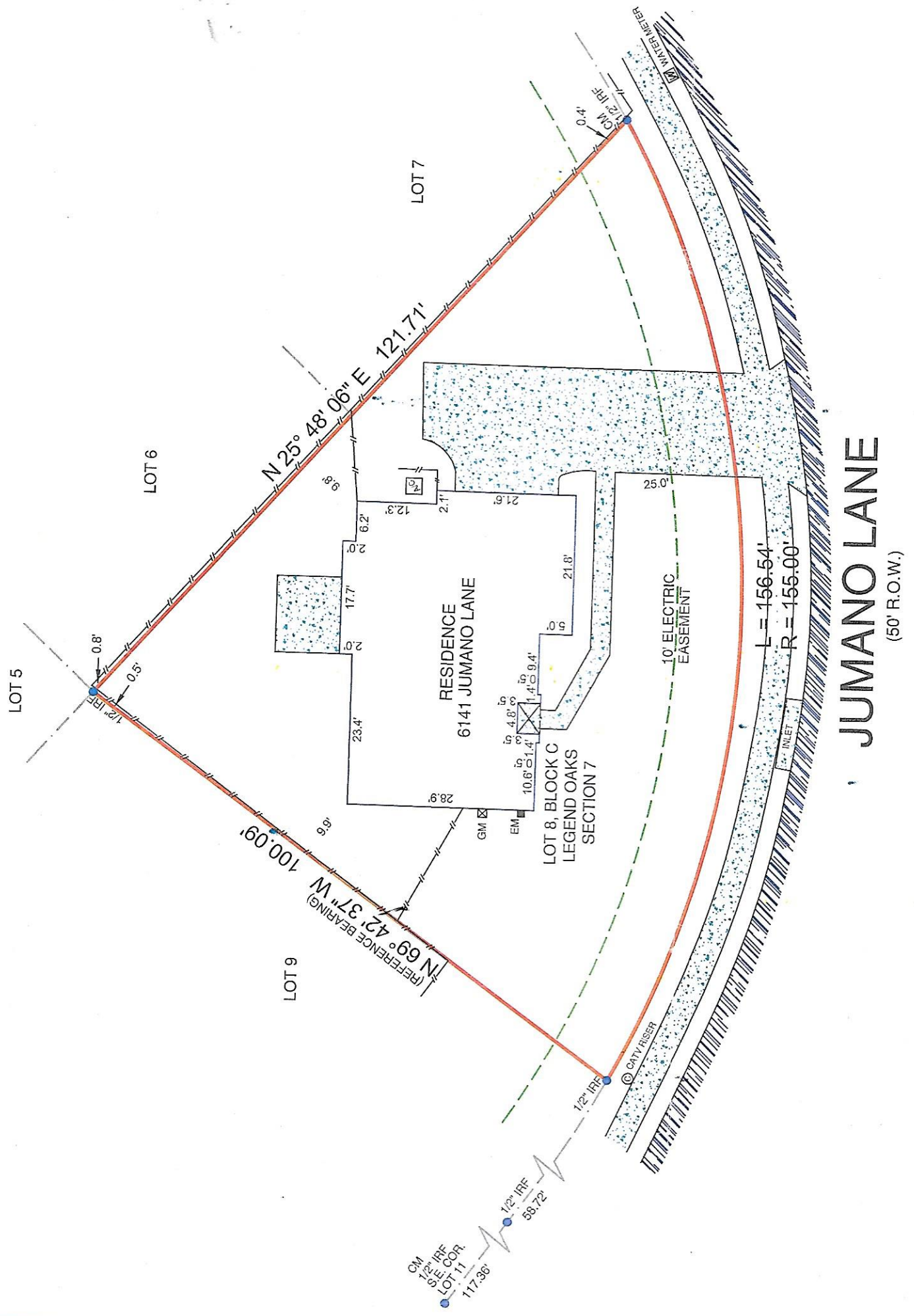
Requested variance: on or as near as possible to the property line.

We respectfully request approval for the requested variances to allow the 8^{ft} fence to remain.









Thank you,

A handwritten signature in black ink, appearing to read "A. Ron Thrower". The signature is written in a cursive, flowing style.

A. Ron Thrower



LEGEND:

—x—x—	BARB WIRE FENCE	ASPHALT =	
—o—o—	CHAINLINK FENCE	CONCRETE =	
—□—□—	WROUGHT IRON FENCE	GRAVEL =	
—//—//—	WOOD FENCE	TILE =	
—v—v—	VINYL FENCE	WOOD =	
—E—E—	ELECTRIC LINE	BRICK =	
GM =	GAS METER	STONE =	
EM =	ELECTRIC METER	WOOD RAILROAD TIE =	
IPF =	IRON PIPE FOUND		
IRS =	IRON ROD SET WITH 'PREMIER' CAP		
IRF =	IRON ROD FOUND		
CM =	CONTROLLING MONUMENT (WOOD) RAILROAD TIE		

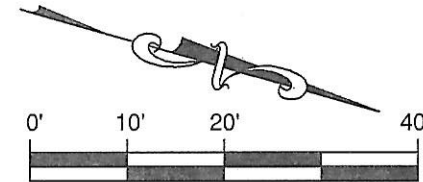
NOTES:

BEARINGS ARE BASED ON THE RECORDED PLAT.
THE PROPERTY IS NOT AFFECTED BY THE FOLLOWING:

(10-2)-EASEMENT, VOL. 564, PG. 412, D.R.T.C.T.

(10-3)-EASEMENT, VOL. 8270, PG. 119, D.R.T.C.T.

THE PROPERTY IS SUBJECT TO THE EASEMENTS AND EASEMENT RIGHTS SET FORTH IN VOL. 11637, PG. 225, R.P.R.T.C.T. ACCORDING TO THE PLAT SETBACKS SHALL COMPLY WITH THE CITY OF AUSTIN ZONING ORDINANCE. THIS SURVEY DOES NOT SHOW ZONING ORDINANCE REQUIREMENTS. EASEMENTS ARE BASED ON THE RECORDED PLAT UNLESS OTHERWISE NOTED.



SCALE: 1" = 20'

LEGAL DESCRIPTION:

BEING LOT 8, BLOCK C, OF LEGEND OAKS, SECTION 7, A SUBDIVISION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT OF RECORD IN VOLUME 93, PAGE 89, OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS.

SURVEYOR'S CERTIFICATION:

THIS IS TO CERTIFY THAT ON THIS DATE A SURVEY WAS MADE ON THE GROUND, UNDER MY SUPERVISION AND REFLECTS A TRUE AND CORRECT REPRESENTATION OF THE DIMENSIONS AND CALLS OF PROPERTY LINES AND LOCATION AND TYPE OF IMPROVEMENTS. THERE ARE NO VISIBLE AND APPARENT EASEMENTS, CONFLICTS, INTRUSIONS OR PROTRUSIONS, EXCEPT AS SHOWN. THIS SURVEY IS NOT TO BE USED FOR CONSTRUCTION PURPOSES AND IS FOR THE EXCLUSIVE USE OF THE HEREON NAMED PURCHASER, MORTGAGE COMPANY, AND TITLE COMPANY ONLY AND THIS SURVEY IS MADE PURSUANT TO THAT CERTAIN TITLE COMMITMENT UNDER THE GF NUMBER SHOWN HEREON, PROVIDED BY THE TITLE COMPANY NAMED HEREON AND THAT THIS DATE, THE EASEMENTS, RIGHTS-OF-WAY, OR OTHER LOCATABLE MATTERS OF RECORD THAT THE UNDERSIGNED HAS KNOWLEDGE OR HAS BEEN ADVISED ARE AS SHOWN OR NOTED HEREON. THIS SURVEY IS SUBJECT TO ANY AND ALL COVENANTS AND RESTRICTIONS PERTAINING TO THE RECORDED PLAT REFERENCED HEREON.

GF. NO.	TFA1-101346
BORROWER	CHALICE MCGEE
TITLE CO.	TEXAS NATIONAL TITLE
TECH	KG
FIELD	NP

FLOOD INFORMATION:

THE SUBJECT PROPERTY DOES NOT APPEAR TO LIE WITHIN THE LIMITS OF A 100-YEAR FLOOD HAZARD ZONE ACCORDING TO THE MAP PUBLISHED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, AND HAS A ZONE "X" RATING AS SHOWN BY MAP NO. 48453C0580 H, DATED SEPTEMBER 26, 2008.

DATE: 08/20/19

JOB NO.: 19-05776

FIELD: 08/19/19

6141 JUMANO LANE, AUSTIN, TX 78749

LOT 8, BLOCK C, LEGEND OAKS, SECTION 7

Premier
Surveying LLC

5700 W. Plano Parkway
Suite 1200
Plano, Texas 75093
972-612-3601 (O) | 855-892-0468 (F)
www.premiersurveying.com



David Lee Bell
Registered Professional Land Surveyor

DATE: _____

ACCEPTED BY: _____

Premier
Surveying LLC

5700 W. Plano Pkwy., Suite 1200
Plano, Texas 75093
Office: 972-612-3601
Fax: 972-964-7021
Firm Registration No. 10146200

EXHIBITS
C15-2021-0036
6141 Jumano Lane

A - 7101 Quimper Ln. - Attorney Letter

B - 6414 Jumano Ln. - Attorney Letter

C - Legend Oaks HOA Fence Application and Approval

D - Viking Fence Company Letter of Construction

E - Photo of old fence and new fence

F - Survey - 6414 Jumano Ln.

THE KELLY LEGAL GROUP, PLLC
ATTORNEYS AT LAW

P.O. Box 2125
Austin, Texas 78768

5-2/16
Exhibit A

(512) 505-0053 tel
(512) 505-0054 fax
Brian J. Tagtmeier

March 25, 2021

Chalice McGee
6141 Jumano Ln,
Austin, TX 78749

VIA CMRRR 7018 0680 0001 8075 7570

RE: Violations of deed restrictions at LT 8 BLK C SEC 7 LEGEND OAKS, more commonly known as 2801 Cedarview Drive, Austin, TX 78704 (the "Property")

Dear Ms. McGee:

Our firm has been retained by Ted and Anita Harbourt (our "Clients"), concerning issues with the fence recently installed on the property located at 6141 Jumano Ln, Austin, TX 78749 ("the Property").

Ted and Anita Harbourt, our Clients, own real property located within the Legend Oaks subdivision (the "Subdivision"), which is the subdivision in which your Property is located. It has come to the attention of this firm that you have constructed a fence on the Property which violates the deed restrictions. On behalf of our Clients, demand is hereby made that you immediately, entirely, and permanently comply with your subdivisions deed restrictions by removing the fence on your Property that violates the deed restrictions.

As you may know, the Property is burdened by certain deed restriction (the "Restrictions") that were recorded in the public records of Travis County. These Restrictions are set forth in the RESTATEMENT OF LEGEND OAKS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS on file with Travis County located at Volume 10326, Page 0088. A copy of the Restrictions is attached hereto as "Exhibit A." As a result of the recording, you were on constructive notice of the Restrictions when you purchased the Property. You also took title to the Property subject to the Restrictions. The Restrictions run with the land and benefit and burden all lot owners in Legend Oaks. By their terms, the Restrictions run perpetually unless an "instrument signed by a majority of the owners of the lots has been recorded, agreeing to change said covenants in whole or in part." The Restrictions remain in effect today.

The Fence Violates the Deed Restrictions

The Restrictions state that "No Improvements shall be constructed upon any of the Property without the prior written approval of the Architectural Committee." Section 3.07 of the Restrictions. It is our understanding that you did not seek prior written approval and did not obtain prior written approval before you built the fence. Assuming that you constructed the fence as an alteration or repair of any existing improvement, a statement with which our Clients vehemently disagree, any alteration must also be approved. As the Restrictions state, "Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement,

or the removal of any Improvement, shall be performed only 'With the prior written approval of the Architectural Committee.'" Section 3.10 of the Restrictions. You failed to obtain any prior written approval before constructing your fence, whether it was new construction or a repair or alteration of existing improvements.

Additionally, as part of the construction, you added a temporary cloth addition to the fence, which violates the Restrictions. The Restrictions state that "No tent, shack, or other temporary building, improvement or structure shall be placed upon the Property without the prior written approval of the Architectural Committee." Section 3.15 of the Restrictions. You again failed to obtain prior written approval from the Architectural Committee before constructing the temporary cloth addition to your fence.

Pursuant to Section 9.08 (a) regarding the right of enforcement of the Restrictions, "[A]ny owner at his own expense, Declarant, and/or the Board shall have the right to enforce all of the provisions of Legend Oaks Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision."

The purpose of this letter is to first provide you notice of the ongoing violations and to demand that you **IMMEDIATELY, ENTIRELY, AND PERMANENTLY COMPLY WITH YOUR SUBDIVISION'S DEED RESTRICTIONS BY REMOVING THE FENCE**. If you refuse to remove the fence, our Clients will have no choice but to proceed with a lawsuit against you for damages and to seek a declaratory judgment deeming your fence in violation of the Restrictions. If a lawsuit becomes necessary, please be advised that under the Texas Property Code §5.006, "in an action based on breach of a restrictive covenant pertaining to real property, the court shall allow to a prevailing party who asserted the action reasonable attorney's fees in addition to the party's costs and claim."

The Fence Encroaches on the Harbours' Property

As a separate matter, your fence encroaches on the Harbours' property. An encroachment is when a person has a physical intrusion that intrudes on or over another's land. The physical intrusion can be structural, nonstructural, or vegetative. This can include a fence, shed, tree, grass, or even a house. Encroachment is very similar to trespass except that encroachment applies to a structure or some other physical object that illegally protrudes or invades another's land.

Your fence is built on the Harbours' property. The Harbours demand that you remove the fence as it is an impermissible encroachment. Additionally, the fence can only be constructed such that it goes to the back of the home, not all the way to the front of the property. See Section 3.19 of the Declarations. Should the Harbours have to file a Declaratory Judgment against you regarding the encroachment, the Harbours will ask the Court to award costs and reasonable and necessary attorney's fees as are equitable and just. See §37.009 Tex. Civ. Prac. & Rem. Code.

The Construction of the Fence Damaged the Harbours' Fence

Additionally, there is no question that the fence you have constructed has damaged our Clients' fence. It will now have to be repaired and/or replaced because of your actions. As such,

you are liable to our Clients for negligence.

To establish liability based on negligence, a plaintiff must prove the defendant did something an ordinarily prudent person exercising ordinary care would not have done under the same circumstances, or, that the defendant failed to do that which an ordinarily prudent person in the exercise of ordinary care would have done. *Sisters of Charity of the Incarnate Word v. Gobert*, 992 S.W.2d 25, 28 (Tex. App.—Houston [1st Dist.] 1997, no pet.) "Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances. *See* State Bar of Texas, Texas Pattern Jury Charges PJC 2.1 (2012).

The manner in which the fence was constructed, and the placement of the fence has damaged our Clients' fence. You and your contractor were negligent in the construction of the fence. We demand that you pay to fix the damage. Please understand that our Clients will comply with all of the Restrictions to the extent that they apply to fixing their fence, something that you failed to do in the construction of yours.

We ask that you, or your counsel, call this firm immediately to discuss a permanent resolution to this matter.

If you have any questions, please contact the undersigned.

Respectfully,



Brian J. Tagtmeier

cc: Client / File

RESTATEMENT OF LEGEND OAKS DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

4 25 1924

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, REALTEX FUNDING CORP., a Texas corporation ("Declarant"), has filed that one certain "Legend Oaks Declaration of Covenants, Conditions and Restrictions" of record in Volume 10162, Page 619, Real Property Records of Travis County, Texas ("Prior Declaration"), subjecting the real property described in Article I, Section 1.20, hereof to the covenants, restrictions, charges, and liens set forth therein; and

WHEREAS, the Declarant desires and intends that this Restatement of Legend Oaks Declaration of Covenants, Conditions and Restrictions (hereinafter, the "Declaration") shall terminate the Prior Declaration, shall supersede the Prior Declaration, and shall be the single expression of all covenants, conditions, restrictions, charges, and liens applicable to the Property, as herein defined; and

WHEREAS, Legend Oaks Owners Association, Inc. has been incorporated under the laws of the State of Texas as a nonprofit corporation, and has been granted powers of administering and enforcing the said covenants, restrictions, charges, and liens and disbursing the assessments and charges created in the Prior Declaration and in this Declaration; and

WHEREAS, Declarant desires to terminate the Prior Declaration and desires to convey the Property described hereinbelow subject to certain protective covenants, conditions, liens, and charges set forth below; and

WHEREAS, Declarant desires to create and carry out a uniform plan for the improvement, development and sale of the Property, as defined hereinbelow, for the benefit of the present and future owners of the Property, as defined hereinbelow:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that it is declared: (i) that the Prior Declaration is hereby terminated and is hereby superseded and replaced by this Declaration; (ii) that all of the Property, as defined in Article I, Section 1.20 hereof, shall be held, sold, conveyed, and occupied subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property, as defined hereinbelow, and shall be binding on all parties having any right, title, or interest in or to the Property, as defined hereinbelow, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof; and (iii) that each contract or deed which may hereafter be executed with regard to the Property, as defined hereinbelow, or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions, and restrictions regardless of whether or not the same are set out or referred to in said contract or deed.

ARTICLE I
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the following meanings:

1.01 Architectural Committee.. "Architectural Committee" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of Improvements upon the Property.

REAL PROPERTY RECORDS
Travis County, Texas

10326 0088

1.02 Architectural Committee Rules. "Architectural Committee Rules" shall mean the rules and regulations adopted by the Architectural Committee, as the same may be amended from time to time.

1.03 Articles. "Articles" shall mean the Articles of Incorporation of Legend Oaks Owners Association, Inc., which shall be filed in the office of the Secretary of State of the State of Texas, as from time to time amended.

1.04 Assessment. "Assessment" or "Assessments" shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration.

1.05 Association. "Association" shall mean Legend Oaks Owners Association, Inc., a Texas non-profit corporation.

1.06 Board. "Board" shall mean the Board of Directors of the Association.

1.07 Bylaws. "Bylaws" shall mean the Bylaws of the Association as adopted by the Board, and as from time to time amended.

1.08 Common Area. "Common Area" shall mean all real property, including the improvements thereto, owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of conveyance by Declarant of the first Lot is described on Exhibit "A," attached to and incorporated into this document by reference. Additional Common Area may be designated by Declarant and dedicated to the Association at the time Declarant annexes additional real property to the Property in accordance with Section 2.02.

1.09 Declarant. "Declarant" shall mean Realtex Funding Corp., a Texas corporation, its duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of Realtex Funding Corp. as Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

1.10 Declaration. "Declaration" shall mean this instrument, and as it may be amended from time to time.

1.11 Improvement. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.12 Lot. "Lot" or "Lots" shall mean any parcel or parcels of land within the Property shown as a subdivided lot on a Plat of a Subdivision out of the Property, together with all Improvements located thereon.

1.13 Member. "Member" or "Members" shall mean any person, persons, entity, or entities holding membership rights in the Association.

1.14 Mortgage. "Mortgage" shall mean any mortgage or deed of trust covering any portion of the Property given to secure the payment of a debt.

1.15 Mortgagee. "Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage or Mortgages.

1.16 Owner. "Owner" or "Owners" shall mean a person or persons, entity or entities, including Declarant, holding a fee simple interest in any portion of the Property, but shall not include a Mortgagee.

1.17 Person. "Person" or "Persons" shall mean any individual, individuals, entity, or entities having the legal right to hold title to real property.

1.18 Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement, including but not limited to those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such improvement.

1.19 Plat. "Plat" shall mean a subdivision plat of any portion of the Property.

1.20 Property. "Property" shall mean that real property which is subject to the terms of this Declaration, which is comprised of the property described on Exhibit "B," attached to and incorporated herein by reference, plus any additional land added to the Property in accordance with the procedures set forth in Section 2.02 below, and less any land withdrawn from the Property in accordance with Section 2.03 below.

1.21 Legend Oaks Restrictions. "Legend Oaks Restrictions" shall mean this Declaration, as the same may be amended from time to time, together with Legend Oaks Rules, Committee Rules and the Articles and Bylaws of the Association from time to time in effect, as the same may be amended from time to time.

1.22 Legend Oaks Rules. "Legend Oaks Rules" shall mean the rules and regulations adopted by the Board as the same may be amended from time to time.

1.23 Subdivision. "Subdivision" shall mean a portion of the Property which is subdivided for residential purposes as shown on a map or plat of record in the Plat Records of Travis County, Texas.

1.24 Supplemental Declaration. "Supplemental Declaration" shall mean and refer to any declaration of covenants, conditions and restrictions which may be recorded hereafter in order (i) to add to the Property or (ii) to withdraw land from the Property.

ARTICLE II DEVELOPMENT OF THE PROPERTY

2.01 Development by Declarant. Declarant may divide or subdivide the Property into several areas, develop some of the Property, and, at Declarant's option, sell any portion of the Property free of these restrictions, in accordance with its master plan for the Property. It is contemplated that the Property will be developed pursuant to a master concept plan, which may, from time to time, be amended or modified, in which the development of, and restrictions upon, each portion of the Property will benefit every other portion, as well as the entire Property.

2.02 Addition of Land. It is contemplated that Declarant will develop certain real property described on Exhibit "D" attached hereto and incorporated herein by reference ("Added

Land") for residential purposes and add such Added Land, or a portion thereof, to the Property in accordance with the time schedules set forth on Exhibit "D" attached hereto and incorporated herein by reference. Declarant may add the Added Land, or portion thereof, in accordance with the time schedules set forth on Exhibit "D" to the Property, without the consent of any Owner or any other person, and upon the filing of a notice of addition of land as described below, this Declaration and the covenants, conditions, restrictions, and obligations set forth herein shall apply to the added lands, and the rights, privileges, duties, and liabilities of the persons subject to this Declaration shall be the same with respect to the added land as with respect to the lands originally covered by this Declaration. In the event the Added Land or any portion thereof is not added within the time schedules set forth on Exhibit "D", then the Added Land may still be added, provided that two-thirds (2/3) of the Owners (excluding Declarant) consent in writing to the annexation. Additionally, land other than the Added Land may be added at any time and from time to time provided that two-thirds (2/3) of the Owners (excluding Declarant) consent in writing to such annexation, and a notice of addition of land as described below is recorded in the Real Property Records of Travis County, Texas, and is executed by the President and Secretary of the Association and certifies that two-thirds (2/3) of the Owners (excluding Declarant) have consented to such annexation. In order to add the Added Land to the Property, Declarant shall be required only to comply with the time schedules set forth on Exhibit "D" and record in the Real Property Records of Travis County, Texas, a notice of addition of land containing the following provisions:

- (A) A reference to this Declaration, which reference shall state the book and page numbers of the Travis County Real Property Records wherein this Declaration is recorded;
- (B) A statement that all of the provisions of this Declaration shall apply to the land being added;
- (C) A legal description of land being added; and
- (D) A legal description of all Common Area to be owned by the Association within the land being added.

2.03 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw lands from the Property, and upon such withdrawal, this Declaration and the covenants, conditions, restrictions, and obligations set forth herein shall no longer apply to those lands withdrawn. In order to withdraw lands from the Property, Declarant shall be required only to record in the Real Property Records of Travis County, Texas, a notice of withdrawal of land containing the following provisions:

- (A) A reference to this Declaration, which reference shall state the book and page numbers of the Travis County Real Property Records wherein this Declaration is recorded;
- (B) A statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and
- (C) A legal description of the withdrawn land.

ARTICLE III GENERAL RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

3.01 Antennae. No exterior radio or television antenna, or aerial or satellite dish receiver, or other devices designed to receive telecommunication signals, including, but not limited to,

radio, television, or microwave signals which are intended for cable television, network television reception, or other entertainment purposes shall be erected or maintained, except by Declarant, without the prior written approval of the Architectural Committee.

3.02 Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located on the Property without the prior written approval of the Board.

3.03 Subdividing. No Lot shall be further divided or subdivided, nor may any easements or other interests in the Lot less than the whole be conveyed by the Owner without the prior written approval of the Architectural Committee; provided, however, that when Declarant is the Owner, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the Architectural Committee.

3.04 Signs. No sign of any kind shall be displayed to the public view on the Property without the prior written approval of the Architectural Committee except for signs which are part of Declarant's overall marketing plan for the Property. The Architectural Committee may permit signs of any type advertising a portion of the Property for sale or lease or it may set standards for the same.

3.05 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion of it unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view.

3.06 Noise. No exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

3.07 Construction of Improvements. No Improvements shall be constructed upon any of the Property without the prior written approval of the Architectural Committee. Anything herein to the contrary notwithstanding, the Architectural Committee may limit its review to a review of a typical floor plan for the proposed residence type, and upon the Architectural Committee's approval of such typical floor plan, residences may be constructed consistent with the approved floor plan without the requirement of further review or approval by the Architectural Committee.

3.08 Dwelling Size. For any one-story residence within the Property which is located on a Lot within an area zoned "SF-2" by the City of Austin, the floor area of the main structure, exclusive of open porches and garages, shall not be less than 1,400 square feet. For any two-story or split-level residence within the Property which is located within an area zoned "SF-2" by the City of Austin, the combined floor area of the main structure, exclusive of open porches and garages, shall not be less than 1,750 square feet.

3.09 Repair of Buildings. All Improvements upon any of the Property shall at all times be kept in good condition and repair and adequately painted and otherwise maintained by the Owner.

3.10 Alteration or Removal of Improvements. Any construction, other than normal maintenance, which in any way

alters the exterior appearance of any Improvement, or the removal of any Improvement, shall be performed only with the prior written approval of the Architectural Committee.

3.11 Roofing Materials. Unless otherwise approved by the Architectural Committee, roofs shall be constructed of the following materials: (i) wood shingles; or (ii) asphalt or composition shingles with a weight of 240 pounds or more per square.

3.12 Electric Service. An electric distribution system, part of which will be underground, will be installed within the Properties. The Owner of each Lot shall, at his own cost, furnish, install, own, and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering on the customer's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each Lot shall, at his own cost, furnish, install, own, and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. All electric service to any Lot shall be single phase, 120/140 volt, three wire, 60 cycle, alternating current.

3.13 Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and approved by the Architectural Committee.

3.14 Hazardous Activities. No activities shall be conducted on the Property and no Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces, or in contained barbeque units while attended and in use for cooking purposes.

3.15 Temporary Structures. No tent, shack, or other temporary building, improvement or structure shall be placed upon the Property without the prior written approval of the Architectural Committee; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the proper approval of Declarant, approval dependent on the nature, size, duration, and location of such structure.

3.16 Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth.

3.17 Unsightly Articles; Vehicles. No article deemed to be unsightly by the Architectural Committee shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the above, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, and garden maintenance equipment, shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than

minor emergency repairs), except in enclosed garages or other structures. Each single family residential structure constructed within the Property shall have garage space sufficient to house at least two (2) vehicle and with a minimum garage door opening of sixteen (16') feet. Lot Owners shall not keep more than two (2) automobiles in a manner which allows them to be visible from any other portion of the Property for any period in excess of seventy-two (72) hours. No automobiles or other vehicles may be parked overnight on any roadway within the Property. Service areas, storage areas, compost piles and facilities for hanging, drying, or airing clothing or household fabrics shall be appropriately screened from public view and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, or refuse of trash shall be kept, stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view.

3.18 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes shall be parked or placed on any Lot at any time, and no travel trailers or recreational vehicles shall be parked on or near any Lot so as to be visible from adjoining property or public or private thoroughfares for more than forty-eight (48) hours.

3.19 Fences. Prior to the occupancy of any residence constructed on a Lot within the Property, a wooden, vertical slat, privacy fence, with no gap between slats, shall be constructed to enclose the back yard ("Required Fence"). The Required Fence shall not extend nearer to the front street than the front wall of the principal building, nor nearer to any side street than the minimum set back line. Any fence constructed on a Lot, other than the Required Fence, requires the prior written consent of the Architectural Committee. Chainlink and similar fences shall not be permitted. The Architectural Committee may, in its discretion, prohibit the construction of any other proposed fence, or specify the materials of which any other proposed fence must be constructed, or require that any other proposed fence be screened by vegetation or otherwise so as not to be visible from other portions of the Property.

3.20 Animals - Household Pets. No animals, including pigs, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the Architectural Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property.

3.21 Landscaping.

- (A) On all corner Lots, prior to the occupancy of the residence located on such Lot, (i) at least two (2) trees, with a diameter of three (3) inches or more, shall be planted on the side yard, and (ii) at least two (2) trees, with a diameter of three (3) inches or more, shall be planted in the front yard, unless two (2) trees of equal or greater size are already located on both the side and front yards of the Lot. On all interior Lots, prior to the occupancy of the residence located on such Lot, at least two (2) trees, with a

diameter of three (3) inches or more, shall be planted in the front yard, unless two (2) trees of equal or greater size are already located in the front yard.

- (B) The side and front yards of each Lot shall be fully sodded prior to the occupancy of the residence located on such Lot.
- (C) All landscaping shall meet or exceed the standards set forth in The City of Austin Code of 1981, Chapter 13-2A, Sections 5600-5635, as the same may hereafter be amended from time to time.

3.22 Maintenance of Lawns, Plantings and Improvements. Each Owner shall keep all shrubs, trees, grass, and plantings of every kind on such Owner's Lot, including any Common Area platted as a part of such Owner's Lot, cultivated, pruned, mowed, and free of trash and other unsightly material, and shall maintain all improvements situated thereon.

3.23 Masonry Requirements. All residences, whether located on interior or corner Lots, shall have a minimum of seventy-five percent (75%) of their exterior walls of the first floor of stone or masonry construction. In computing this percentage (1) all gables shall be excluded from the total area of exterior walls; (2) all windows and door openings shall be excluded from the total area of the exterior walls; and (3) stone and masonry used on fireplaces, chimneys, and walls of an attached garage may be included in the computation as stone or masonry used.

3.24 Construction Activities. Exterior construction activity shall only occur during daylight hours on any improvement on a Lot located within the Property, and no construction activity may occur on Sundays in areas zoned "SF-2"; apart from these two limitations, nothing in this Declaration shall be construed so as to unreasonably interfere with, or prevent, normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural Committee, provided that such waiver shall be only for the reasonable period of such construction.

3.25 Construction in Place. All dwellings constructed on the Property shall be built in place on the Lot and the use of prefabricated materials shall be allowed only with the prior written approval of the Architectural Committee.

3.26 Unfinished Structures. No structure shall remain unfinished for more than one (1) year after the same has been commenced. Construction of residential improvements shall begin no later than two (2) years after ownership of the Lot has been legally conveyed by Declarant, unless the Association, exercising its best judgment, determines that an extension of time should be granted and issues a written statement to the Lot owner specifically permitting the extension.

3.27 Setback Requirements. Setback requirements for Lots are those set forth on each Plat of the Subdivision which includes such Lots.

3.28 Rentals. Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes.

3.29 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article III or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

ARTICLE IV USE RESTRICTIONS

4.01 General. The Property shall be improved and used solely for single family residential use or for Common Area. Common Area may, subject to the approval of Declarant, be improved and used for active and passive recreational purposes for the primary benefit of Owners and occupants of portions of the Property; provided, however that, as to any specific areas, Declarant may, in its sole and absolute discretion, permit other improvements and uses. Any Supplemental Declaration recorded for a portion of the Property may designate such area to be used and improved for single-family residential.

4.02 Common Area. No land within any Common Area shall be improved, used or occupied, except in such manner as shall have been approved by Declarant, in its sole and absolute discretion. Such required approval shall extend to the nature and type of use, occupancy, and Improvement. Declarant may, by written instrument, delegate its right to grant such approval to the Board. Access to any Common Area may be limited to persons currently paying assessments, fees, and other charges, or otherwise conditioned or restricted, or made available to non-owners, all on such terms and conditions as Declarant may determine, in its sole discretion.

4.03 Recreational Improvements. Any proposed construction of recreational improvements within a Common Area shall be subject to approval by the Architectural Committee.

ARTICLE V LEGEND OAKS OWNERS ASSOCIATION, INC.

5.01 Organization. The Declarant shall, at such time as Declarant deems appropriate, cause the formation and incorporation of the Association. The Association shall be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws and in this Declaration. Neither the Articles nor the Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.02 Membership. Any Person, upon becoming an Owner, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the property interest which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated, except together with the title to the said property interest.

5.03 Voting Rights. The right to cast votes, and the number of votes which may be cast, for election of members to the Board of Directors of the Association, and on all other matters to be voted on by the Members, shall be calculated as provided below. Owners entitled to votes pursuant to (A) below are hereinafter sometimes referred to as "Class A Members."

Declarant, which is entitled to vote pursuant to (B) below, is hereinafter sometimes referred to as the "Class B Member."

- (A) The Owner of each Lot within the Property shall have one vote for each Lot so owned.
- (B) In addition to the votes to which it is entitled by reason of subparagraph (A) of this section, for every one (1) vote to which Declarant is entitled due to its ownership of Lots, Declarant shall have an additional three (3) votes for each Lot owned by Declarant until the earlier of (i) December 31, 1995 or (ii) the number of total votes in Class A equals the number of total votes in Class B. Thereafter, Declarant shall have only the votes, if any, to which it is entitled under subparagraph (A) of this section.

5.04 Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

- (A) Legend Oaks Rules and Bylaws. To make, establish, and promulgate, and in its discretion to amend or repeal and re-enact, such Legend Oaks Rules and Bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.
- (B) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association functions.
- (C) Records. To keep books and records of the Association's affairs.
- (D) Assessments. To levy assessments as provided in Article VII below. An assessment is defined as that sum which must be levied in the manner and against the property set forth in Article VII in order to raise the total amount for which the levy in question is being made.
- (E) Right of Entry and Enforcement. To enter at any time in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot for the purpose of enforcing the Legend Oaks Restrictions or for the purpose of maintaining or repairing any area, improvement or other facility to conform to the Legend Oaks Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article VII hereof for regular and special assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Legend Oaks Restrictions. The Association is also

authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Legend Oaks Restrictions.

- (F) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.
- (G) Conveyances. To grant and convey to any person or entity the real property and/or other interest therein, including fee title, leasehold estates, easements, rights-of-way, or mortgages out of, in, on, over, or under any Association property for the purpose of constructing, erecting, operating, or maintaining the following:
 - (a) Parks, parkways or other recreational facilities or structures;
 - (b) Roads, streets, walks, driveways, trails, and paths;
 - (c) Lines, cables, wires, conduits, pipelines or other vices for utility purposes;
 - (d) Sewers, water systems, storm water drainage systems, sprinkler systems, and pipelines; and/or
 - (e) Any similar public, quasi-public or private improvements or facilities.

Nothing above, however, shall be construed to permit use or occupancy of any improvement or other facility in a way which would violate applicable use and occupancy restrictions imposed by other provisions of this Declaration.

- (H) Manager. To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager. The members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power, or function so delegated.
- (I) Association of Property Services. To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property of the Association; to maintain and repair easements, roads, roadways, rights-of-way, parks, parkways, median strips, sidewalks, paths, trails, ponds, lakes and other areas of the Property, as appropriate; and to own and operate any and all types of facilities for both active and passive recreation.
- (J) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration, or the Articles or Bylaws of the Association.
- (K) Construction on Association Property. To construct new improvements or additions to Association properties, subject to the approval of the Architectural Committee as required by this Declaration.

- (L) Contracts. To enter into contracts with Declarant and other persons on such terms and provisions as the Board shall determine, to operate and maintain any Common Area or to provide any service or perform any function on behalf of Declarant or other person.
- (M) Property Ownership. To acquire and own and to dispose of all manner of real and personal property, whether by grant, lease, gift, or otherwise.

5.05 Maintenance. The Association shall (i) maintain all streets which have been completed but not accepted by the appropriate governmental entity for maintenance, (ii) maintain all Common Area dedicated to the Association for maintenance, by or with the consent of Declarant, and (iii) maintain the landscaping and entry sign located at the entrance of the Property, and all median strips which have not been accepted by any governmental entity for maintenance.

5.06 Street Lighting. The Association shall pay for electrical service and for all other costs and expenses necessary to operate and maintain the street lights within the Property, until such time as such obligation is assumed by the appropriate governmental entity.

5.07 Common Area.

- (A) Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:

- (1) To accept, own, operate, and maintain all Common Area which may be conveyed or leased to it by Declarant, together with all improvements of whatever kind and for whatever purpose which may be located in said areas; and to accept, own, operate, and maintain all other property, real and personal, conveyed or leased to the Association by Declarant and to maintain in good repair and condition all lands, improvements, and other Association property owned by, or leased to, the Association. Such maintenance shall include but not be limited to mowing and removal of rubbish or debris of any kind.
- (2) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon the members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- (3) To execute mortgages, both construction and permanent, for construction of facilities, including improvements on property owned by or leased to the Association. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner as may be deemed appropriate by the Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second, or other junior lien as shall be deemed appropriate by the Association, on the improvement or other facility to be constructed, together with such underlying and surrounding lands as the Association deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the

revenues generated by dues, use fees, assessment of the members of the Association, or otherwise, or any combination thereof, as may be deemed appropriate by the Association, but subject to the limitations imposed by this Declaration.

- (4) To take out and maintain current a policy of liability insurance coverage to cover accidental bodily injury and/or death caused by the use and enjoyment in the Common Area. Such insurance shall be in an amount as the Board shall deem appropriate.

5.08 Indemnification. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorney's fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a Court that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by settlement, or upon a plea of Nolo Contendere, or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant, or agent of the Association, against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

ARTICLE VI ARCHITECTURAL COMMITTEE

6.01 Membership of Architectural Committee. The Architectural Committee shall consist of not more than three (3) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as Declarant, its successors or assigns deems appropriate. The initial voting members of the Architectural Committee shall be designated by the Declarant.

6.02 Action by Architectural Committee. Items presented to the Architectural Committee shall be decided by a majority vote of the Voting Members.

6.03 Advisory Members. The Voting Members may from time to time designate Advisory Members.

6.04 Term. Each member of the Architectural Committee shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided herein.

6.05 Declarant's Rights of Appointment. Declarant, its successors or assigns shall have the right to appoint and remove all members of the Architectural Committee. Declarant may delegate this right to the Board by written instrument. Thereafter, the Board shall have the right to appoint and remove all members of the Architectural Committee.

6.06 Adoption of Rules. The Architectural Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties, including but not limited to a building code, a fire code, a housing code, and other similar codes as it may deem necessary and desirable. Each Owner shall comply with said rules as the same may be amended from time to time, and failure to comply with said rules shall constitute a default of this Declaration, and any Owner, including Declarant, at its sole expense and/or the Board may seek any of the remedies set forth herein for default of this Declaration.

6.07 Review of Proposed Construction. Whenever in this Declaration, or in any Supplemental Declaration, the approval of the Architectural Committee is required, it shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which, in its sole discretion, are relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefor shall be submitted to the Architectural Committee, and construction thereof may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing. The Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Committee. The Architectural Committee may review Plans and Specifications submitted for its review and such other information as it deems proper. Until receipt by the Architectural Committee of any information or document deemed necessary by the Architectural Committee, it may postpone review of any Plans and Specifications submitted for approval. No Improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with residential development within the Property. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence and the decision of the Architectural Committee shall be final and binding so long as it is made in good faith. The Architectural Committee shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes.

6.08 Variance. The Architectural Committee may grant variances from compliance with any of the provisions of this Declaration, or any Supplemental Declaration, when, in the opinion of the Architectural Committee, in its sole and absolute discretion, such variance will not impair or detract from the high quality development of the Property, and such variance is justified due to unusual or aesthetic considerations or unusual circumstances. All variances must be evidenced by a written instrument, in recordable form, and must be signed by at least two (2) of the voting members of the Architectural Committee. The granting of such variance shall not operate to waive or amend any of the terms and provisions of these covenants and restrictions applicable to the Lots for any purpose except as to the particular property and in a particular instance covered by the variance, and such variance shall not be considered to establish a precedent or future waiver, modification, or amendment of the terms and provisions hereof.

6.09 Actions of the Architectural Committee. The Architectural Committee may, by resolution, unanimously adopted in writing, designate one or two of its members or an agent acting

on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee. In the absence of such designation, the vote of a majority of all of the members of the Architectural Committee taken without a meeting, shall constitute an act of the Architectural Committee.

6.10 No Waiver of Future Approvals. The approval or consent of the Architectural Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

6.11 Work in Progress. The Architectural Committee, at its option, may inspect all work in progress to insure compliance with approved Plans and Specifications.

6.12 Nonliability of Architectural Committee Members. Neither the Architectural Committee, nor any member thereof, nor the Board, nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of the Architectural Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Committee or its member or the Board or its member, as the case may be. Neither the Architectural Committee, nor the members thereof, shall be liable to any Owner due to the construction of any Improvement within the Property.

6.13 Address. Plans and Specifications shall be submitted to the Architectural Committee, c/o Peyton Collins & Company, Barton Oaks Plaza One, 901 MoPac Expressway South, Suite 410, Austin, Texas 78746, or such other address as may be designated by Declarant, its successors and assigns, from time to time.

6.14 Fees. The Architectural Committee shall have the right to require a reasonable submission fee for each set of Plans and Specifications submitted for its review.

6.15 Certificate of Compliance. Upon completion of any Improvement approved by the Architectural Committee and upon written request by the Owner of the Lot, the Architectural Committee shall issue a Certificate of Compliance in a form suitable for recordation. The Certificate shall identify the Lot and the Improvements, the use or uses to be conducted thereon, and the Plans and Specifications on file with the Architectural Committee pursuant to which the Improvements were made and shall specify that the Improvements comply with the approved Plans and Specifications. The Certificate shall not be construed to certify the acceptability, sufficiency, or approval by the Architectural Committee of the actual construction of the Improvements or of the workmanship or materials thereof. The Owner is hereby notified that the Certificate in no way warrants, except as set forth above, the sufficiency, acceptability, or approval by the Architectural Committee of the construction, workmanship, materials, or equipment of the Improvements. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the improved Lot.

ARTICLE VII FUNDS AND ASSESSMENTS

7.01 Assessments.

- (A) Assessments established by the Board pursuant to the provisions of this Article VII shall be levied on a uniform basis against each Lot within the Property.