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December 13, 2013

University Oaks Community Association
13506 Syracuse
San Antonio, Texas 78249

Via E-Mail

Re: Foreclosure Provisions and applicability to current property owners within the HOA.

Dear Ben:

You had inquired as to the applicability of the foreclosure provisions in the proposed Amended Declaration of Restrictive Covenants with respect to current property owners within the Association. We are attaching to this correspondence a copy of *Boudreaux Civic Association vs. Leary Cox*, Court of Appeals, Texas. This case is the one we referred to as setting current case law in regards to the members concerns.

Essentially, the Court ruled that new restrictions are not enforceable against homeowners' because it was not a right preexisting homestead rights. That means the right had to exist before the property owner purchased the property. Consequently, in this situation the foreclosure provisions in the proposed documents would only affect property owners who purchased their property after the filing of the document. Current property owners would not be subject to the foreclosure provision. However, an affidavit of non-payment (the "lien") would be able to be filed. This would state that the property was in arrears in assessments to the Association.

In regards to the question whether the Association is a homeowners association, the association is legally recognized as such. There is a filing with the Texas State Comptrollers office certifying the entity as such. Additionally, the association fits the legal definition of a Texas Residential Property Owners Association located in Texas Property Code section 209.002. Furthermore, the initial set of governing documents created an architectural control committee (hereinafter "ACC"). ACC's members are typically appointed by the board of directors and are ultimately responsible to the board of directors. The document which is missing the set of bylaws which were created at the formation of the association. However, note that during the inception of this association bylaws were not required to be filed at the courthouse as they are now. Hence, the preparation of the proposed set of bylaws to fill this void.

The Association's restrictions are enforceable because they were filed of record prior to the

sale of property's within the subdivision. They are enforceable by either the Association or any of its members. So owners are part of a mandatory participation association due to the fact that the covenants existed prior to their purchase of the property and the filing of the documents provided presumed notice of the existing restrictions.

Any additional restrictions to the existing covenants would have to be approved by the required vote of the membership. This could not be done without their approval. Additionally, any such restrictions would only be effective from the date of filing forward. In other words they could not be retroactively applied to current property owners.

In addition, when ever anyone purchases a property within a homeowners association the title companies typically request what is called a "resale certificate". This document should contain a copy of all restrictions affecting the property, as well as a listing of any liabilities, ongoing lawsuits and other matters concerning the association.

We hope this correspondence addresses the major concerns raised by some of the members. If the board should have any additional questions or concerns please do not hesitate to contact us. Thank you for allowing us to be of assistance to the University Oaks Community Association.

Sincerely,

Thomas L. Placier