

NOTTING HILL HOMEOWNERS ASSOCIATION, INC.

PLAINTIFF

v.

**ANSWER AND COUNTERCLAIM**

*ELECTRONICALLY FILED*

JAMES AND ELISHA FEGER

DEFENDANTS

\* \* \* \* \*

Comes now the Defendants, James and Elisha Feger, hereinafter "Defendants", by counsel, and for their answer to the Complaint filed herein, states as follows:

**FIRST DEFENSE**

The Plaintiff's Complaint fails to state a cause of action against these answering Defendants upon which relief may be granted.

**SECOND DEFENSE**

1. The Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the allegations contained within Paragraph No. 1 of the Plaintiff's Complaint, and therefore denies the same.
2. The Defendants admit the allegations contained within Paragraph No. 2 of the Plaintiff's Complaint to the extent that the deed speaks for itself.
3. The Defendants admit the allegations contained within Paragraph No. 3 of the Plaintiff's complaint only to the extent that the deed and Declaration of Covenants, Conditions, and Restrictions speak for themselves.
4. The Defendants admit the allegation contained within Paragraphs No. 4, 5, 6, 7, 8, 9, and 10 of the Plaintiff's Complaint only to the extent that the Declaration of Covenants, Conditions, and Restrictions speak for themselves.

5. The Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the allegations contained within Paragraph No. 11 of the Plaintiff's Complaint, and therefore denies the same.
6. The Defendants admit the allegations contained within Paragraph No. 12 of the Plaintiff's Complaint to the extent that James Feger sent an email to the Association's property manager, Bill Haley, detailing the proposed outdoor improvements with an initial project rendering attached. The Defendants further state that this email was originally sent to the Homeowner's Association's President, Kelly Jones, on July 11, 2021.
7. The Defendants admit the allegations contained within Paragraph No. 13 and 14 of the Plaintiff's Complaint to the extent that the public record speaks for itself.
8. The Defendants deny the allegations contained within Paragraph 15 of the Plaintiff's Complaint.
9. The Defendants deny the allegations contained within Paragraph 16 of the Complaint to the extent that the Association, through the Property Manager, did not request a plat, layout, and renderings of the proposed pool. The December 13, 2021 email refers to an email sent in July 2021 which outlined a plat, layout, and renderings.
10. The Defendants deny the allegations contained within Paragraphs 17, 18, 19, 20, and 21 of the Plaintiff's Complaint.
11. The Defendants admit the allegations contained within Paragraph 22 of the Plaintiff's Complaint.
12. The Defendants deny the allegations contained within Paragraph 23 and 24 of the Plaintiff's Complaint.

13. The Defendants admit the allegations contained within Paragraph No. 25 of the Plaintiff's Complaint to the extent that they met with the Homeowner Association's President, Kelly Jones, and Vice-President, Cathy Stich at Mr. Jones' request.
14. The Defendants deny the allegations contained within Paragraph 26 of the Plaintiff's Complaint and state that the President of the Association sent the Defendants an email on April 5, 2022 regarding the April 1, 2022 meeting. The Defendants responded to said email on April 5, 2022. An additional email was sent by the President of the Association to the Defendants on April 6, 2022, to which the Defendants responded on the same date.
15. The Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the allegations contained within Paragraph No. 27 of the Plaintiff's Complaint, and therefore denies the same.
16. The Defendants deny the allegations contained within Paragraph No. 28 of the Plaintiff's Complaint.
17. The Defendants admit the allegations contained within Paragraph 29 of the Plaintiff's Complaint to the extent that the Association has instructed the Defendants to stop all construction.
18. The Defendants deny the allegations contained within Paragraph 30, 31, 32, 33, 34, and 35 of the Plaintiff's Complaint.
19. Any allegation that is not specifically admitted herein is denied.

### **AFFIRMATIVE DEFENSES**

As this litigation is in its initial stages, this answering Defendant pleads and relies upon those affirmative defenses contained within C.R. 8.03 as a complete bar to the Plaintiff's relief asserted herein, which include:

- a. Accord and satisfaction;
- b. Arbitration and award;
- c. Assumption of risk;
- d. Contributory negligence;
- e. Discharge in bankruptcy;
- f. Duress;
- g. Estoppel;
- h. Failure of Consideration;
- i. Fraud;
- j. Illegality;
- k. Injury by fellow servant;
- l. Laches;
- m. License;
- n. Novation
- o. Payment;
- p. Release;
- q. Res Judicata;
- r. Statute of Frauds;
- s. Statute of Limitations;
- t. Waiver

**COUNTERCLAIM**

**DECLARATION OF RIGHTS**

1. That the Defendants own real Property located at 18701 Foxbough Glen Place Louisville, Kentucky 40245 located within the Notting Hill subdivision (hereinafter the “Property”).

2. That the Defendants sent an email to Notting Hill's property management company, Kentucky Realty Corp, on August 11, 2020 advising of their intentions to install an inground swimming pool and inquiring as to what steps they needed to take to obtain approval. Bill Haley, the property manager, responded and requested that the Defendants send any preliminary drawings or renderings. *See* email attached hereto as "Exhibit A".
3. That the Defendants emailed Bill Haley on August 23, 2020 with the requested renderings including an inground swimming pool and pergola. *See* email attached hereto as "Exhibit B".
4. That on July 21, 2021 the Defendants again sent an email to Bill Haley with a detailed proposal and rendering for the outdoor improvements, noting a construction start date of October 11, 2021. *See* email attached hereto as "Exhibit C".
5. That construction work for the pool began as scheduled on October 11, 2021.
6. That on December 13, 2021, the Defendants received an email from the property manager stating "I believe you have followed all the protocols to build this wonderful pool." And further, "I have forwarded the paperwork submitted in June of this year and there isn't an issue other than the new board which was transitioning into the positions at the time this pool process was starting just wants to be kept in the loop and up to date." *See* email attached hereto as "Exhibit D".
7. That the Defendants, believing the plans had been approved, proceeded with the project.
8. That the Defendants had a plat survey completed by a licensed land surveyor prior to obtaining necessary permits and any work beginning. *See* "Exhibit E" attached hereto.
9. That the work that has been completed was inspected by Louisville-Jefferson County Metro Government, Department of Codes and Regulations on March 8, 2022 and the

inspector found that “everything is in compliance with surveyed site plan”, and issued a ‘Partial Pass Notice’. See “Exhibit F” attached hereto.

10. That all work regarding the project has since ceased at the direction of the Association.
11. That as a result of being required to cease work regarding the project, the Defendants have incurred damages.
12. That the Defendants are entitled to declaration from the Court that they are entitled complete their outdoor improvements project on their Property, including an inground swimming pool, spa, pergola, fireplace, kitchen, sidewalk, berm, and landscaping.

**WHEREFORE**, the answering Defendants, James and Elisha Feger, respectfully requests as follows:

1. For dismissal of the Plaintiff’s Complaint in its entirety;
2. For declaration of rights;
3. For judgment against the Plaintiff in an amount to be determined;
4. For attorney’s fees;
5. For costs;
6. For leave to amend;
7. For all other relief to which they may be entitled, whether legal, equitable or declaratory.

Respectfully submitted,

/s/ Jessica D. Smith  
Jessica D. Smith-#91574  
Molly M. Robertson- #97077  
Attorney at Law  
Vaughn & Smith, PLLC  
201 Thierman Lane  
Louisville, Kentucky 40207  
(502) 899-5600  
jessica@vaughnsmithlaw.com  
molly@vaughnsmithlaw.com

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the foregoing was sent, this the 10<sup>th</sup> day of May, 2022, via electronic mail and U.S. mail postage pre-paid, to the following:

Richard V. Hornung  
Hebel & Hornung, PSC  
6511 Glenridge Park Place, #1  
Louisville, Kentucky 40222  
rich@hebelhornung.com  
*Attorney for Plaintiff*

/s/ Jessica D. Smith  
Jessica D. Smith-#91574  
Molly M. Robertson- #97077  
Attorney at Law







# EXHIBIT A

From: [jfeger68 -jfeger68@gmail.com](mailto:jfeger68-fjeger68@gmail.com)  
Date: Tue, Aug 11, 2020 at 11:27 AM  
Subject: Re: Exploring pool for 18701 Foxbough Glen Place, Louisville KY 40245 (Nottingham)  
To: Bill Haley <[bh@kyrealityonline.net](mailto:bh@kyrealityonline.net)>

Thanks Bill. I will reach out to our builder and forward the preliminary renderings.

Jim

On Tue, Aug 11, 2020 at 11:17 AM Bill Haley <[bh@kyrealityonline.net](mailto:bh@kyrealityonline.net)> wrote:

Jim

Thank you for the heads up. If you have any preliminary drawings or renderings, please send those so that we can begin this process of approval.

Thank you.

**Bill Haley**  
Project Manager  
<[image001.jpg](mailto:image001.jpg)>

**Kentucky Realty Corp**  
3944 Bardstown Rd  
Louisville KY 40218  
502-473-0003 (p)  
502-473-7269 (f)

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From: [jfeger68 -jfeger68@gmail.com](mailto:jfeger68-fjeger68@gmail.com)>

Sent: Tuesday, August 11, 2020 10:58 AM

To: Bill Haley <[bh@kyrealityonline.net](mailto:bh@kyrealityonline.net)>; Elisha Feger <[elishafeger04@gmail.com](mailto:elishafeger04@gmail.com)>

Subject: Exploring pool for 18701 Foxbough Glen Place, Louisville KY 40245 (Nottingham)

Hi Bill,

My wife and I reside at 18701 Foxbough Glen Place, Nottingham. We have a corner lot, (former model) at the subdivision's entrance and we would like to construct a pool. We have already met with several contractors and had the utility companies conduct their respective surveys.

Our initial plan was to submit a design proposal with the pool site located immediately behind our home and between the build lines in accordance with our CCRs. However, easements for MSD significantly restrict the potential build space, rendering our initial plans untenable.

We have significant yard space on the balance of our property that supports our design ideas. With that in mind, we want to loop you into this conversation as HOA representative to see if, with proper design and aesthetics, the yard space we propose to design and build meets HOA standards.

We take great pride in our home to support the beauty of our little community. Would you be available to come by for a site visit and brief conversation of our project? We can discuss how we could incorporate landscape and hardscape that compliments our house seat and the principles of aesthetics inherent in our CCRs.

Kindest Regards,

Jim and Elisha Feger

RE: Exploring pool for 18701 Foxbough Glen Place, Louisville KY 40245    
(Nottinghill) 

→ **Bill Haley** <bh@kyrealtyonline.net>  
to me, Elisha ▾

Aug 11, 2020, 11:17 AM



Jim

Thank you for the heads up. If you have any preliminary drawings or renderings, please send those so that we can begin this process of approval.

Thank you.

**Bill Haley**

**Project Manager**



**Kentucky Realty Corp**

**3944 Bardstown Rd**

**Louisville KY 40218**

**502-473-0003 (p)**

**502-473-7269 (f)**

# EXHIBIT B

## Project Update: 18701 Foxbough Glen Place - Initial Renderings and Project Scope >



**jfefer68** <jfefer68@gmail.com>  
to Bill, starr, Elisha

Sun, Aug 23, 2020, 7:20 PM ☆ ↶ ⋮

Hi Bill,

Attached you will find an initial rendering for the pool, hard and softscaping we envision for our project. I wanted to share its major features to confirm all components were viable before taking further steps ( contract, permits, etc.). The pool is configured for 16x35' but we may opt for a 30' length to allow for additional landscaping. Behind our house and within the build line we would like to install a pergola (12x16) and gas firepit. The pergola would be large beam construction, (likely Douglas Fir or Cedar) and stained to complement our home, likely brown. The embedded pergola image is just a sample, but very close if not perfect to what we envision.

I've copied Starr Tingle, Project Manager with Sanctuary Pools, in this email, as Sanctuary will be coordinating this project. I look forward to hearing from you and of course, we welcome your feedback.

Kindest Regards,

Jim and Elisha Feger



# EXHIBIT C

Pool and Outdoor building Project Proposal for 18701 Foxbough Glen Place

→ jfeger68 <jfeger68@gmail.com>  
to Bill, starr, Elisha

Wed, Jul 21, 2021, 4:57 PM

Elisha and I are excited to share our proposed outdoor improvements. We are contracting with Sanctuary Homes and Pools of Shelbyville to install an inground pool and patio on the rear of our property. Pending approval of the utility companies and HOA, our plan includes the following improvements:

1. An inground swimming pool
  - a. 13x30- Fiberglass, black bottom, heated, saltwater swimming pool.
  - b. To be located immediately behind our house and within the usable space not set aside by MSD for water egress/easement
  - c. 8x8 Spa, staged above patio grade and immediately adjoining pool. Visible spa walls will be veneered and capped with complementary stone.
2. Patio area and sidewalk
  - a. Patio area around pool and attached to current covered patio complying with same easements
  - b. Sidewalk to connect driveway, proximal to garage door to existing covered patio
3. Outdoor kitchen
  - a. To be constructed behind the rear and side build lines of our home, proximal to our only adjoining neighbor and parallel to Ladbroke Grove Rd.
  - b. The outdoor kitchen will be masonry constructed and faced with stone veneer that complement the exterior brick of our home and the overall aesthetic of Notting Hill.
4. A 12x 14 pergola
  - a. Constructed of rough hewn oak, stained and finished to complement existing structures and overall aesthetics of Notting Hill.
  - b. Pergola will stand behind the rear build line of our home, proximal to our property line that joins Ladbroke Grove Rd.
  - c. Pergola will be seated on a concrete pad, contiguously joined to the patio area surrounding the pool and join the existing covered, attached patio.
  - d. Pergola will be improved by a masonry constructed fireplace to be situated in the midline, rear of the structure.
    - i. Fireplace will be veneered with the same or complementary stone to be used for the proposed outdoor kitchen veneer.
    - ii. Fireplace will be constructed for both gas and wood burning. (However, we anticipate largely using gas).
5. Gated Fence
  - a. Fence will project from the rear build line of our home between the existing covered patio posts and join the masonry structure of the outdoor kitchen.
  - b. Fence will also project from the rear build line of our home to the property line that parallels Nottinghill Blvd.
  - c. Fence will run between the existing Wood Fence and Shrubbery Berm to the existing fence that separates our property from our only adjoining neighbor.
6. Utility/Single Car Garage
  - a. 16x24 Garage
  - b. Seated adjacent to and with doors facing at a right angle to existing two gar, attached garage
  - c. Veneered entirely with brick and mortar of matching design, including decorative brick coins and matching garage doors
  - d. Rendering attached in initial project overview. Blueprints are in the process of being purchased.

From my reading and understanding, the project's entirety falls either within the parameters set forth in Section 3.2 CCRs of Notting Hill or within the discretion of the current HOA board. As you can imagine, this is a project of a lifetime for us. We hope you will be pleased with the thought, planning and consideration we've taken to create an ideal outdoor living space. Our hope is not just for our family's enjoyment but to provide a safe place to entertain and enjoy the company of our Notting Hill neighbors and friends who have become so dear.

We are pleased to partner with Sanctuary Homes and Pools to lead our project. Tony and Starr Tingle (Sanctuary's Owners) have been in the building business for almost twenty years and they have already started pursuing the appropriate permits. We have a project start date of October 11, 2021.

Elisha and I take pride in our home and its appearance. We are mindful that our home is the 'first face' of Notting Hill and have thought through each improvement we've undertaken since we moved here three years ago to provide a beautiful aesthetic our neighbors can enjoy as they walk, jog, bike or otherwise pass by our home and who knows, maybe even enjoy a summer's dip in the pool or winter's conversation in front of our warm fireplace.

I've attached an initial project rendering. Let me know if you have additional questions or concerns and we look forward to your reply.

Kindest Regards,

Jim and Elisha Feger

cc: Elisha Feger, Starr Tingle/Sanctuary Pools





# EXHIBIT D

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-----Original Message-----

From: [bh@kyrealtyonline.net](mailto:bh@kyrealtyonline.net)

Sent: Monday, December 13, 2021 9:02 AM

To: [jfege68@gmail.com](mailto:jfege68@gmail.com)

Subject: Pool Installation Paperwork

Good morning Jim. I wanted to reach out concerning the pool that you are constructing. I believe you have followed all the protocols to build this wonderful pool. However I received a request from the board on Friday requesting scaled drawing for the work being completed.

I have forwarded the paperwork submitted in June of this year and there isn't an issue other than the new board which was transitioning into the positions at the time this pool process was starting just wants to be kept in the loop and up to date.

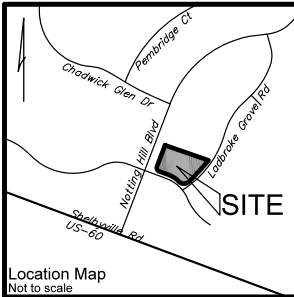
Is there anything that you can submit that may not have been included in the July email outlining the plat, layout and renderings? The new board is doing an awesome job with the community and only has the best intentions so anything that you would consider helpful or updated would be appreciated.

Thank you and had a great holiday.

Sent from my iPhone

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# EXHIBIT E



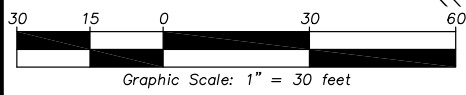
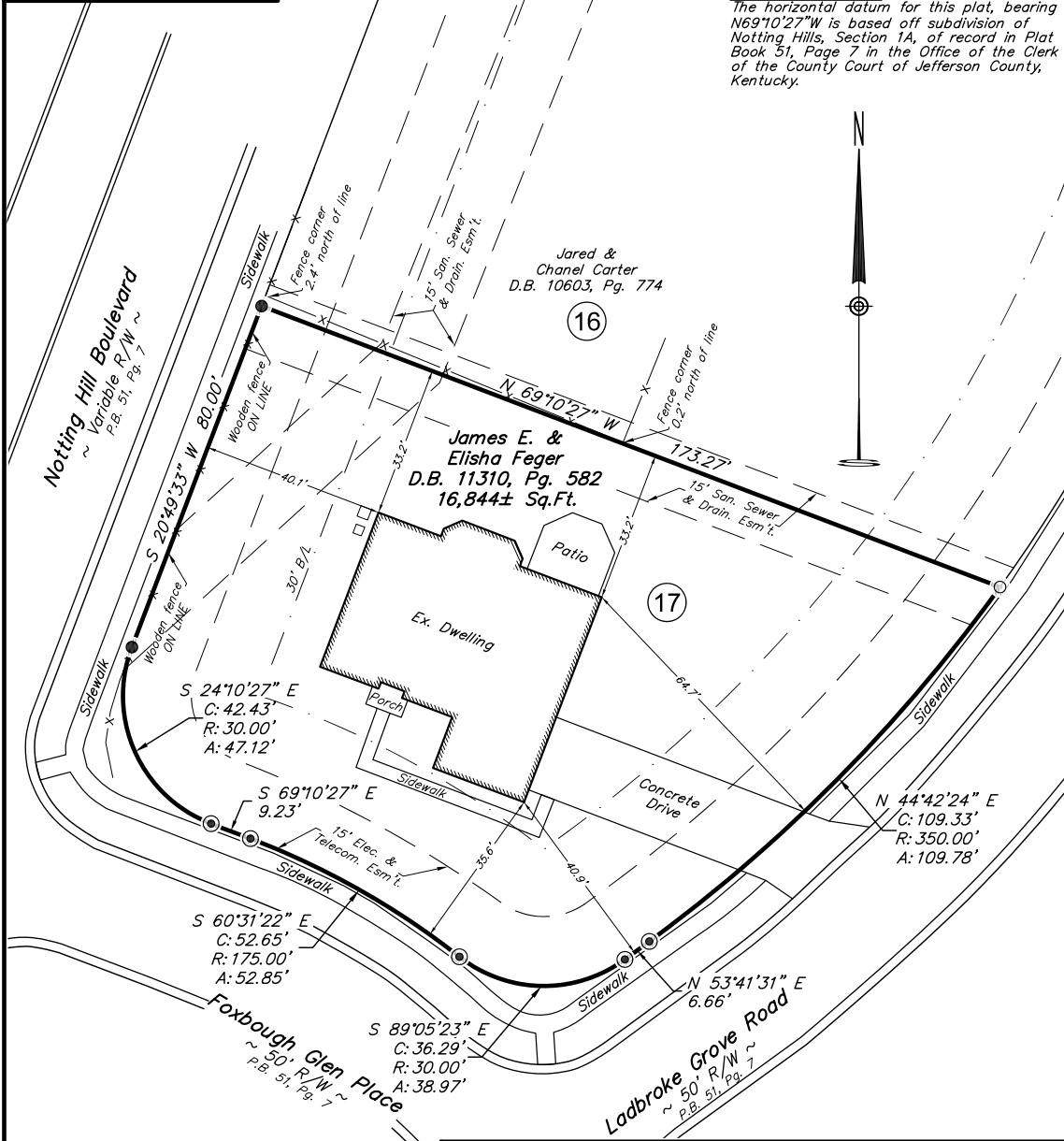
A full title search was not requested or performed for this survey. Properties shown hereon are subject to all legal easements, right-of-ways, defects, liens, adverse claims, encumbrances, covenants and restrictions, which a title search may or may not reveal, whether shown on this plat or not.

**FLOOD NOTE**  
Flood plain determination is restricted to a review of the Flood Insurance Rate Maps (F.I.R.M.) latest revisions and shall not be construed as a conformation of or denial of flooding potential. The property shown hereon is in Zone "X", which is NOT in a flood area as located by F.E.M.A. Map No. 21111-C-0052-E, Dated 12-05-2006.

**SURVEY NOTES**  
1. All easements and setbacks listed are per the recorded deed, or plat, unless otherwise noted.

- LEGEND**
- ⊕ Indicates a set rebar (5/8"x24") with a blue plastic cap stamped "JASON GRAVES KY PLS 4010"
  - ⊙ Indicates a found 5/8" iron pin with cap stamped "MATHERLY 3596"
  - ⊖ Indicates a found 5/8" rebar
  - ⊕ Indicates a found "X" cut
  - ⊙ Indicates a calculated point (No monument found or set)

**BEARING DATUM**  
The horizontal datum for this plat, bearing N69°10'27"W is based off subdivision of Notting Hills, Section 1A, of record in Plat Book 51, Page 7 in the Office of the Clerk of the County Court of Jefferson County, Kentucky.



**RETRACEMENT SURVEY FOR**

Client Name: James E. Feger & Elisha Feger  
Client Address: 18701 Foxbough Glen Pl., Louisville, KY 40245  
Property Located at: 18701 Foxbough Glen Pl., Louisville, KY 40245  
Property Owner: James E. Feger & Elisha Feger  
Property Owner's Address: 18701 Foxbough Glen Pl., Louisville, KY 40245  
Source of Ownership: Deed Book 11310, Page 582

**LAND SURVEYORS CERTIFICATION**  
I, Kenneth Jason Graves, hereby certify that I am a Licensed Professional Land Surveyor in compliance with the laws of the Commonwealth of Kentucky, and I further certify that this plat of survey was completed by me, or persons under my supervision. This survey was completed by the method of random traverse with sideshots. The unadjusted precision ratio of said traverse loop was 1:130,731 and was not adjusted. The directional and linear measurements, as witnessed by the monuments shown hereon, are true and correct to the best of my knowledge and belief. This plat meets or exceeds the standards of governing authorities for an URBAN survey per 201-KAR-18:150.

*Kenneth Jason Graves*  
Kenneth Jason Graves  
Licensed Professional Land Surveyor  
Date: 03/12/2020  
No. 4010

STATE OF KENTUCKY  
KENNETH J. GRAVES  
4010  
LICENSED PROFESSIONAL LAND SURVEYOR

**Century**  
LAND SURVEYING  
1107 State Street, Unit 4  
New Albany, IN 47150  
(502) 419-8136  
Jason@LouisvilleLandSurveyor.com  
www.louisvillelandsurveyor.com  
THIS DOCUMENT COMPLIES WITH 201.KAR.18:150

Scale: 1" = 30'  
Drawn by: J.Graves  
Date: 03/12/2020  
Rev.:  
Field work performed by: ML  
Field work completed on 01/23/2020

This survey represents a professional opinion concerning the location of the property boundaries depicted hereon, based on the appropriate boundary law principles governed by the facts and evidence gathered and evaluated during the course of this survey. Monuments, that in the opinion of this surveyor represent the true and correct corners of the property being surveyed, have been found or set as indicated hereon. As a professional opinion, this survey carries with it no guarantees or warranties, expressed or implied.

# EXHIBIT F



**Louisville-Jefferson County Metro Government**

**Department of Codes & Regulations**

**Construction Review Division**

444 S. 5th Street, Suite 100 - Louisville, KY 40202



Phone: 502-773-2144 Email: Ronald.Huff@louisvilleky.gov Web Site: www.louisvilleky.gov/government/codes-regulations

Letter Number: RES-POOL-21-00242-1

Page 1 of 1

3/8/2022

**Contractor:**  
SANCTUARY HOME  
SANCTUARY HOMES  
PO BOX 1116  
SHELBYVILLE, KY 40066

**Owner:**  
FEGER JAMES E  
18701 FOXBOUGH GLEN PL  
LOUISVILLE, KY 40245-6263

**Location:** 18701 FOXBOUGH GLEN PL, LOUISVILLE, KY 40245

**Parcel:** 376100170000

**Permit Type:** Pool/Spa - Residential

**Permit Number:** RES-POOL-21-00242

**Inspection Date:** Tuesday, March 8, 2022

**Partial Pass Notice**

Dear Contractor,

An inspection on March 08, 2022 by the undersigned inspector of the Construction Review Division of the Department of Codes and Regulations, revealed work which does not comply with the Kentucky Building Code, Residential Code, Electrical Code, or the Louisville Metro Code of Ordinances as indicated below:

**Violations**

Responding to complaint of easement encroachment, everything is in compliance with surveyed site plan.

These corrections are required to be made and re-inspected to ensure compliance with applicable building and/or Louisville Metro Code of Ordinances as noted.. Once you have corrected the noted violations, you will need to request a follow up inspection.

To request an inspection please use the Online Permitting portal:<https://www.louisvilleky.gov/businessportal>  
If you do not have an account, you may request inspections at 502-574-4400 or via email at [elecinspection@louisvilleky.gov](mailto:elecinspection@louisvilleky.gov)

Electrical Contractors must enter inspection requests using the Online Permitting Portal

Please contact Ronald Huff at 502-773-2144 with any questions about this notice

Ronald Huff  
Inspector  
502-773-2144  
[Ronald.Huff@louisvilleky.gov](mailto:Ronald.Huff@louisvilleky.gov)

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**Louisville-Jefferson County Metro Government**

**Department of Codes & Regulations**

**Construction Review Division**

444 S. 5th Street, Suite 100 - Louisville, KY 40202



Phone: 502-773-2144 Email: Ronald.Huff@louisvilleky.gov Web Site: www.louisvilleky.gov/government/codes-regulations

Letter Number: RES-POOL-21-00242-934850986

Page 1 of 1

3/8/2022

**Property Owner:**

FEGER, JAMES E  
18701 FOXBOUGH GLEN PL  
LOUISVILLE, KY 40245-6263

**Location:** 18701 FOXBOUGH GLEN PL, LOUISVILLE, KY 40245

**Parcel:** 376100170000

**Permit Type:** Pool/Spa - Residential

**Permit Number:** RES-POOL-21-00242

**Inspection Date:** Tuesday, March 8, 2022

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Electrical Contractors must enter inspection requests using the Online Permitting Portal

Please contact Ronald Huff at 502-773-2144 with any questions about this notice

Ronald Huff

Inspector

502-773-2144

[Ronald.Huff@louisvilleky.gov](mailto:Ronald.Huff@louisvilleky.gov)

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