

CAUSE NO. \_\_\_\_\_

FOSTERS MILL VILLAGE COMMUNITY  
ASSOCIATION,  
*Plaintiff,*

VS.

MARIA C. HOYT A/K/A MARIA  
CHRISTINE HOYT,  
*Defendant,*

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR  
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE AND JURY OF THIS COURT:

Fosters Mill Village Community Association, Plaintiff in this lawsuit, would respectfully  
show the Court the following.

**I.  
DISCOVERY CONTROL PLAN**

Discovery in this matter will be controlled by Discovery Control Plan Level 2 described  
in Rule 190.3 of the *Texas Rules of Civil Procedure*.

**II.  
PARTIES; SERVICE OF PROCESS**

Plaintiff, Fosters Mill Village Community Association (the "Association"), is a non-profit  
corporation existing under and by virtue of the laws of the State of Texas with its principal  
office being located in Harris County, Texas.

Defendant, Maria C. Hoyt a/k/a Maria Christine Hoyt, is a resident of Harris County,  
Texas, and may be served with process at 5306 Sandy Grove Drive, Kingwood, TX 77345 or  
wherever Maria C. Hoyt a/k/a Maria Christine Hoyt may be found.

### **III. JURISDICTION AND VENUE**

Pursuant to *Texas Civil Practice and Remedies Code*, jurisdiction and venue of this case properly lie in Harris County, Texas, in that Harris County is the county in which all or part of the property made the basis of this cause is located and/or is the county of Defendant's residence at the time the cause of action accrued.

This lawsuit seeks monetary relief of one hundred thousand dollars (\$100,000.00) or less and non-monetary relief. The damages sought are within the jurisdictional limits of the court.

### **IV. TYPE OF CAUSE OF ACTION**

It has become necessary for Plaintiff to bring this case to seek injunctive relief as a result of the Defendant's violations of the applicable restrictive covenants. Plaintiff also seeks civil damages, attorney fees and court costs.

### **V. RELEVANT RESTRICTIVE COVENANTS**

"Restrictive Covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative. TEX. PROP. CODE ANN. § 202.001(4) (Vernon 2013).

There are recorded certain *restrictive covenants* (the "Restrictions") affecting the use of lots under the jurisdiction of the Plaintiff. These Restrictions, which run with the land and are enforceable at law, and which were placed on each residential lot under the jurisdiction of the Plaintiff for the purpose of establishing a uniform plan for the benefit of both the present and future lot owners and residents, are recorded in the *Official Public Records of Real Property of Harris County, Texas*, and amendments, if any. These Restrictions and amendments, if any, continue to be valid and enforceable against all owners and properties under the jurisdiction of

the Fosters Mill Village Community Association.

According to a deed recorded in the office of the County Clerk of Harris County, Texas, Defendant is the owner of a tract of land described as *Lot Two (2), in Block Six (6), of the Corrected Plat of Fosters Mill Village, Section One (1), an addition in Harris County, Texas, according to the map or plat recorded in Volume 294, Page 52 of the Map Records of Harris County, Texas in Harris County, Texas* (the "Property"). The street address of the Property is 5306 Sandy Grove Drive, Kingwood, TX 77345. The Property is encumbered by the Restrictions and amendments, if any.

#### **VI. LIBERAL CONSTRUCTION OF RESTRICTIVE COVENANTS**

A restrictive covenant shall be liberally construed to give effect to its purposes and intent. TEX. PROP. CODE ANN. § 202.003(a) (Vernon 1987).

#### **VII. ASSOCIATION'S AUTHORITY TO ENFORCE THE RESTRICTIVE COVENANTS AND REGULATE THE SUBDIVISION**

A property owners' association may initiate litigation affecting the enforcement of a restrictive covenant or the protection, preservation, or operation of the property covered by the dedicatory instrument. TEX. PROP. CODE ANN. § 202.004(b) (Vernon 1987).

#### **VIII. DEFENDANT'S VIOLATIONS OF THE RESTRICTIVE COVENANTS**

Defendant is in substantial violation of the Restrictions in that Defendant has failed to maintain the Property within the spirit and intent of the Restrictions. Specifically, the Defendant has failed to 1) repair the hole in the siding on the front of the residence; and 2) repair/replace the roof on the residence; both on the Property in violation of the applicable restrictive covenants; both on the Property under the jurisdiction of the Fosters Mill Village Community

Association.

The Defendant has been mailed written notices of these violations. Despite such notices, the Defendant has failed to comply with the Restrictions.

If the Defendant is not enjoined from violating the Restrictions and/or ordered to comply with the Restrictions, the Plaintiff will suffer impairment of its rights and irreparable and uncompensable injury of a continuing nature in that Defendant's violations of the Restrictions will continue unabated.

#### **IX. NOTICE OF RESTRICTIVE COVENANTS**

An instrument that is properly recorded in the proper county is notice to all persons of the existence of the instrument. TEX. PROP. CODE ANN. § 13.002 (Vernon 2003).

The Restrictions have been properly recorded in the *Official Public Records of Real Property of Harris County, Texas*.

Despite notice of the Restrictions, Defendant is violating the Restrictions.

#### **X. APPLICATION FOR TEMPORARY INJUNCTION**

Plaintiff requires injunctive relief in order to remedy Defendant's deliberate and intentional violation of the Restrictions. Plaintiff tried to avoid legal action via multiple notices of violation but Defendant's failure to: 1) repair the hole in the siding on the front of the residence; and 2) repair/replace the roof on the residence; both on the Property in violation of the applicable restrictive covenants; both on the Property, has left Plaintiff with no other avenue for relief and protection of the Restrictions than to seek court intervention.

Further, Defendant failed to provide Plaintiff with any reason to expect that they intend to remedy the issue. Plaintiff has no reason to believe that Defendant will abide by the Restrictions without court intervention.

Plaintiff seeks mandatory injunctive relief, as opposed to prohibitive injunctive relief. *See R.P.&R., Inc. v. Territo*, 32 S.W.3d 396, 400 (Tex. App.—Houston [14th Dist.] 2000, no pet.). The two types of injunction differ in that “[a] prohibitive injunction forbids conduct, whereas a mandatory injunction requires it.” *Id.* Issuance of a temporary mandatory injunction is proper if issuance of such can prevent hardship on the requesting party. *Id.* However, a party need not even always show substantial hardship because when “a distinct or substantial breach of the restrictions is shown, the courts will enjoin the violation *even though there is no proof of actual damages or irreparable injury.*” *Gunnels v. N. Woodland Hills Cmty. Ass’n*, 563 S.W.2d 334, 337 (Tex. App.—Houston [1st Dist.] 1978, no writ) (emphasis added). “The plaintiff in an action to enforce restrictive covenants is not required to prove actual damages in order to obtain injunctive relief.” *Id.*

Plaintiff has requested that the Court order specific performance from the Defendant, and as indicated in this Original Petition, Plaintiff has shown a probable right of recovery and likelihood of success on the merits.

In the present case, Plaintiff is not required to show extreme hardship because in cases “[w]here a distinct or substantial breach of restrictions is shown, the courts will enjoin the violation *even though there is no proof of actual damages or irreparable injury.*” *Gunnels v. N. Woodland Hills Cmty. Ass’n*, 563 S.W. 2d 334, 337 (Tex. App.— Houston [1<sup>st</sup> Dist.] 1978, no writ)(emphasis added). Even though Plaintiff is not required to prove hardship and must only show a breach of the Restrictions, here, Defendant’s complete disregard for the Restrictions does indeed place a clear hardship on Plaintiff. As a direct and proximate result of Defendant’s

violations of the Restrictions, Plaintiff suffers continuous harm to the property values and development within the community which is an aspect the members specifically bargained for when purchasing homes within said community. "It is a well known fact that restrictions enhance the value of the subdivision property and form an inducement for purchasers to buy lots within the subdivision." *Gunnels v. N. Woodland Hills Cmty. Ass'n*, 563 S.W.2d at 338. In order to maintain the status quo pending a trial on the merits, Defendant must comply with the Restrictions as no adequate remedy exists at law.

Plaintiff asks the Court to set its application for temporary injunction for hearing and, after the hearing, issue a temporary injunction against the Defendant.

Plaintiff asks the Court to set its request for permanent injunction for a full trial on the merits and, after the trial, issue a permanent injunction against the Defendant.

Plaintiff requests mandatory temporary and permanent injunctive relief ordering Defendant to: 1) submit an Architectural Control Committee (ACC) application and obtain ACC approval to repair the hole in the siding on the front of the residence and thereafter repair the hole in the siding on the front of the residence; and 2) submit an Architectural Control Committee (ACC) application and obtain ACC approval to repair/replace the roof on the residence and thereafter repair/replace the roof on the residence; both on the Property in violation of the applicable restrictive covenants; both on the Property or within the legal boundaries of Fosters Mill Village Community Association.

Plaintiff is willing to post bond as required by law.

## **XI. REQUEST FOR INJUNCTIVE RELIEF**

The Defendant's failure to comply with the Restrictions undermines the general plan and scheme of the Restrictions and infringes upon the rights of the other property owners and

residents of properties under the jurisdiction of the Plaintiff. In addition, unless the Defendant is compelled to comply, the Restrictions will become meaningless, thus adversely affecting the rights of all of the present and future property owners and residents of lots. No amount of money can compensate the present and future property owners and residents of the lots under the jurisdiction of the Plaintiff for the harmful effect of the Defendant's violations of the Restrictions, nor can the damages be accurately measured. Therefore, Plaintiff has no adequate remedy at law and requests that the Court grant it injunctive relief as herein requested.

## **XII. CONDITIONS PRECEDENT**

All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

## **XIII. CIVIL DAMAGES**

Pursuant to Texas Property Code § 202.004(c), the Plaintiff seeks civil damages for Defendant's violations of the Restrictions in the amount of \$200.00 for each day of the violation. The language of § 202.004(c) dictates that these damages are intended to be punitive, rather than compensatory and are not related to the showing of a specific injury but merely to the number of days that the violation takes place. *Uptegraph v. Sandakwood Civic Club*, 312 S.W.3d 918, 938 (Tex.App—Houston [1<sup>st</sup> Dist.] 2010, no pet.)

The Plaintiff has contacted the Defendant to give notice of the violations of the Restrictions and to attempt to resolve the situation. The Defendant's violations of the Restrictions described in paragraph VIII above have been or were maintained on the Property for at least fifteen days, and thus, Plaintiff will seek an award of civil damages of at least \$3,000.00 which represents damages for only fifteen days despite the fact that the Defendant's

violations have been or were ongoing for a period of more than fifteen days.

#### **XIV. ATTORNEY'S FEES AND COSTS**

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. TEX. PROP. CODE ANN. § 5.006 (Vernon 1984).

Plaintiff designates the undersigned attorneys as expert witnesses on reasonable and necessary attorney's fees and costs of litigation incurred by the Plaintiff in connection with this suit.

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, the Plaintiff prays:

1. That the Defendant be cited to appear and answer this Petition;
2. That on a full and final hearing on this cause, the Defendant be permanently enjoined from violating the Restrictions for the Subdivision in the complained-of manner;
3. That on a full and final hearing on this cause, a mandatory injunction issue that orders the Defendant to 1) submit an Architectural Control Committee (ACC) application and obtain ACC approval to repair the hole in the siding on the front of the residence and thereafter repair the hole in the siding on the front of the residence; and 2) submit an Architectural Control Committee (ACC) application and obtain ACC approval to repair/replace the roof on the residence and thereafter repair/replace the roof on the residence; both on the Property in violation of the applicable restrictive covenants on the Property and/or within the legal boundaries (as evidenced by the recorded plat map) of any subdivision under the jurisdiction of the Fosters Mill Village Community Association, within forty-five (45) days of the date a final judgment is signed by the Court in this cause;
4. That the Plaintiff recover civil damages of at least \$3,000.00 for the violation of the Restrictions as provided by §202.004(c) of the *Texas Property Code*;



5. That the Plaintiff be awarded reasonable attorney's fees (plus additional reasonable post judgment attorney's fees, if applicable, and additional attorney's fees should the Defendants unsuccessfully appeal a judgment in favor of the Plaintiff) and costs pursuant to Texas Property Code; and,
6. That the Plaintiff be awarded interest on the entire amount awarded, including attorney's fees, at the highest rate allowed by law from the date of judgment until fully paid, together with all costs of court, and all such other and further relief, special or general, at law or in equity, to which Plaintiff may show itself justly entitled or as the Court may deem just.

Respectfully submitted,

**ROBERT'S MARKEL WEINBERG BUTLER HAILEY PC**

/s/ Melissa McLain

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