

V. SUIT TO ENFORCE DEED RESTRICTIONS

6. By instrument styled "*Amended, Extended and Merged Restrictive Covenants for Cape Conroe, Section I and Section II*" (the "Declaration" or "Restrictions"), all Lots within the Subdivision are subject to certain covenants and restrictions as set forth in the Declaration. The Declaration has been duly filed and recorded in the Official Public Records of Real Property of Montgomery County, Texas, under Clerk's File No. 2002-041158, and has been incorporated into each and every deed to all Lots within the Subdivision.

VI. PERTINENT SECTIONS OF DEED RESTRICTIONS

7. The Declaration provides, in pertinent part, as follows:

“6. NUISANCES

A. Definitions. At all times, each lot in the Subdivision whether residential or commercial lots, shall be kept free of nuisances, which means, but is not limited to, the following:

1. objectionable, detrimental, offensive, dangerous, or unattractive conditions, as determined by the Board of Directors of the Association in its reasonable discretion”

17. MATERIALS STORED ON LOTS

On all lots in the subdivision, whether residential or commercial, no building material or debris of any kind shall be placed or stored upon any lot except during construction.

VII. DEFENDANT BOUND

8. Defendant, RICHARD L. PFIRMAN, is the owner of that certain real property within the Subdivision, and is therefore bound by the provisions of the Declaration. The legal description for the real property owned by Defendant is as follows: **LEGAL DESCRIPTION (hereinafter sometimes called the "Lot" and sometimes called the "Property):**

Lot Nineteen (19), Block Seven (7), of CAPE CONROE, Section Two (2), a subdivision in Montgomery County, Texas, according to the map or plat thereof recorded in Cabinet A, Sheet 77B (formerly Volume 10, Page 49), Map Records of Montgomery County, Texas, with a physical address of 607 Lake View Drive, Montgomery, Texas 77356.

VIII. FACTS

9. Conditions exist on Defendant's Property which are in violation of the Declaration. ***Specifically, you are not maintaining the property in an attractive condition, as the yard is not being mowed and edged on a regular basis and trees need to be trimmed or pruned;***

the landscaping is not being maintained on a regular basis, and rather than repairing or replacing windows and doors, the residence on the property has boarded up windows and doors creating an unsightly appearance, all of which is in violation of the Restrictions. .

10. Despite Plaintiff's notice to Defendant of the violations of the Restrictions, the above-described conditions continue to exist on the Property.

IX. BREACH OF RESTRICTIONS

11. Defendant's conduct of allowing the conditions set out above to continue to exist on the Property constitutes a breach and/or violation of the Declaration and is injurious to the neighboring property owners within the Subdivision. Defendant has notice of the Restrictions, as said Restrictions are filed for record in Montgomery County, Texas, as set forth above.

X. REQUEST TO COMPLY

12. Prior to the filing of this lawsuit, Defendant were requested to comply with the Declaration as above set forth. However, Defendant failed and refused, and continue to fail and refuse to comply with the Declaration as set forth above.

XI. INJUNCTIVE RELIEF

13. Plaintiff has no adequate remedy at law or otherwise for the harm or damage done by Defendant's distinct, willful, and substantial breach of the covenants and restrictions. Monetary damages in an action at law would be an inadequate remedy for the Plaintiff because of the essentially aesthetic nature and purpose of the Deed Restrictions whose violations are made the basis of this Petition, and because of the difficulty of precise computation of damages resulting to Plaintiff and the other Lot owners because of the matters complained of herein. Specific enforcement of the provisions of the Restrictions is the only meaningful remedy for a violation thereof, a remedy without which the Restrictions become a nullity. Plaintiff and the other lot owners within the Subdivision will suffer irreparable harm, damage, and injury unless the acts and conduct of Defendant herein complained of are cured by being enjoined forthwith. Plaintiff requests that the Defendant be mandatorily enjoined and ordered to cure the restriction violations by removing the building materials that were being used for installation of the rock driveway, together with piles of rock and mud debris associated therewith, and restore the driveway to a condition that meets the criteria of the Restrictions.

XIII. ATTORNEY FEES

14. Defendant's violations of the clear and unambiguous provisions of the Declaration as above set forth and failure and refusal to cure such violations despite demand to do so have made it necessary for Plaintiff to employ the undersigned attorney to enforce its rights under the Declaration. Plaintiff has obligated itself to pay a reasonable fee for the professional services of the said attorney in this controversy. Accordingly, since this is an action based on breach of a restrictive covenant pertaining to real property, should Plaintiff prevail in this suit, it is entitled to an award from Defendant of reasonable attorney's fees pursuant to Chapter 38 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE and to TEX. PROP. CODE ANN. § 5.006 (Vernon's Supp. 1984) in an amount deemed reasonable in the judgment of the Court; and the contingent award for additional attorney fees of:

- A. In the event of unsuccessful filing by Defendant of a motion for new trial or other motion to modify, correct, reform or set aside judgment, the further sums of TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00);
- B. In the event of successful appeal by Plaintiff or in the event of unsuccessful appeal by Defendant, the further sums of:
 - (1) TEN THOUSAND & NO/100 DOLLARS (\$10,000.00) in the event of an appeal to the Court of Appeal;
 - (2) ONE THOUSAND FIVE HUNDRED & NO/100 DOLLARS (\$1,500.00) in the event of filing of and as to each motion for rehearing or other motion to modify, correct, reform or set aside the Judgment of the Court of Appeals;
 - (3) TEN THOUSAND & NO/100 DOLLARS (\$10,000.00) in the event of filing of an Petition for Discretionary Review to the Supreme Court of Texas;
 - (4) the further sum of TEN THOUSAND & NO/100 DOLLARS (\$10,000.00) in the event Petition for Discretionary Review to the Supreme Court of Texas is granted; and
 - (5) ONE THOUSAND FIVE HUNDRED & NO/100 DOLLARS (\$1,500.00) in the event of filing of and as to each motion for rehearing or other motion to modify, correct, reform or set aside the Judgment of the Supreme Court of Texas.

XIV. CIVIL DAMAGES

15. Plaintiff would show that Defendant has acted to deprive Plaintiff of the benefits of the Declaration in deliberate disregard of the rights of others, and with full knowledge of the facts. Defendant was fully advised of the current violation of the Declaration and requested to abate same but wholly failed to do so.

16. The activities of Defendant are precisely the type of conduct the Texas Legislature has sought to prevent through Section 202.004 (c) of the TEXAS PROPERTY CODE which provides a “court may assess civil damages for the violation of a restrictive covenant in an amount not to exceed TWO HUNDRED DOLLARS (\$200.00) for each day of the violation.” Plaintiff requests the Court assess civil damages in accordance with the foregoing in an amount of not less than TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00).

XV. PRAYER

17. **WHEREFORE, PREMISES CONSIDERED**, Plaintiff prays that:

- A. Defendant be cited to appear and answer herein;
- B. That upon final trial hereof the Defendant be further ordered to remedy the restriction violations as set forth above within thirty (30) days from the date of the Judgment;
- C. That Plaintiff be granted all costs of suit;
- D. Plaintiff be awarded judgment for reasonable attorney’s fees of not less than SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$7,500.00) pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code and/or to Section 5.006, Texas Property Code, together with interest from the date of judgment until paid for the preparation and trial of this cause; and the contingent award for additional attorney’s fees of:
 - (1) in the event of unsuccessful filing by Defendant of a motion for new trial or other motion to modify, correct, reform or set aside judgment, the further sums of TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00);
 - (2) in the event of successful appeal by Plaintiff or in the event of unsuccessful appeal by Defendant, the further sums of:
 - (a) TEN THOUSAND & NO/100 DOLLARS (\$10,000.00) in the event of an appeal to the Court of Appeal;

- (b) ONE THOUSAND FIVE HUNDRED & NO/100 DOLLARS (\$1,500.00) in the event of filing of and as to each motion for rehearing or other motion to modify, correct, reform or set aside the Judgment of the Court of Appeals;
 - (c) TEN THOUSAND & NO/100 DOLLARS (\$10,000.00) in the event of filing of a Petition for Discretionary Review to the Supreme Court of Texas;
 - (d) the further sum of TEN THOUSAND & NO/100 DOLLARS (\$10,000.00) in the event Petition for Discretionary Review to the Supreme Court of Texas is granted; and
 - (e) ONE THOUSAND FIVE HUNDRED & NO/100 DOLLARS (\$1,500.00) in the event of filing of and as to each motion for rehearing or other motion to modify, correct, reform or set aside the Judgment of the Supreme Court of Texas.
- E. Plaintiff be awarded judgment against Defendant for civil damages of not less than TWO HUNDRED DOLLARS (\$200.00) for each day thereafter of Defendant' violations of the restrictive covenants;
- F. Plaintiff be granted such other and further relief, special or general, legal or equitable, as Plaintiff may be shown to be justly entitled to receive, together with all writs, injunctions, executions, garnishments, attachments, sequestrations, etc., necessary to enforce the judgments entered.

Respectfully submitted,

THE FOWLER LAW FIRM



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