

**HOOVER SLOVACEK LLP**  
A REGISTERED LIMITED LIABILITY PARTNERSHIP

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MAR 23 2007  
CLERK OF DISTRICT COURT  
HOUSTON, TEXAS  
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2007 MAR 21 11 5:06  
DEPUTY

DATE: March 21, 2007

**Via Hand Delivery**

TO: Charles Bacarisse  
Harris County District Clerk  
201 Caroline  
Houston, Texas 77002

ADVERSE: Inwood Forest Partners, L.P.,  
Caminata Holdings, LLC, and  
Inwood Forest Golf and Country  
Club, Inc.

2007-16697 FILE NO: 171327-01

Re: Cause No. \_\_\_\_\_; *Inwood Forest Community Improvement Association v. Inwood Forest Partners, L.P.; Caminata Holdings, LLC, its general partner; and Inwood Forest Golf and Country Club, Inc., jointly and severally*; In the 157 Judicial District Court of Harris County, Texas

- INSTRUMENT(S):
- 1.) **Civil Process Request;**
  - 2.) **Plaintiff's Original Petition, Request for Temporary Injunction, Permanent Injunction Relief and Declaratory Relief;**
  - 3.) **Request for Production of Documents to Defendant Inwood Forest Golf and Country Club, Inc.; and**
  - 4.) **Request for Production of Documents to Defendant Inwood Forest Partners, L.P.**

Dear Mr. Bacarisse: Please take the following action relative to the above captioned instrument:

- X   File same and return the enclosed copies with your file mark noted thereon.  
       Present same to Court for action and return a conformed copy to undersigned in the enclosed self-addressed, stamped envelope.  
       Other.
- X   Enclosed is our firm's check in the amount of \$ 221.00 as payment of your fees and for service.  
       Hold for service at this time.
- X   Service should be issued for \_\_\_\_\_ Harris County \_\_\_\_\_ Out-of-County  
Through: \_\_\_\_\_ Sheriff \_\_\_\_\_ Constable  
  X   Civil Process Server: To be picked up by KGriff

Mr. Charles Bacarisse

March 21, 2007

Page -2-

\_\_\_ Prepare citation and return to the undersigned.

\_\_\_ Other:

\_\_\_ Copy of this letter and enclosure(s) have been forwarded via:

\_\_\_ First Class Mail, \_\_\_ Via Facsimile and First Class Mail,

\_\_\_ Hand Delivery, \_\_\_ Certified Mail/Return Receipt Requested

\_\_\_ A hearing on this matter has been set for \_\_\_\_\_, 200\_\_, at \_\_\_\_\_ o'clock \_\_\_\_ .m.,  
in the Courtroom of the \_\_\_\_\_ Court of \_\_\_\_\_ County, Texas.

Very truly yours,

**HOOVER SLOVACEK LLP**



Matthew A. Kornhauser

Enclosures

MAK:nac

INWOOD FOREST COMMUNITY §  
IMPROVEMENT ASSOCIATION §

VS. §

INWOOD FOREST PARTNERS, L.P.; §  
CAMINATA HOLDINGS, LLC, its §  
general partner; and INWOOD FOREST §  
GOLF AND COUNTRY CLUB, INC., §  
jointly and severally §

IN THE JUDICIAL DISTRICT COURT

HARRIS COUNTY, TEXAS

157 JUDICIAL DISTRICT

2007 MAR 21 AM 5:06  
DEPUTY  
CLERK OF COURT  
HARRIS COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION, REQUEST FOR TEMPORARY INJUNCTION,  
PERMANENT INJUNCTIVE RELIEF AND DECLARATORY RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, INWOOD FOREST COMMUNITY IMPROVEMENT ASSOCIATION ("Plaintiff"), and files this, Plaintiff's Original Petition, Request for Temporary Injunction, Permanent Injunctive Relief and Declaratory Relief against Defendants, INWOOD FOREST PARTNERS, L.P. ; CAMINATA HOLDINGS, LLC, its general partner; and INWOOD FOREST GOLF AND COUNTRY CLUB, INC., jointly and severally (hereinafter collectively referred to as "Defendants"), and would show unto the Court the following:

I.

DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Level 2 of the Texas Rules of Civil Procedure 190.2.

## II.

### PARTIES

2. Plaintiff, INWOOD FOREST COMMUNITY IMPROVEMENT ASSOCIATION INC., is a non-profit corporation duly organized under the laws of the State of Texas.

3. Defendant, INWOOD FOREST PARTNERS, L.P., is a Texas limited partnership duly organized under the laws of the State of Texas and may be served with process, through its Registered Agent, Steven P. Otilar, 600 Travis Street, Suite 6200, Houston, Texas 77002, or wherever else he may be found.

4. Defendant, CAMINATA HOLDINGS, LLC, is an Ohio limited liability company, transacting business in the State of Texas and may be served with process through its Registered Agent, Steven P. Otilar, 600 Travis Street, Suite 6200, Houston, Texas 77002, or wherever else he may be found.

5. Defendant, INWOOD FOREST GOLF AND COUNTRY CLUB, INC., is a corporation duly organized under the laws of the State of Texas and may be served with process, through its Registered Agent, Mary Kay Green, 1116 Key Street, Houston, Texas 77009, or wherever else she may be found.

## III.

### VENUE/JURISDICTION

6. Venue is proper in Harris County, Texas, because it is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred. This case is within the jurisdictional limits of this Court, and this court has jurisdiction over this matter.

IV.

EXHIBITS

7. Exhibit "A": The Houston Post, dated Sunday, April 15, 1973;
8. Exhibit "B": Marketing Pamphlet marketing the Inwood Forest subdivision;
9. Exhibit "C": Map of Golf Course made the basis of this lawsuit;
10. Exhibit "D": Affidavit of Frances Roemer, sales representative for original builders;
11. Exhibit "E": Affidavit of Clymer Wright, current owner of property located in Inwood Forest;
12. Exhibit "F": Notice Letter provided by Inwood Forest Partners, L.P., notifying Plaintiff and its members that the Golf Course and County Club would be shut down;
13. Exhibit "G": Special Warranty Deed from Grantor to Inwood Forest Partners, L.P. conveying the Golf Course, consisting of Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11;
14. Exhibit "H": Plat for 8.31 Acres making up the Golf Club, Clubhouse, Driving Range, Pool, and Putting Green (hereinafter referred to as the "Golf Club");
15. Exhibit "I": Voluntary Restrictions requiring that Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, and the 8.31 Acres be generally used for "recreational, park, or open space use".
16. Exhibit "J": Plat of Parcel 6 evidencing the restriction "GOLF COURSE USE ONLY";
17. Exhibit "K": Notice to Purchaser providing notice that Parcel 6 is restricted to "GOLF COURSE USE ONLY";

18. Exhibit "L": First Re-Plat application submitted by Inwood Forest Golf and Country Club, Inc. to the City of Houston in an attempt to unilaterally and unlawfully remove the restrictive covenant on the 8.31 Acres making up the Golf Club;

19. Exhibit "M": Second Re-Plat application submitted by Inwood Forest Golf and Country Club, Inc. to the City of Houston in an attempt to unilaterally and unlawfully remove the restrictive covenant on the 8.31 Acres making up the Golf Club;

20. Exhibit "N": Unilateral attempt by Inwood Forest Partners to terminate the express restrictive covenant on the 8.31 Acres making up the Golf Club, which expressly provided "RECREATIONAL AND LANDSCAPING PURPOSES ONLY"; and

21. Exhibit "O": Affidavit of Arnold Morgan, former owner of Morgan Homes, Inc. and homebuilder in Inwood Forest.

## V.

### BACKGROUND

22. In the 1960s, developers such as J.G. Wilkerson, Inc., Metallic Building Co., York Development Company and La Marque Development Company (the "Developers"), developed a subdivision known as Inwood Forest (the "Subdivision") located in Harris County, Texas. The Developers, along with numerous homebuilders who constructed single-family residences therein, such as Merit Homes ("Merit"), Pacesetter Homes ("Pacesetter"), and Morgan Homes, Inc. ("Morgan Homes") (hereinafter collectively referred to as the "Builders"), marketed the Subdivision as being a golf course, country club community having a "picturesque country setting with city conveniences". [See Page 16/CG of Exhibit "A"] As evidenced by the Subdivision's Marketing Pamphlet, such city conveniences included, but was not limited to, a "27-hole championship golf

course” that “turns and twists *through* [emphasis added] the community...lined with beautiful trees and picturebook homes that bring you in touch with nature...” [See Exhibit “B”] Furthermore, the Developers and Builders marketed the Subdivision as having recreational facilities such as the Inwood Forest County Club (the “Country Club”), which included the clubhouse, half-way house, member’s dining room, men and women’s locker rooms, putting green, chipping green, pro-shop, cart storage facility, the parking lot, and a swimming pool for the exclusive use of the residents of the Subdivision and their guests. [See Exhibit “B”]

23. The Developers and Builders intended that the Country Club and the 27-hole championship golf course (the “Golf Course”) be the centerpiece and major selling point of its 750 acre Subdivision. As a matter of fact, and as evidenced by Exhibit “B” and Exhibit “C”, which are maps of the Golf Course, attached hereto and fully incorporated herein by reference, the Golf Course makes up approximately 224 acres of the entire Subdivision, and is not contiguous but is comprised of finger-like fairways that spread and meander throughout the Subdivision. As further evidenced by Exhibit “C” attached hereto, approximately thirty-five percent (35%) of the approximately one thousand, one hundred and fifty (1,150) homes located in the Subdivision have frontage on the Golf Course.

24. As evidenced by the affidavit of Frances Roemer, attached hereto as Exhibit “D” and fully incorporated herein by reference, who was a sales representative for Pacesetter and Merit between the years 1965 through 1976, Ms. Roemer sold approximately three hundred and sixty-seven (367) homes in total to residents in the Subdivision. She states in her affidavit, in relevant part:

...as an agent for Merit, I represented to prospective purchasers- many of whom became home owners in Inwood Forest-that the general plan for Inwood Forest was for a residential community built around and upon the Inwood Forest golf course, that Merit intended this general plan of development to benefit every home owner in Inwood Forest in some way, and that, by purchasing a Merit home in Inwood Forest, home owners [sic], wherever located, could experience the benefits of this general plan of development...

As evidenced by Frances Roemer's affidavit, even she purchased a "Golf Course Lot" from Merit thinking that it would be a good investment and that she could build her own home and enjoy the "beauty and privilege of living on the golf course". [See Exhibit "D"]

25. The Golf Course and Country Club scheme (the "Golf Course and Country Club Scheme") that was envisioned and marketed by the Developers, Builders and their sales representatives came to fruition with architect Jay Riviere designing the first nine (9) holes of the Golf Course. Thereafter, Jackson Bradley, a former golf-pro at River Oaks, designed the second nine (9) holes, and the third and final nine (9) holes was designed in 1970 by former BraeBurn golf pro Don Collett, making up the entire 27-hole Golf Course. Aside from the fact that the Golf Course consists of fairways lined with residences on both sides, the Golf Course is built around eleven (11) lakes, White Oak Bayou and Vogel Creek and features ninety (90) bunkers.

26. Based upon the Golf Course and Country Club Scheme that was promised by the Developers and Builders and the benefits and amenities that would be conferred to all the residents of the Subdivision and the residents' reliance thereon, many residents paid a premium for homes located in the Subdivision, and even more so for those who purchased residences fronting the Golf Course. [See Exhibit "D" and Exhibit "E", affidavits of Frances Roemer and Clymer Wright, respectively.]



27. As evidenced by the affidavit of Clymer Wright, a copy of which is attached hereto as Exhibit "E" and incorporated herein by reference, he purchased a golf course lot and built a home thereon in the Subdivision relying on the representations of his builder that the Subdivision was in fact a golf course community. Clymer Wright states in his affidavit that he paid a premium for his golf course lot and but for the representations that were made to him regarding the golf course country club scheme in the Subdivision, he would not have purchased a lot and constructed a home in the Subdivision.

28. As evidenced by the affidavit of Arnold Morgan, attached here as Exhibit "O" and fully incorporated herein by reference, who was the former owner of Morgan Homes, Morgan Homes built and sold approximately five hundred (500) homes in the Subdivision between 1963 and 1985. Arnold Morgan attests to the fact that, typically, each time Mischer, the developer in the Subdivision at the time, opened a new section of the subdivision for construction, Morgan Homes and Merit would draw for the right to purchase the lots therein. Morgan Homes would acquire half of the available lots abutting the golf course ("Golf Course Lots") in the Subdivision, and Merit would acquire the other half. Additionally, Morgan Homes would acquire half of the available non-Golf Course Lots, and Merit would acquire the other half. Arnold Morgan states, in relevant part, that:

*I paid Mischer a higher price for Golf Course Lots than for non-Golf Course Lots specifically because of their proximity to the Club's golf course. I did so in reliance on Mischer's representations that his general plan of development for Inwood Forest [i.e. Subdivision] was to build a golf course/country club residential community whose chief distinguishing characteristic was the Club and its golf course. Mischer's representations further indicated that his plan was that the Club and its golf course would be permanent features of Inwood Forest. This was essential to my purchasing lots from him since I*

*knew selling lots would be more difficult, if potential purchasers thought the Club and golf course might someday be removed, potentially devaluing their investment.* [emphasis added] To promote my homes to potential purchasers, I frequently ran advertisements in Houston's major newspapers pictorially and textually depicting Inwood Forest as a residential community centered on the Club and its golf course. When showing homes to potential purchasers, I regularly drove them to the Club to show them the facilities, especially the golf course. Sometimes, I treated potential purchasers to a meal at the Club as a way of giving them a taste of this key Inwood Forest amenity. In sum, I aggressively and consistently promoted the Club and its golf course to potential purchasers as a means of encouraging them to purchase my Inwood Forest homes and, in doing so, represented to them that the Club and its golf course were not only part of the general plan of Inwood Forest but that they were two of its permanent features.

29. Plaintiff and its members experienced unfettered enjoyment and use of the Golf Course and Country Club for several decades, and despite the fact that ownership of the Golf Course and Country Club changed hands throughout the years, the tradition of maintaining the Golf Course and Country Club Scheme and its amenities were upheld and recognized, without question, until recently.

30. On or about February 2, 2007, Plaintiff received a letter from Inwood Forest Partners, L.P. ("Inwood Forest Partners"), a copy of which is attached hereto as Exhibit "F" and fully incorporated herein by reference, who is the current owner of the Golf Course and Country Club, as evidenced by the Special Warranty Deed, a true and correct copy of which is attached hereto as Exhibit "G", respectively, and fully incorporated herein by reference. Such letter notified Plaintiff and its members, in relevant part, that Inwood Forest Partners were the new owner of the Golf Course and Country Club, and:

Effective 30 days from the post mark on this letter, Inwood Forest Country Club will be *permanently* [emphasis added] closed.

Inwood Forest Partners intended not only to close down the Golf Course and Country Club, but they intended to redevelop such areas for prohibited uses, such as, but not limited to, commercial and/or mix-uses, in violation of express covenants and equitable servitudes running with and encumbering the parcels made the subject of this lawsuit.

31. The Golf Course that Inwood Forest Partners is wrongfully attempting to shut down and redevelop is made up of eleven (11) parcels in total and legally described as follows:

**PARCEL ONE:**

BEING 24.7658 ACRES OF LAND SITUATED IN THE SAMUEL LEEPER SURVEY, A-522 AND THE B.B.B.&C. RR. CO. SURVEY, A-181, HARRIS COUNTY, TEXAS AND BEING ALL OF TRACT B, TRACT 22 AND TRACT 23 AS DESCRIBED IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS UNDER COUNTY CLERK'S FILE NUMBER N178735; SAID 24.7658 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.

**PARCEL TWO:**

BEING 22.2224 ACRES OF LAND SITUATED IN THE K. MORGAN SURVEY, A-573 AND THE B.B.B.&C. RR. CO. SURVEY, A-181, HARRIS COUNTY, TEXAS AND BEING TRACT 9, TRACT 19, TRACT 20 AND TRACT 21 AS DESCRIBED IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS UNDER COUNTY CLERK'S FILE NUMBER N178735; SAID 22.2224 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.

**PARCEL THREE:**

BEING 31.5383 ACRES OF LAND SITUATED IN THE B.B.B.&C. RR. CO. SURVEY, A-181 AND THE K. MORGAN SURVEY, A-573, HARRIS COUNTY, TEXAS AND BEING TRACT 9, TRACT 10, TRACT 17 AND TRACT 18 AS DESCRIBED IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS UNDER COUNTY CLERK'S FILE NUMBER N178735; SAID 31.5383 ACRES OF LAND BEING

MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.

**PARCEL FOUR:**

BEING 17.2191 ACRES OF LAND IN THE K. MORGAN SURVEY, A-573, HARRIS COUNTY, TEXAS AND BEING TRACT 5 AND TRACT 6 AS DESCRIBED IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS UNDER COUNTY CLERK'S FILE NUMBER N178735; SAID 17.2191 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.

**PARCEL FIVE:**

BEING 9.8173 ACRES OF LAND SITUATED IN THE K. MORGAN SURVEY, A-573 AND THE B.B.B.&C. RR. CO. SURVEY, A-181, HARRIS COUNTY, TEXAS AND BEING TRACT 3 AND TRACT 4 AS DESCRIBED IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS UNDER COUNTY CLERK'S FILE NUMBER N178735; SAID 9.8173 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.

**PARCEL SIX:**

BEING 52.7621 ACRES OF LAND SITUATED IN THE K. MORGAN SURVEY, A-572 AND THE B.B.B.&C. RR. CO. SURVEY, A-181, HARRIS COUNTY, TEXAS AND BEING TRACT 1, TRACT 2, TRACT 7 AND TRACT 24 AS DESCRIBED IN THE OFFICIAL PUBLIC RECORDS OF HARRIS COUNTY, TEXAS UNDER COUNTY CLERK'S FILE NUMBER N178735; SAID 52.7621 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.

**PARCEL SEVEN:**

BEING 28.4142 ACRES OF LAND SITUATED IN THE SAMUEL LEEPER SURVEY, A-522 AND THE B.B.B.&C. RR. CO. SURVEY, A-181, HARRIS COUNTY, TEXAS AND BEING TRACT 11 AND TRACT 15 AS DESCRIBED IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS UNDER COUNTY CLERK'S FILE NUMBER N178735; SAID 28.4142 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.

**PARCEL EIGHT:**

BEING 11.7291 ACRES OF LAND SITUATED IN THE SAMUEL LEEPER SURVEY, A-522, HARRIS COUNTY, TEXAS AND BEING TRACT 13 AS DESCRIBED IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS UNDER COUNTY CLERK'S FILE NUMBER N178735; SAID 11.7291 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.

**PARCEL NINE:**

BEING 7.8623 ACRES OF LAND SITUATED IN THE SAMUEL LEEPER SURVEY, A-522, HARRIS COUNTY, TEXAS AND BEING TRACT 14 AS DESCRIBED IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS UNDER COUNTY CLERK'S FILE NUMBER N178735; SAID 7.8623 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.

**PARCEL TEN:**

BEING 7.6774 ACRES OF LAND SITUATED IN THE SAMUEL LEEPER SURVEY, A-522 AND THE B.B.B.&C. RR. CO. SURVEY, A-181, HARRIS COUNTY, TEXAS AND BEING TRACT 16 AS DESCRIBED IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS UNDER COUNTY CLERK'S FILE NUMBER N178735; SAID 7.6774 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.

**PARCEL ELEVEN:**

BEING 12.8776 ACRES OF LAND SITUATED IN THE SAMUEL LEEPER SURVEY, A-522, HARRIS COUNTY, TEXAS AND BEING KNOWN AS TRACT 12 AS DESCRIBED IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS UNDER COUNTY CLERK'S FILE NUMBER N178735; SAID 12.8776 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.

The Golf Club that Inwood Forest Partners is improperly attempting to shut down and redevelop for commercial use is legally described as:

An 8.31 acre tract, more or less, being all Reserve "A", of Inwood Forest Golf and County Club Section One, an addition in Harris

County, Texas, according to the map or plat thereof recorded under Film Code No. 365041, of the Map Records of Harris County, Texas (the "8.31 Acre Tract").

32. As evidenced by the recorded plat for the 8.31 Acres which currently consists of the Golf Club, attached hereto as Exhibit "H" and fully incorporated herein by reference, the 8.31 Acres is expressly restricted to "RECREATIONAL AND LANDSCAPING PURPOSES ONLY". Such restriction ran with and encumbered the 8.31 Acres, currently consisting of the Golf Club, and was for the benefit of Plaintiff and its members.

33. As evidenced by the Voluntary Restrictions attached hereto as Exhibit "I", Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, were restricted and limited to "recreational, park, or open space use" until at least 1991, and a portion of Parcel 6 was, and currently is, expressly restricted to "GOLF COURSE USE ONLY", as evidenced by the recorded plat attached hereto as Exhibit "J". As further evidence of the express restriction on Parcel 6, on or about September 9, 1994, Inwood Forest Golf Club, Ltd., who was the owner of Parcel 6 at the time, provided notice to the purchaser by a recorded document entitled "Notice to Purchaser", a copy of which is attached hereto as Exhibit "K" and fully incorporated herein by reference, providing the purchaser of said Parcel 6 notice that such parcel was restricted to "GOLF COURSE USES ONLY". The Notice to Purchaser specifically provides that:

You are advised that, in the absence of a declaratory judgment that the referenced restrictions are no longer enforceable, the City of Houston may sue to enjoin a violation of such restrictions. [See Exhibit "K"]

34. Currently, the 8.31 Acres, which consists of the Golf Club, is expressly restricted to "RECREATIONAL AND LANDSCAPING PURPOSES ONLY", and Parcel 6, which makes up a portion of the Golf Course, is expressly restricted to "GOLF COURSE USES ONLY". These restrictions are evidenced in recorded plats. [See Exhibits "H" and "J"] Because the restrictions are

properly recorded, any grantee or purchaser of the Golf Club and Parcel 6 have constructive notice of the restrictions, and consequently, the above restrictions run with the land.

35. Aside from the fact that Parcel 6 and the Golf Club are encumbered by express restrictive covenants that run with the land, the Golf Course, consisting of Parcels 1, 2,3, 4, 5, 6, 7, 8, 9, 10 and 11, as a whole, and the Golf Club, are collectively part of a general plan of development which was a Golf Course and Country Club Scheme, that has been maintained, understood, accepted, relied upon and acted upon.

## VI.

### CAUSES OF ACTION

#### *Breach of Express and Implied Covenants or Equitable Servitudes*

36. Plaintiff incorporates paragraphs 22 through 35 herein by reference for all purposes. Despite the express covenants encumbering Parcel 6 and the Golf Club, despite the fact that the Golf Course and the Golf Club are part of a Golf Course Country Club Scheme that was reasonably relied upon by Plaintiff's members, and despite the fact that Inwood Forest Partners purchased the Golf Course and Golf Club with actual and constructive notice of the express restrictions and equitable servitudes thereon, Inwood Forest Partners has threatened and commenced to alter the use of the Golf Course and Golf Club for commercial and/or mix-uses, which is contrary to the Golf Course and Country Club Scheme of the Subdivision. On information and belief, Inwood Forest Partners is preparing to tear down and destroy the Golf Club which services the Golf Course, Plaintiff and its members. Furthermore, as of the date of filing of this lawsuit, Inwood Forest Partners have commenced tearing up the putting green which is part of the 8.31 Acres making up the Golf Club.

37. Inwood Forest Partners is in breach of express and implied restrictive covenants that run with and encumber the Golf Course and Country Club.

38. By virtue of the fact that Caminata Holdings, LLC ("Caminata"), is the general partner of Inwood Forest Partners, it is jointly and severally liable for Inwood Forest Partners' breach of express and implied restrictive covenants or equitable servitudes.

*Fraud/Conspiracy*

39. Inwood Forest Partners purchased the Golf Course and Golf Club from Inwood Forest Golf and Country Club, Inc. (the "Predecessor Owner"), who was the predecessor and owner of the Golf Course and Country Club, on February 1, 2007. On information and belief, on December 4, 2006, and again on January 8, 2007, immediately prior to the Predecessor Owner conveying the Golf Course and Golf Club to Inwood Forest Partners, the Predecessor Owner unilaterally and unlawfully attempted to re-plat the 8.31 Acres making up the Golf Club in order to remove the "RECREATIONAL AND LANDSCAPING PURPOSES ONLY" restriction. Said application was not approved, and prior to the rendition of a decision by the City of Houston Planning and Development Commission, the Predecessor Owner withdrew the re-plat application. On information and belief, the Predecessor Owner conspired with Inwood Forest Partners to attempt to remove the restrictive covenant on the Golf Club, and had every intention of doing same prior to its conveyance of the Golf Club, as evidenced by the re-plat applications attached hereto as Exhibits "L" and "M". The Predecessor Owner knew or had reason to know that Inwood Forest Partners had no intention of maintaining and supporting the Golf Course and Country Club Scheme that was promised, understood, accepted, relied upon, acted upon and binding upon Developers, Builders, owners, Plaintiff and its members. Notwithstanding, the Predecessor Owner unlawfully put in motion the very act that Inwood Forest Partners is now attempting to follow through with, destroying the Golf Course and Golf Club and redeveloping same for commercial and mix-uses that are contrary to express and implied covenants thereon.



40. The Predecessor Owner's actions and/or omissions are fraudulent. As a result of such fraud, Plaintiff seeks the maximum amount of exemplary damages from Predecessor Owner as provided by TEX. CIV. PRAC. & REM. CODE § 41.008.

41. Inwood Forest Partners unilaterally attempted to terminate the express restrictive covenant on the 8.31 Acres making up the Golf Club, which stated "RECREATIONAL AND LANDSCAPING PURPOSES ONLY", by filing a Termination of Restriction with the Harris County Real Property Records, as evidenced by Exhibit "N" attached hereto and fully incorporated herein by reference. Inwood Forest Partners' actions and/or omissions are fraudulent. As a result of such fraud, Plaintiff seeks the maximum amount of exemplary damages from Inwood Forest Partners as provided by TEX. CIV. PRAC. & REM. CODE § 41.008.

42. By virtue of Caminata being the general partner of Inwood Forest Partners, Plaintiff seeks the maximum amount of exemplary damages from Caminata as provided by TEX. CIV. PRAC. & REM. CODE § 41.008.

43. Such damages sought by Plaintiff against Defendants are within the jurisdictional limits of this court.

#### INJUNCTIVE RELIEF

44. Plaintiff asserts that the aforementioned violations of express and implied restrictive covenants detrimentally affect and continue to affect Plaintiff and its members, the values and amenities of the Subdivision, and property values. Inwood Forest Partners and Caminata's violations are clear, distinct, continuing, and harmful, and as such, Plaintiff is entitled to temporary and permanent mandatory injunctive relief. Plaintiff is without an adequate remedy at law.

## CONDITIONS PRECEDENT

45. All conditions precedent to filing this suit and Plaintiff's right to recovery have been performed or have occurred.

## VII.

### DECLARATORY RELIEF

46. Plaintiff seeks a declaratory judgment, pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, declaring that the Golf Course and Country Club are part of a Golf Course and Country Club Scheme or general plan that creates an equitable servitude thereon for the benefit of Plaintiff and its members, that is binding upon Inwood Forest, Caminata and their successors and assigns, and is enforceable by Plaintiff. Furthermore, Plaintiff seeks a declaratory judgment declaring that the Golf Club and Parcel 6 have an express restrictive covenant thereon that is binding upon Inwood Forest, Caminata and their successors and assigns. In such regards, Inwood Forest and Caminata are precluded from engaging in any act that would alter or change the use of the Golf Course or Golf Club for anything other than such uses without Plaintiff's consent.

### DAMAGES

47. As a result of Defendants' violations of express and implied restrictive covenants, Plaintiff was forced to retain the legal services of Hoover Slovacek LLP. Plaintiff is entitled to recover all reasonable costs and attorney's fees incurred in connection with the prosecution of this lawsuit pursuant to §5.006 of the Texas Property Code. In addition, Plaintiff is entitled to its reasonable and necessary attorneys' fees and costs pursuant to §37.009 of the Texas Civil Practice & Remedies Code. Finally, Plaintiff is entitled to its reasonable and necessary attorneys' fees against Defendants for their breach of contract to which Plaintiff was the beneficiary pursuant to §38.001 of the Texas Civil Practice & Remedies Code. In addition, §202.004(c) of the Texas

Property Code allows for statutory damages of up to \$200.00 per day for each day of the violation. As such, Plaintiff requests this Court grant it statutory damages against Inwood Forest Partners and Caminata for each day of each violation of express and implied restrictive covenants.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, INWOOD FOREST COMMUNITY IMPROVEMENT ASSOCIATION, prays that Defendants, INWOOD FOREST PARTNERS, L.P.; CAMINATA HOLDINGS, LLC, its general partner; and INWOOD FOREST GOLF AND COUNTRY CLUB, INC., jointly and severally, be cited to appear, and prays that this Court award Plaintiff:

- a. A temporary and permanent injunction against Inwood Forest Partners and Caminata, precluding them from engaging in any act and or omission that would change or alter the use of the Golf Course or Golf Club for said uses;
- b. A temporary and permanent injunction requiring Inwood Forest Partners and Caminata to properly maintain the Golf Course and Golf Club;
- c. A declaratory judgment declaring that the Golf Course and Country Club, which is inclusive of the Golf Club, are part of a Golf Course and Country Club Scheme or general plan that creates an equitable servitude thereon that is for the benefit of Plaintiff and its members and that is binding upon Inwood Forest Partners, Caminata and their successors and assigns;
- d. A declaratory judgment declaring that the Golf Club and Parcel 6 have an express restrictive covenant thereon that is binding upon Inwood Forest Partners, Caminata and their successors and assigns;
- e. A declaratory judgment that Inwood Forest and Caminata are precluded from engaging in any act or omission that would alter or change the use of the Golf Course or Golf Club for anything other than said uses without Plaintiff's consent;
- f. Statutory damages in the amount of \$200.00 per day for violations of express and implied restrictive covenants until the Date of Judgment;
- g. Reasonable and necessary attorney's fees;

- h. Pre-Judgment interest at the rate of six percent (6%) per annum and Post-Judgment interest at the highest rate allowed by law; and
- i. Such other and further relief, at law or in equity, to which Plaintiff may show itself justly entitled.

Respectfully submitted,

**HOOVER SLOVACEK, L.L.P.**

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