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RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (the "Agreement") is entered into as of the ____ day of October, 1988, by and between THE CHESTNUT PARTNERSHIP ("Chestnut"), party of the First Part, and the RUXTON-RIDERWOOD-LAKE ROLAND AREA IMPROVEMENT ASSOCIATION, INC. (the "Association"); the ADVISORY BOARD established in accordance with Section 432.3.F of the Baltimore County Zoning Regulations (the "Advisory Board"); and the members of the Advisory Board whose names are subscribed hereto as individual property owners (the "Neighbors"), parties of the Second Part.

RECITALS:

A. The Institute of Mission Helpers of Baltimore City, Inc. (the "Mission Helpers") is a non-profit religious Order and the legal owner of a tract of land (the "Land"), containing approximately 45.71 acres, located on the south side of West Joppa Road, between Greenwood Road and Chestnut Avenue, in the Fourth Councilmanic District of Baltimore County, Maryland, which tract is more particularly described in a deed recorded among the Land Records of Baltimore County in Liber 5060, folio 0334. The Land is currently improved, consisting of the convent and associated facilities of the Mission Helpers.

B. The Land is currently zoned DR 2 in its entirety.

C. The Mission Helpers have contracted to sell approximately 40.92 acres of the Land ("Parcel B") to Chestnut, so that Chestnut may develop thereon a continuing care facility (the "Community").

D. The Mission Helpers will retain approximately 4.79 acres of the Land ("Parcel A" on Exhibit A) for the construction of a new convent and associated facilities that will continue to serve as the headquarters of the Order. Chestnut has entered into a contract with the Mission Helpers, provisions of which include the responsibility of Chestnut to determine the compatibility of the new convent to be constructed with the Community. The parties have met with the Planning Director of Baltimore County and have been advised that it is his recommendation that the convent facility not to exceed 50,000 square feet nor shall the facility exceed two stories in height except on the southern side of said buildings due to the sloping nature of the ground, a third story would be acceptable. He has further determined that a 75 foot setback consistent with RTA requirements would be appropriate for the convent site. As a result, Chestnut has agreed that construction of a new convent facility in excess of 50,000 gross square footage and two stories as defined above would be incompatible with the Community and would so exercise that judgment in their Agreement in their contract with the Mission Helpers.

E. In pursuance of its intention to develop the Community on Parcel B, Chestnut filed Petitions for Special Exception and Zoning Variance with the Zoning Commissioner of Baltimore County. The Petitions for Special Exception and Variance, authorized by Baltimore County Council Bill No. 36-88, sought approval to locate a continuing care facility in a DR zone and approval of a residential density of approximately nine (9) density units per acre as well as a height variance. The parties of the Second Part appeared in opposition to the Petitions. The Petitions were denied by the Zoning Commissioner on September 13, 1988. Chestnut filed an appeal from that decision to the Board of Appeals of Baltimore County on October 11, 1988.

F. On September 8, 1988 the Baltimore County Review Group (CRG) approved at a public hearing, the Towson Life Care Community Plan (8814IX-522) over objection of the parties of the Second Part. The parties of the Second Part filed an appeal to the Baltimore County Board of Appeals on October 6, 1988. In addition to the matters pending before the Baltimore County Board of Appeals, this project is currently scheduled for a hearing before the Baltimore County Planning Board.

G. The Association is an incorporated association of Baltimore County residents interested in the character and quality of life of residential areas in the vicinity of the

Community, and the Advisory Board is a body established in accordance with Section 432.3.F of the Baltimore County zoning Regulations (as amended by County Council Bill No. 36-88) to provide for a system of community participation in connection with the Community. The Association, the Advisory Board, and certain individual members of the Association and/or the Advisory Board protested the CRG Plan, as well as the Petitions for Special Exception and Zoning Variance, for the reasons expressed during the hearing.


H. The parties of the Second Part are all willing to support the Community if Chestnut agrees to the covenants and restrictions set forth herein.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual agreements and understandings contained in this Agreement, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Community Scope. The Community shall be limited in scope, size and location, as set forth on the site plan, Exhibit A, which is attached to and hereby made a part of this Agreement, as follows:

- a. The Community shall contain no villa units.
- b. The Community shall contain no more than two hundred eighty (280) residential living units (exclusive of health care center beds and convent units). The parties




understand that a new convent will be constructed on Parcel A, Exhibit A and they agree that if, at some future date within the term of this Agreement, the Mission Helpers cease to use the new convent and Parcel A, Parcel A may be added to the Community in accordance with the approved CRG Plan and converted into a maximum of forty (40) additional residential living units.

c. The Community shall contain no more than four hundred forty-nine (449) residents based upon a factor of 35% double occupancy rate (including residents of the health care center, but not including residents of any convent units).

Upon conversion of Parcel A to additional residential living units, the maximum number of residents shall be increased by a total of sixty-two (62).

d. The two Phase I residential buildings ^(A+C) fronting on Joppa Road shall not exceed a height of five (5) stories as designated on Exhibit A.

e. The remaining one Phase I building and the three Phase II residential buildings shall not exceed a height of six (6) stories not to exceed 60 feet, as designated on Exhibit A.

 f. Reasonable adjustments in the location of buildings, parking and other features of the Community shall be permitted upon the direction and approval of the Director of Planning for Baltimore County, it being the intention of all

parties to maximize the retention of existing trees and vegetation on the Land and to permit a degree of flexibility in addressing the nature and constraints of the site, appropriate governmental building standards and requirements and the needs of the elderly residents.

g. It is further the intention of the parties in this Agreement to state their desire to preserve existing trees, vegetation, wetlands and open space for the benefit of all parties.

2. Use and Term Limitation.

a. The Community shall be used solely for the development and operation of a continuing care facility as defined in the Baltimore County Zoning Regulations Section 432.1.B.3 from the date of this Agreement and continuing for a period of twenty-five (25) years from the date of the recording of this Agreement.

b. That portion of the Community, Exhibit A, Parcel B, lying south of the internal roadway and identified as Cemetery Road, shall remain as open space and shall be used solely for recreation, golf holes, non-lighted tennis courts or similar recreational activities for the exclusive use of residents of the Community and their guests for a period of fifty (50) years from the date of this Agreement. The parties agree that this portion of Parcel B shall not be subdivided and shall be used only in conjunction with the use authorized for the whole of parcel B during that period. It is further

agreed that there will be no parking permitted, no buildings nor structures nor paving of any sort constructed on that portion of Parcel B or permitted other than what is shown on Exhibit A during that period. The parties further agree that there shall be no lighting of any of the activities permitted on this portion of Parcel B.

3. Board of Appeals; Planning Board; and Final Development Plan. It is the intention of the parties to this Agreement to resolve their differences which occurred at the CRG and before the Zoning Commissioner, by agreeing to consolidate the appeals of both parties into one proceeding before the Board of Appeals and to jointly submit a Consent Order to the Board of Appeals for its approval, which Order shall be in substantially the form attached hereto as Exhibit D and made a part hereof.

Both parties agree to submit this Agreement and its accompanying Exhibits to the Planning Board for Baltimore County as required by the County Review Group. All terms and conditions of this Agreement shall be included on the Final Development Plan submitted to Baltimore County by Chestnut.

4. Appearance. The appearance and character of the buildings to be constructed on Parcel B shall conform substantially to the schematic drawings included in the Project Description document for the "Towson Life Care Community," prepared by Chestnut and dated July 25, 1988.

The Advisory Board shall be advised of any noticeable modification to the architectural drawings of the project in order to permit comments from the Board concerning reasonable compatibility with the general architectural design of the community. This provision is not intended to grant the right of veto over modifications to the Advisory Board.

b)

5. Road Improvements, etc. Baltimore County has recommended certain road and intersection improvements to Greenwood Road, Chestnut Avenue, and Joppa Road, as described by the County in the CRG review. Chestnut and the Association and Advisory Board shall join in applying for all available waivers of those requirements; provided that success of such application or applications for waivers is not a condition of this Agreement. The parties agree solely to cooperate in obtaining such waivers, if the waivers are reasonably and economically obtainable. The parties shall also cooperate on the matters described in the Schedule attached hereto as Exhibit B and hereby made a part hereof (all of said matters being beyond the direct control of any of the parties).

6. Traffic Light. Chestnut and the Association and Advisory Board shall join in a request to Baltimore County authorities for the installation of a traffic light at the main entrance to the Community on Joppa Road. If the County approves the request for installation of such a traffic light, Chestnut hereby agrees to bear the cost thereof.

inserted by
add. III
13.6 p.5
plantings
morewood

7. Other Agreements. The parties have also reached agreement, on certain additional terms and conditions that are set forth in the schedule attached hereto as Exhibit C and hereby incorporated and made a part of this Agreement as if they were specifically set forth herein.

8. Association and Advisory Board Support. The Association, the Advisory Board, and the individual members of the Advisory Board whose names are subscribed hereto shall support the Community subject to the terms and conditions ^{of this agreement, its addenda} ~~I, II + III and the Exhibits attached thereto~~ described above and in Exhibit A, in any and all proceedings that may be necessary to obtain required governmental approvals therefor; provided, however, that they reserve the right to protest any changes in plans for the Community that are not ^{its addenda I, II and III and the Exhibits attached thereto} consistent with this Agreement and ~~its Exhibits.~~

deleted by Add 3 p. 5

9. Term. The covenants, restrictions, and conditions stated herein shall commence from the date of this Agreement and shall continue for twenty-five years (25) from the date of the recording of this Agreement. The provisions of Paragraph 2.b. Use and Term Limitation, shall commence from the date of this Agreement and shall continue for fifty (50) years from the date of the recording of this Agreement.

10. Binding Effect and Recordation. The terms and conditions of this Agreement shall become effective and binding upon the parties, on the date and at the time of the execution of this Agreement. This Agreement shall immediately bind

Chestnut to the full extent of its equitable interest as contract purchaser of the land; as soon as Chestnut takes legal title to the land in accordance with the Land Purchase Agreement between the Mission Helpers and Chestnut, this Agreement shall be recorded among the Land Records of Baltimore County, Maryland, and the same shall run with and be binding upon the land, and upon all present and future owners thereof, and shall inure to the benefit of each of the parties respectively, their successors and assigns.

The cost of recording this Agreement shall be borne by Chestnut.

11. Conditions Subsequent. In the event, that any of the following conditions do not occur, then this Agreement shall terminate and have no further force or effect, and the parties thereto shall be relieved from any and all obligations:

1. The entry of a Consent Order by the County Board of Appeals or the Zoning Commissioner of Baltimore County, which Order shall be in substantially the form attached hereto as Exhibit D.

2. The expiration of the time for appeal from such Consent Order without challenge or appeal of any kind having been taken by any person or entity whatsoever.

3. The final and satisfactory resolution of all other proceedings or appeals related to the approval of the development of the Community under the Baltimore County Zoning

and Development Regulations. (Resolution of such proceedings or appeals shall be deemed "satisfactory" if it permits the development of the Community in a manner that is consistent with all other terms of this Agreement).

4. If, prior to December 31, 1993, or the application for a grading or building permit by Chestnut, whichever occurs first, Chestnut deems it infeasible for any reason, economic or otherwise to proceed with the development of the Community. In the event of termination of this Agreement, under this provision, Chestnut and its successors, waive and forever relinquish the right to proceed under any special exceptions, variances, or other development and zoning approvals that they have obtained at the time with the cooperation of the parties of the Second Part. Future subdivision, use, and development of the Land shall be governed by the Zoning and Development Regulations then applicable to the Land, as if no such zoning and development approvals have been given.

12. Amendments. This Agreement may be amended by a written instrument in recordable form, executed by Chestnut, and by the Advisory Board after a favorable vote of 3/4 of the Board or their successors.

13. Authority. The parties warrant and represent that they have taken all necessary action required to be taken by their respective charters, by-laws, or other organizational documents to authorize the execution of this Agreement.

14. Entire Agreement. This Agreement, which may be executed in counterparts, contains the entire understanding of the parties.

15. Voluntary Act. Each of the parties warrants that it has carefully read and understands this Agreement, is cognizant of the terms hereof, and has had ample time to consult with counsel of its choice regarding its respective rights and obligations in connection herewith.

16. No Waiver. Failure, in any instance, to enforce any of the covenants, restrictions, and conditions contained in this Agreement, shall in no event constitute a waiver or estoppel of the right to enforce the same or any other covenant, restriction, or condition in the event of another violation occurring prior or subsequent thereto. In the event any one or more of the covenants, restrictions and conditions herein contained should for any reason be declared invalid, the remaining covenants, restrictions or conditions shall continue in full force and effect.

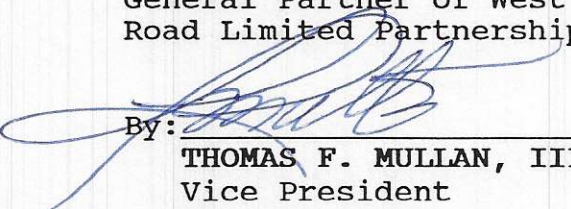
17. Definitions. All terms used herein are to be defined and construed pursuant to the definitions and provisions of the Baltimore County Zoning Regulations and Development Regulations in existence at the date of this Agreement.

18. Enforcement. If any party to this Agreement, or any party's successor, is required to institute legal action to enforce the terms of this Agreement, and is successful thereafter (whether by judgment or by settlement) in obtaining enforcement of the Agreement, that party or successor shall be entitled to recover reasonable attorneys' fees and court costs of the action from the person or entity against whom enforcement is obtained. However, as a prerequisite to the recovery of fees under this paragraph, the person or entity seeking enforcement shall serve the alleged violator of the Agreement with written notice of the violation, and only if the alleged violator has failed to remedy or to make substantial progress toward remedying the violation within sixty (60) days after receipt of this notice may legal action be instituted.

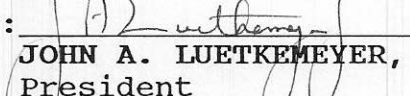
ATTEST:

THE CHESTNUT PARTNERSHIP
By West Joppa Road Limited
Partnership

A General Partnership of the
Chestnut Partnership
By Foxleigh Enterprises, Inc., a
General Partner of West Joppa
Road Limited Partnership

By:  (SEAL)
THOMAS F. MULLAN, III
Vice President

By Continental Life Care Corp., a
General Partner of West Joppa
Road Limited Partnership

By:  (SEAL)
JOHN A. LUETKEMEYER, JR.
President

By Chestnut Village, Inc., a
General Partner of the
Chestnut Partnership

By: _____ (SEAL)
STEPHEN J. HOOVER
Vice President

**RUXTON-RIDERWOOD-LAKE ROLAND AREA
IMPROVEMENT ASSOCIATION, INC.**

By: _____ (SEAL)
_____, President

Section 432.3.F ADVISORY BOARD

By: Gail B. O'Donovan (SEAL)
GAIL B. O'DONOVAN, Chairman

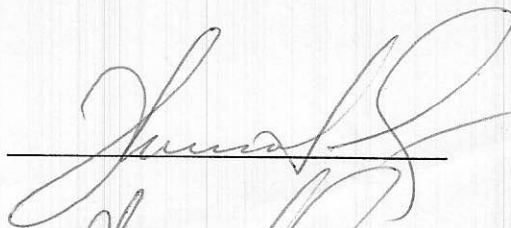
By: Dawson L. Farber, Jr. (SEAL)
DAWSON L. FARBER, JR.
614 Chestnut Avenue

By: Erwin W. Huber (SEAL)
ERWIN W. HUBER
620 Chestnut Avenue

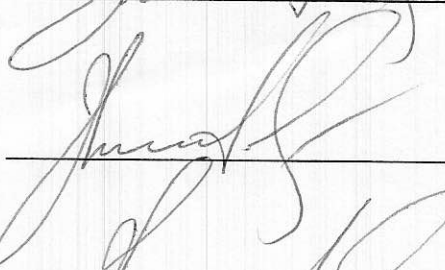
By: Herbert B. Mittenenthal (SEAL)
HERBERT B. MITTENTHAL
507 Chestnut Avenue

By: Gail B. O'Donovan (SEAL)
GAIL B. O'DONOVAN
600 Greenwood Road

By: Howard Ritter, Jr. (SEAL)
HOWARD RITTER, JR.
623 Chestnut Avenue



By: Elizabeth Sexton (SEAL)
ELIZABETH SEXTON
600 Chestnut Avenue



By: Gordon B. Shelton (SEAL)
GORDON B. SHELTON
500 Greenwood Road



By: Mary R. Wolfe (SEAL)
MARY R. WOLFE
602 Chestnut Avenue