

Rule Against
Perpetuities?

RECEIVED
SIGNED
ASSIGNED
DATE 3/24/92
DATE 3/24/92
DATE 3-24-92
ACK

AGREEMENT OF RESTRICTIONS AND PURCHASE OPTION

THIS AGREEMENT made and entered into as of this 23rd day of March, 1992, by and between THE INSTITUTE OF MISSION HELPERS OF BALTIMORE CITY, a Maryland corporation ("Owner") and THE CHESTNUT REAL ESTATE PARTNERSHIP, a Maryland general partnership ("Developer").

WITNESSETH

WHEREAS, Owner is the owner of that certain real property located at 1001 West Joppa Road, Baltimore County, Maryland, consisting of approximately four and one-half (4.5) acres, more or less, and particularly described on Exhibit A hereto and incorporated herein by reference (the "Premises") having heretofore sold to the Developer a certain parcel of land adjacent to the Premises containing forty and one-half (40.5) acres, more or less, (the "Developer Premises"), more particularly described on Exhibit B attached hereto and incorporated herein by reference, on which the Developer intends to construct a life care facility (the "Project");

AND WHEREAS, the Owner, as additional consideration to the Developer, has agreed to encumber the Premises in order to facilitate the Developer's intended construction of the Project and to grant to the Developer an option to purchase the Premises according to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, Owner and Developer agree as follows:

1. Restrictions.

(a) For so long as the Developer Premises are used as the Project (including any period of development, construction or reconstruction), Owner shall not construct any structure on the Premises (i) the exterior of which is architecturally incompatible (in terms of design features, colors or materials) with the improvements located on the Premises as of the date hereof or (ii) the location of which on the Premises would violate any set-back restrictions including such set-back restrictions in the residential transition zone (such set-back to be not more than fifty (50) feet) that would pertain to the common boundary of the Premises and the Developer Premises as of the date hereof, as if the Owner were not exempt from such restrictions because of Owner's status as a religious institution or for any other reason. For purposes of this Agreement, a structure shall be considered architecturally incompatible if the exterior design or any exterior features are materially at variance (in terms of design features,

D RC/F 42.00
DC IMP 2.00
ACRMT 0
44.00
102 114:2
03/24/92

colors or materials) with the exterior of the improvements located on the Premises as of the date hereof.

(b) Owner shall provide to Developer, promptly after they become available to Owner, preliminary plans and schematic drawings ("Owner's Preliminary Plans") which describe the proposed exterior features of Owner's proposed structures for the Premises, their respective location upon the Premises, including the proposed County Review Group and Development Plans for the Premises. If Developer shall object to the exterior features of such structures as being architecturally incompatible with the improvements now existing on the Premises, or the location of any such improvements, it shall so advise Owner in writing within fifteen (15) days from receipt of Owner's Preliminary Plans stating what specific aspects of Owner's Preliminary Plans Developer claims are incompatible with the existing improvements, and shall, within thirty (30) days from receipt of Owner's Preliminary Plans, provide the Owner with reasonable alternatives that would be acceptable to the Developer. If no such objection is received by Owner within the foregoing fifteen (15) day period, the Owner's Preliminary Plans shall be deemed approved. After approval by the Developer of the Owner's Preliminary Plans Owner shall provide to Developer, not less than thirty (30) days prior to commencing construction on the Premises, final plans and working drawings ("Owner's Final Plans") which shall include, without limitation, any revisions to the information provided by Owner's Preliminary Plans. If Developer shall object to any aspect of Owner's Final Plans as being architecturally incompatible with the existing improvements on the Premises or the location of the Owner's improvements, it shall so advise Owner in writing within fifteen (15) days from the receipt of Owner's Final Plans stating what specific aspects of Owner's Final Plans Developer claims are incompatible and shall, within thirty (30) days from receipt of Owner's Final Plans, provide Owner with reasonable alternatives that would be acceptable to the Developer; provided that Developer shall be entitled to object only to an aspect of Owner's Final Plans that represents a material change from Owner's Preliminary Plans. If no such objection is received by Owner within such thirty (30) day period, the Owner's Final Plans shall be deemed approved, and Owner shall be entitled to construct the structures reflected on the Owner's Final Plans without any further approval or consent by Developer.

(c) If Developer shall object to Owner's Final Plans, Developer and Owner shall in a bona fide manner, using their respective commercially reasonable efforts, for a period of thirty (30) days, review the Owner's Final Plans and attempt to resolve the question of whether the Owner's Final Plans satisfy the standards of paragraph 1(a) hereof. Unless an agreement is reached as to the acceptability of Owner's Final Plans within such thirty (30) day period, Owner shall not construct any improvements upon the Premises unless or until it shall have received a court order entitling it to so construct or Owner and Developer shall have

reached an accord as to the Owner's Final Plans. However, the Owner shall then be entitled to seek a declaratory judgment or such other appropriate relief in a court of competent jurisdiction that would allow Owner to construct the improvements to which the Developer objected upon the grounds that the Owner's Final Plans were architecturally incompatible with the improvements now existing on the Premises; provided, however, that Owner shall file any such action no later than six (6) months after the expiration of the thirty (30) day period hereinabove described in this paragraph 1 (c). If the Owner seeks such relief, the prevailing party in such an action shall be entitled, in addition to other remedies, to reimbursement for the costs of the suit, including, without limitation, reasonable attorneys' fees.

2. Purchase Right.

(a) For so long as the Developer Premises are used as the Project (including any period of development, construction, or reconstruction), Developer is granted the option right to purchase the Premises with all improvements thereon should Owner elect to sell the Premises. Such right shall be upon the terms, provisions and conditions hereinafter set forth. For the purposes of this paragraph 2, the election by the Owner to sell the Premises shall be deemed to include, without limitation, the corporate decision or election to sell, listing for sale or otherwise marketing the Premises for sale, the receipt by Owner of an offer to purchase the Premises, or the election to enter into, or the receipt of an offer of, a ground lease of the Premises which the Owner is willing to accept. If Owner elects to sell the Premises, Owner shall notify Developer of its election and of the identity of an appraiser for the purpose of determining the fair market value of the Premises. Developer shall have fifteen (15) days to appoint an additional appraiser, and the two (2) appraisers so appointed shall then jointly select a third appraiser within seven (7) days from the appointment of the second appraiser. The three (3) appraisers shall collectively establish the fair market value for the Premises based upon a cash sale. The foregoing fair market value of the Premises shall be determined by the three appraisers within thirty (30) days from the selection of the third appraiser and delivered to the Owner and Developer in accordance with paragraph 4 hereof. (If Developer fails to select a second appraiser, the appraiser selected by the Owner shall alone determine the fair market value of the Premises within thirty (30) days from the expiration of the fifteen (15) day period during which Developer failed to select a second appraiser.)

(b) For a period of fifteen (15) days after receipt of the determination of the fair market value of the Premises as described in paragraph 2(a) above, the Owner shall have the right to accept or reject such determination of fair market value by written notice to the Developer. Failure on the part of the Owner to notify the Developer of its rejection of the fair market value

shall be deemed an acceptance thereof. If Owner rejects the fair market value determined by the appraiser(s) Owner shall not be required to sell or offer for sale the Premises.

(c) Owner shall have the right at any time to offer for sale the Premises provided that Developer shall have a right of first refusal with respect to any offer received by Owner for the Premises except for a sale in accordance with Section 2(d) hereof. Except as provided in Section 2(d) hereof, Owner shall be prohibited from selling the Premises unless it receives a bona fide third-party offer to purchase the Premises ("Offer") and gives Developer notice of that offer and of all the terms and conditions thereof. Owner shall give Developer written notice of the terms and conditions of the proposed sale of the Premises in the form of a proposed agreement (the "Proposed Agreement"), and Developer shall have fifteen (15) days after receipt of such Proposed Agreement to accept or reject the right to purchase to the Premises upon such terms. Developer shall exercise such rights by returning to Owner two (2) executed copies of the Proposed Agreement in the form presented by Owner within such fifteen (15) day period. If Developer does not elect to purchase the Premises upon such terms within such fifteen (15) day period, then Owner, for a period of ninety (90) days after the termination of such initial fifteen (15) day option, shall be free to sell the Premises to the other offering party upon identical terms to those set forth in the Proposed Agreement. Owner shall not sell the Premises to any party other than the other offering party nor upon terms that are not identical to those offered to Developer in the Proposed Agreement without first notifying Developer in writing. Upon receipt of such a notice, Developer shall have the right for seven (7) business days after receipt of any such notice to purchase the Premises on such new terms.

(d) If Owner accepts the fair market value determined by the appraiser(s), Owner shall give Developer written notice of the terms and conditions of the proposed sale of the Premises in the form of a proposed agreement (the "Proposed Agreement"). Developer shall have thirty (30) days after receipt of such Proposed Agreement to accept or reject the right to purchase the Premises upon such terms. Developer shall exercise such rights by returning to Owner two (2) executed copies of the Proposed Agreement in the form presented by Owner within such thirty (30) day period. If Developer does not elect to purchase the Premises upon such terms within such thirty (30) day period, then Owner, for a period of one hundred and eighty (180) days after the termination of such initial thirty (30) day option, shall be free to sell the Premises to any other offering party upon terms not materially different from those set forth in the Proposed Agreement. Owner shall not sell the Premises upon terms materially different from those offered to Developer in the Proposed Agreement without first notifying Developer in writing. Upon receipt of such a notice, Developer shall have the right for fifteen (15) days

after receipt of any such notice to purchase the Premises on such new terms. If Owner fails to sell the Premises within the foregoing one hundred and eighty (180) day period, Owner shall be prohibited from selling the Premises thereafter without first complying with all of the provisions of this paragraph 2, including the initial selection of an appraiser for the purpose of determining the fair market value of the Premises.

3. Cooperation: Restrictions.

(a) Developer and Owner shall cooperate reasonably in connection with the proposed land use restrictions such as zoning which may be applicable to the Premises and to the Developer Premises to allow each party to utilize its property for the purposes presently contemplated. The Developer shall use the Developer Premises as the Project, and Owner shall utilize the Premises as a convent and motherhouse center for a religious order and for no other purposes. Notwithstanding any other provision herein to the contrary, the provisions of this paragraph 3(a) shall bind only Developer and Owner and not any successors or assigns thereof.

(b) For so long as the Developer Premises are used as the Project (including any period of development, construction or reconstruction):

(i) The Owner shall not use the Premises, or cause or allow the Premises to be used for a public purpose or use, in any manner which would be incompatible with the Project on the Developer Premises without the prior written consent of the Developer, which consent shall not be unreasonably withheld. Nothing herein contained shall prohibit the continued use of the Premises by the Owner, no more than twice during any calendar year, for fund raising events open to the public in the nature of crab feasts, oyster or bull roasts, etc.

(ii) The Premises shall not be used for any commercial or business use (other than the solicitation by mail by the owner of funds for religious purposes), nor shall the Premises be used for multi-family residential purposes, a half-way house, a nursing home, or any other residential use except as a convent or as a single-family residence. The Owner shall not rezone or cause or allow the Premises to be rezoned to any other use, without the prior written consent of the Developer.

NOTE

4. Notices. All notices and other items required to be given or delivered under this Agreement shall be in writing and shall be delivered or addressed to Owner c/o Sister Danielle Murphy, President, Institute of Mission Helpers of Baltimore City, 1001 West Joppa Road, Towson, Maryland 21204, with a copy to Susan F. Kramer, Esquire, Patton, Boggs and Blow, 250 West Pratt Street, Baltimore, Maryland 21201; and to Developer at 1700 West

Pennsylvania Avenue, Baltimore, Maryland 21204, Attn: Mr. John A. Luetkemeyer, Jr. with a copy to J. Michael Brennan, Esquire, Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson, Maryland 21204, or such other addresses as Owner or Developer may from time to time designate in writing. Except as otherwise set forth in this Agreement, notices shall be considered given when hand delivered or, if mailed two (2) days after mailing by certified or registered mail, return receipt requested, or one (1) day after having been sent by Federal Express or similar express overnight delivery service.

5. Successors and Assigns. The benefits and burdens of this Agreement shall bind and inure to the benefit of any successor or assign of the Owners of the Premises and the Developer Premises, respectively, and shall be a covenant which runs with the land. No third party (other than one who shall become an owner of the Premises and the Developer Premises respectively) shall have any rights, remedies or obligations on account of this Agreement.

6. Enforcement. The parties hereto agree that the development of the Premises and the Developer Premises, respectively, will depend upon the mutual compliance with the terms of this Agreement, that the terms of this Agreement are special and unique, and that damages cannot adequately compensate the party in the event of any breach or default under this Agreement by the other party. Accordingly, in the event of any actual or threatened breach to the party hereto, the other party shall be entitled to injunctive or other appropriate relief compelling performance of the terms of this agreement or restrain any action in violation of the terms hereof; provided that nothing contained herein shall be construed as prohibiting a party from pursuing any other available remedies, including the recovery of damages.

7. Recording. The parties hereto shall cause this agreement to be recorded in the Land Records of Baltimore County, Maryland upon execution and delivery hereof.

8. Governing Law. This Agreement shall be construed according to and governed by the laws of the State of Maryland applicable to contracts made and performed by such State.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal on the year and date first set forth above.

WITNESS/ATTEST:

OWNER:
INSTITUTE OF MISSION HELPERS OF
BALTIMORE CITY

J. P. King

By: Sister Danielle Murphy (SEAL)
Sister Danielle Murphy,
President

WITNESS/ATTEST:

THE CHESTNUT REAL ESTATE
PARTNERSHIP, a Maryland
general partnership

By: WEST JOPPA ROAD LIMITED
PARTNERSHIP, a general partner

By: Rosedale Care, Inc.
a general partner of WJR

William F. Brown

By: Thomas F. Mullan, III (SEAL)
Thomas F. Mullan, III
President

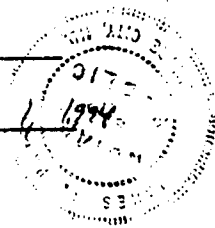
ACKNOWLEDGEMENT

STATE OF MARYLAND, COUNTY OF BALTIMORE, TO WIT:

On this 23rd day of March, 1992, before me, the undersigned, a Notary Public in and for said County and State aforesaid, personally appeared Sister Danielle Murphy, president of Institute of Mission Helpers of Baltimore City, known to me (or satisfactorily proven) to be the person named in and who, duly authorized, executed the foregoing instrument as president of the INSTITUTE OF MISSION HELPERS OF BALTIMORE CITY for the purposes set forth therein, and acknowledged that she executed the same as her voluntary act and deed.

James L. Prince
Notary Public

My Commission Expires: May 1, 1994

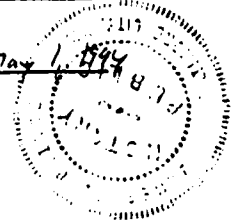


STATE OF MARYLAND, COUNTY OF SALTIMORE, TO WIT:

On this 23rd day of March, 1992, before me, the undersigned, a Notary Public in and for said County and State aforesaid, personally appeared Thomas F. Mullan, III, president of Rosedale Care, Inc., a general partner of West Joppa Road Limited Partnership, which is a general partner of THE CHESTNUT REAL ESTATE PARTNERSHIP, known to me (or satisfactorily proven) to be the person named in and who, duly authorized, executed the foregoing instrument as president of a general partner of West Joppa Road Limited Partnership, a general partner of THE CHESTNUT REAL ESTATE PARTNERSHIP, for the purposes set forth therein, and acknowledged that he executed the same as his voluntary act and deed.

James D. Prince
Notary Public

My Commission Expires: May 1, 1994



FileRecordedAgree.asp
1/12/93

After recording, return to:

J. Michael Brannan, Esq.
Venables, Bartjer & Howard
210 Allegheny Ave.
TOWSON, MD 21204

LIGER 9109 PAGE 149

Exhibit A

BEING KNOWN AND DESIGNATED as Lot No. 1 as shown on a plat entitled, "Amended Subdivision Plat of BLAKEHURST LIFE CARE COMMUNITY" dated March 18, 1992 and recorded among the Land Records of Baltimore County in Plat Book S.M. No. 64, folio 34 (the "Plat"), together with that parcel of land binding on Lot No. 1 and identified on the Plat as "Highway Widening Area No. 2" containing 0.371 acres, more or less.

Exhibit B

BEING KNOWN AND DESIGNATED as Lot No. 2 as shown on a plat entitled, "Amended Subdivision Plat of BLAKEHURST LIFE CARE COMMUNITY" dated March 18, 1992 and recorded among the Land Records of Baltimore County in Plat Book S.M. No. 64, folio 34 (the "Plat"), together with those two parcels of land binding on Lot No. 2 and identified on the Plat as "Highway Widening Area No. 1" containing 1.943 acres, more or less, and "Highway Widening Area No. 3", containing 0.20 acres, more or less.