IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

WATERS LANDING ASSOCIATION, INC.	*	
	*	
Plaintiff/Counter-Defendant,	*	
	*	
v.	*	
	*	Case No.:485576-V
CHURCHILL SENIOR HOUSING I, LIMITED PARTNERSHIP, *et al.*,	*	
	*	
	*	
Defendants/Counter-Plaintiffs.	*	
	*	

* * * * * * * * * * * * *

COUNTER-PLAINTIFFS' FIRST AMENDED COUNTERCLAIM

Counter-Plaintiffs, Churchill Senior Housing I, Limited Partnership ("CSH-1"), Churchill Senior Living II, LLC ("CSL-2"), and Churchill Senior Housing III, Limited Partnership ("CSH-3") (together, CSH-1, CSL-2 and CSH-3 are "Defendants"), by undersigned counsel, sue the Waters Landing Association, Inc. (the "Association") and allege as follows based on personal knowledge as to Counter-Plaintiffs' own acts and on information and belief as to all other matters:

Common Allegations

1. CSH-1 is a limited partnership organized under the laws of the State of Maryland with its principal place of business located in Montgomery County, Maryland.

2. CSL-2 is a limited liability company organized under the laws of the State of Maryland with its principal place of business located in Montgomery County, Maryland.

3. CSH-3 is a limited partnership organized under the laws of the State of Maryland with its principal place of business located in Montgomery County, Maryland.

4. The Association is a corporation organized under the laws of the State of Maryland with its principal place of business located in Montgomery County, Maryland.

5. This Court has subject matter jurisdiction over this matter pursuant to Md. Code Ann., Cts. & Jud. Proc. §§ 1-501 and 3-401 *et seq*.

6. Jurisdiction and venue over the Association in this Court is proper pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-102(a) and § 6-201(a).

7. At all times relevant hereto, CSH-1 has been the fee simple owner of the Subdivided Lot (as used in the Declaration) known as Parcel Z. Parcel Z is improved by the "Phase I" building of Churchill Senior Living, which includes 121 rental apartments for low-income individuals age 62 or older.

8. At all times relevant hereto, CSL-2 has been the fee simple owner of the Subdivided Lot known as Parcel CC. Parcel CC is improved by the "Phase II" building of Churchill Senior Living, which includes 134 rental apartments for low-income individuals age 62 or older.

9. At all times relevant hereto, CSH-3 has been the fee simple owner of the Subdivided Lot known as Parcel DD. CSH-3 is planning to improve Parcel DD with the "Phase III" building of Churchill Senior Living, which will include 240 rental apartments for low-income individuals age 62 or older. **Exhibit A**, attached, shows an overlay of the three buildings on the three Subdivided Lots.

10. All of the land owned by Counter-Plaintiffs was made subject to the 1981 Waters Landing Association Declaration of Covenants (the "Declaration") pursuant to two supplemental declarations that are attached to the Plaintiff/Counter-Defendant's Second Amended Complaint as Exhibits B and C.

11. Article V of the Declaration authorizes the Association to assess four categories of assessments: (1) a General Assessment (Article V, Sec. 1) pursuant to a *pro rata* formula

described therein; (2) a Neighborhood Assessment (Article V, Sec. 2), which must be determined in accordance with any supplemental declarations; (3) a Foundation Assessments (Article V, Sec. 3), which represents a recoupment from members as a result of an assessment the Association pays to the Churchill Community Foundation; and (4) any Special Assessments (Article V, Sec. 4).

12. In a sworn interrogatory response, the Association acknowledged that all assessments are collected on a *pro rata* basis when it explained: "[The] Board of Directors compiles annual budgets for the [A]ssociation, including the total amount to be assessed to all owners to support operation of the Association. The total is then divided among ***lot owners*** based on lot types and/or sizes." (emphasis added)

COUNT I
(Declaratory Judgment Regarding Unlawful Association Fees)

13. The allegations contained in paragraphs 1-12 are incorporated by reference herein as if repeated verbatim.

14. Article III, Section 1(a) of the Declaration defines a Class A member of the Association as"[e]very person, group of persons, corporation, trust or other legal entity, or any other combination thereof, who is a record owner of a fee interest in any Lot or Living Unit which is or becomes subject by covenants of record of assessment by the Association." Thus, under the Declaration, each association Class A member is a "record owner of a fee interest in any Lot or Living Unit."

15. Under the Declaration, "Living Unit," "Unit," and "Lot" all have identical definitions.

16. Article I, Section 1(c) of the Declaration provides that "Living Unit", "Unit", or

"Lot" "shall mean and refer to all Subdivided Lots which are part of the Association's Property ***and*** to any portion of a structure within said property intended for use as a one-family residence." (emphasis added)

17. The clauses of this definition are intended to permit owners of land to become members of the Association in one of two different ways, *i.e.*, either (a) by owning a Subdivided Lot ("clause a"), or (b) where the land owned by the member is not a Subdivided Lot (such as with respect to a condominium unit), by owning in fee simple a portion of a structure within the property intended for use as a one-family residence ("clause b"). Thus, the clauses of this definition are mutually-exclusive – an owner either becomes a member under clause (a) or clause (b), but not both. Clause (a) applies to ownership of Subdivided Lots, and clause (b) applies to ownership of land that is not subdivided.

18. Counter-Plaintiffs are each a record owner of a fee simple interest in one Subdivided Lot. Accordingly, Counter-Plaintiffs satisfy clause (a) of the Declaration's definition of "Living Unit," "Unit," or "Lot." Each Counter-Plaintiff owns one Living Unit, Unit, or Lot.

19. Because none of Counter-Plaintiffs own land that is not subdivided, clause (b) does not apply to Counter-Plaintiffs.

20. Article V, Section 1 obligates any person or entity that "becomes an owner of a Lot or Living Unit, by acceptance of a deed therefor," to pay a General Assessment to the Association. This section further provides that the General Assessment is calculated as

> a monthly sum (hereinelsewhere sometimes referred to as "assessments") equal to one-twelfth (1/12) of the member's proportionate (for the purposes hereof such proportion shall be equal to a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots, subject to assessment) share of the sum required by the Association as estimated and expressed in an adopted budget by its Board of Directors, to meet its annual expenses[.]

Thus, General Assessment must be calculated on a *pro rata* basis based on a budget adopted by

the Association's Board, where each Lot owner pays the same amount (*i.e.*, 1 divided by the total number of Lots) as every other Lot owner in the Association.

21. Currently, the Association does not assess members General Assessments consistent with the formula in Article V, Sec. 1. For example, a member who owns a town home pays a different amount than a member who owns a single family home, and a member who owns a condominium pays yet another amount.

22. The Association has always assessed CSH-1 and CSL-2 unlawfully on a per apartment basis, rather than using the formula for Lot owners in Article V, Sec. 1 and assessing each of them based on its ownership of one Living Unit, Unit, or Lot.

23. Article V, Sec. 2 of the Declaration authorizes the Association to collect a Neighborhood Assessment that "shall be determined in accordance with the provisions of the Supplementary Declaration imposing these covenants upon the Neighborhood annexed."

24. Supplemental Declaration VC-2 (attached to Plaintiff's Second Amended Complaint as Exhibit B) includes a paragraph titled "Neighborhood Assessments," which requires the "owner of each Lot" within the annexed property to "pay a pro rata share, reflecting a fair and equitable allocation of financial responsibilities for facilities or services to be used or enjoyed by owners" within the annexed property.

25. In contravention of Article V, Sec. 2 of the Declaration, Supplemental Declaration X (attached to Plaintiff's Second Amended Complaint as Exhibit C) does not address how Neighborhood Assessments are to be assessed, thereby leaving in dispute whether the Association is authorized to make such assessments as to the land brought into the Association in Supplemental Declaration X.

26. Counter-Plaintiffs' tenants do not use any of the facilities or services offered by

the Association, and therefore, should not be assessed Neighborhood Assessments.

27. To the extent that the Association has assessed Neighborhood Assessments to Counter-Plaintiffs, the Association has unlawfully over-assessed CSH-1 and CSL-2 in contravention of the Declaration and applicable supplements and amendments because such assessments were allocated based on Counter-Plaintiffs' ownership of hundreds of apartments, not based on each entity's ownership of one Living Unit, Unit, or Lot as required by the Declaration.

28. Article V, Sec. 3 of the Declaration (as amended) also authorizes the Association to charge a Foundation Assessment, which derives from the Association's obligation to pay an annual maintenance assessment to Churchill Community Foundation (the "Foundation"), a non-profit established to maintain the area surrounding a nearby lake, pursuant to the Foundation's declaration.

29. As evidenced by its sworn interrogatory response, the Association calculates assessments by establishing a budget and dividing the costs needed to meet that budget amongst Lot owners. The Association is obligated to pay a specified amount of assessments to the Foundation, so it builds into its annual budget the amount it is obligated to pay the Foundation. It then passes that budget amount to Lot owners by way of the Foundation Assessment on a *pro rata* basis.

30. The Association has unlawfully over-assessed Counter-Plaintiffs for the Foundation Assessments by assessing Counter-Plaintiffs based on their ownership of hundreds of apartments, rather than based on each entity's ownership of one Living Unit, Unit, or Lot.

31. As owners of three Subdivided Lots, Counter-Plaintiffs each own just one Living Unit, Unit, or Lot. In contravention of the plain terms of the Declaration, the Association has

wrongfully assessed Defendants as if they own hundreds of Lots.

32. The Association has assessed CSH-1 incorrectly since 2002, and as a result the Association has over-assessed CSH-1 by several hundred thousand dollars.

33. For example, at least as far back as January 2017, the Association has incorrectly assessed CSH-1 at a rate of $1,724.25 per month, as if it owned 121 Lots, and well in excess of what other Lot owners pay.

34. Despite that CSL-2 and CSH-3 each own just one Lot, the Association asserts in this lawsuit that CSL-2 should pay assessments as if it owns 134 Lots and CSH-3 (which is in the process of developing an apartment building with 240 apartments) should be assessed once its building is constructed and leased.as if it owns 240 Lots.

35. The Association has never issued assessments to CSH-3.

36. The Association granted CSL-2 a waiver of assessments for the first three years that the building was leased.

37. A dispute presently exists between Counter-Plaintiffs and the Association as to whether the Association is required to assess Counter-Plaintiffs based on each Counter-Plaintiff's ownership of just one Living Unit, Unit, or Lot.

38. A declaratory judgment is necessary to afford relief from uncertainty and insecurity with respect to the proper calculation of assessments owed by Counter-Plaintiffs presently and in the future.

WHEREFORE, Churchill Senior Housing I, Limited Partnership, Churchill Senior Living II, LLC, and Churchill Senior Housing III, Limited Partnership request that this Court enter a judgement:

a. Declaring that the Association has unlawfully assessed Counter-Plaintiffs in

contravention of the Declaration by charging assessments based on the number of apartments they own rather than based on each entity's ownership of one Living Unit, Unit, or Lot.

b. Each Counter-Plaintiff is a fee simple owner of one Living Unit, Unit, or Lot, and should be assessed for the General Assessment based on the fraction: 1 divided by the number of Lots subject to assessment.

c. Each Counter-Plaintiff is a fee simple owner of one Living Unit, Unit, or Lot, and should be assessed for the Foundation Assessment based on the fraction: 1 divided by the number of Lots subject to assessment.

d. Each Counter-Plaintiff is a fee simple owner of one Living Unit, Unit, or Lot, and should not be assessed for the Neighborhood Assessment because its tenants do not use the facilities or services. Alternatively, to the extent Counter-Plaintiffs can justify assessing a Neighborhood Assessment, that assessment should, as to each Counter-Plaintiff, be based on the fraction: 1 divided by the number of Lots subject to assessment.

COUNT II
(Breach of Contract)

39. The allegations contained in paragraphs 1-38 are incorporated by reference herein as if repeated verbatim.

40. The Declaration requires that CSH-1 be assessed *pro rata* based on its ownership of one Living Unit, Unit, or Lot.

41. The Association has breached its contractual obligations pursuant to the Declaration by unlawfully assessing CSH-1 based on its supposed ownership of 121 Living Units, Units, or Lots, rather than based on its ownership of just one Subdivided Lot, and thus one

Living Unit, Unit, or Lot.

42. As a result of the Association's breach, CSH-1 has suffered damages by being forced to pay excessive assessments, and is entitled to monetary damages in an amount to be proven at trial, which amount represents the difference between what it paid in assessments and what it should have paid.

WHEREFORE Churchill Senior Housing I, Limited Partnership requests that this Court enter a judgement in its favor in an amount to be proven at trial.

COUNT III
(Recoupment)

43. The allegations contained in paragraphs 1-42 are incorporated by reference herein as if repeated verbatim.

44. Currently, the Association is unlawfully assessing CSH-1 at the rate of $1,724.25 per month, representing $14.25 per apartment for the 121 apartments CSH-1 owns.

45. For the period of 2002 to 2020, the Association also unlawfully assessed CSH-1 based on its supposed ownership of 121 Living Units, Units, or Lots, when it fact the Declaration requires that CSH-1 be assessed a *pro rata* amount based on its ownership of just one Living Unit, Unit, or Lot.

46. From 2002 to 2020, the Association charged, and CSH-1 paid, more than $400,000 in assessments based on the Associations incorrect formula.

47. The Association's retention of the difference between what CSH-1 paid and what CSH-1 should have paid based on its ownership of just one Living Unit, Unit, or Lot from 2002 to 2020 is unjust under the circumstances.

48. By overcharging CSH-1 from 2002 to 2020, the Association violated its legal duty in its performance of the Declaration.

49. The Association has filed a Second Amended Complaint against Counter-Plaintiffs seeking money damages related to fee assessments for Counter-Plaintiffs' properties.

50. The Association's actions in overcharging CSH-1 from 2002 to 2020 arise from the same transaction on which the Association's claims in its Second Amended Complaint are based.

51. In the event that any assessment is determined by this Court to be due and owing, such amount should be subject to a recoupment and/or set-off in an amount to be determined at trial.

WHEREFORE, Churchill Senior Housing I, Limited Partnership respectfully prays that any assessments determined to be owed be expunged or reduced by an amount to be proven at trial.

COUNT IV
(Injunctive Relief Regarding CSH-1 Over Assessments)

52. The allegations contained in paragraphs 1-51 are incorporated by reference herein as if repeated verbatim.

53. The Association has unlawfully assessed CSH-1 based on its supposed ownership of 121 Living Units, Units, or Lots, rather than based on its ownership of just one Living Unit, Unit, or Lot. As a result, CSH-1 has been over-assessed by the Association at all relevant times.

54. Pursuant to Maryland law, while affirmative claims are subject to the applicable statute of limitations, the defense of recoupment is not. Imbesi v. Carpenter Realty Corp., 357 Md. 375, 389-90 (2000) ("[A] claim in the nature of a recoupment defense survives as long as the plaintiff's cause of action exists, even if affirmative legal action upon the subject of recoupment is barred by a statute of limitations.").

55. To avoid additional, unnecessary litigation concerning assessments owed by

CSH-1, this Court should issue an injunction prohibiting collection of assessments by the Association against CSH-1 until such time as the amount of assessments CSH-1 should have paid the Association, based on its ownership of one Living Unit, Unit, or Lot, exceeds the amount of assessments CSH-1 actually paid between 2002-2020.

56. Without an injunction, CSH-1 will suffer irreparable harm because CSH-1 is not permitted to seek a monetary damages award for the amounts it was overcharged outside the limitations period, and will not be able to recover attorneys' fees and costs it incurs to defend against additional meritless claims for assessments owed while it still has a credit in its favor based on the Association's excessive assessments.

57. The balance of harms favors CSH-1 because it should not be forced to defend against claims for assessments so long as the amount of assessments CSH-1 actually paid the Association between 2002-2020 exceeds the amount of assessments CSH-1 should have paid the Association during this period (i.e., so long as there exists an over-assessment credit (the "Over-Assessment Credit")), based on its ownership of one Living Unit, Unit, or Lot. The Association is neither harmed nor inconvenienced since additional collection actions during the period in which an Over-Assessment Credit exists will be futile and thus a waste of the parties' and Court's time.

58. Enjoining the Association from collecting assessments from CSH-1 until such time as the Over-Assessment Credit expires is not contrary to the public interest.

WHEREFORE, CSH-1 requests that this Court enter a Permanent Injunction that enjoins the Association from attempting to collect assessments from CSH-1 until the total CSH-1's Over-Assessment Credit expires.

COUNT V
(Declaratory Judgment Regarding Parking Termination)

59. The allegations contained in paragraphs 1-58 are incorporated by reference herein as if repeated verbatim.

60. On December 18, 2009, the Association entered into a written contract ("Parking Agreement") with Oakwood Properties (predecessor-in-interest to all three Churchill entities), CSL-2, and CSH-3 ("Benefited Parties") that granted the Benefitted Parties a perpetual license to park vehicles on the land described therein, in exchange for the Benefited Parties' agreement to repair and maintain certain parking areas owned by the Association. The Parking Agreement is attached as **Exhibit B**.

61. Paragraph 1, titled "Parking Rights," along with Paragraph I of the Recitals, establish and confirm for the Benefited Parties "a perpetual license" for "parking motor vehicles" on the described portion of the Association's property.

62. Paragraph 9 provides the duration for the license, explaining that the rights and obligations under the Parking Agreement will continue so long as the Benefited Parties, *i.e.*, Counter-Plaintiffs, own the relevant parcels.

63. The Association has authority pursuant to Article V, Sec. 3(i) of its By-Laws to "grant licenses, easements, rights-of-way and other rights of use."

64. The Association's Board of Directors voted to enter into the Parking Agreement, and thereby authorized the then-President of the Board to execute the Agreement.

65. With this authority, the then-President of the Board executed the Parking Agreement on December 18, 2009.

66. Paragraph 7 of the Parking Agreement further provides a warranty of authority, stating that each party warrants and covenants that it has "full right, power and authority to enter

into, carry out and perform [the Parking] Agreement without obtaining any further approvals or consents[.]"

67. The Parking Agreement includes exhibits showing an "Existing Parking Area" (Ex. D-1), which consists of 30 parking spaces, and an adjacent "Proposed Parking Area" (Ex. D-2), on which Counter-Plaintiffs, at their own cost, subsequently constructed six handicapped parking spaces.

68. The location of the six parking spaces is critical because they are close to an entrance of the Phase II building, a senior-living facility owned by CSL-2, making them most convenient for elderly tenants and visitors with limited mobility. There is no other viable alternative parking that addresses this same need.

69. The final county-approved site plan for CSL-2's property (referenced in Paragraph 2 of the Parking Agreement) shows the 36 parking spaces that are subject to the Parking Agreement, as well as a generator to be placed on the Association's property by Counter-Plaintiffs. This site plan was reviewed and approved by the Association.

70. From 2009 to present, Counter-Plaintiffs' elderly tenants (many of whom are disabled) and their visitors have used the parking area granted in the Parking Agreement without issue.

71. On July 11, 2022, Counter-Plaintiffs received a letter (the "Letter") from the Association's counsel stating that the Association's Board of Directors ("the Board") had "voted to revoke the privileges granted by [the Parking Agreement] as of July 31, 2022." The Letter further stated that

> [a]s of August 1, 2022, the owners and tenants of the Churchill Parties' properties shall have no rights of use of access to the Association's parking areas beyond those reserved to all Members by the Association's Declaration of Covenants. On or before that date, you are required to remove (1) any signs purporting to restrict

> parking placed without the written authorization of the Association's Board of Directors and (2) any equipment, machinery and commercial vehicles stored or parked on Association property.

72. In a separate communication, the Association demanded that Counter-Plaintiffs remove the generator that is placed on land owned by the Association, as depicted on the approved site plan.

73. The land on which the generator sits is a grassy area that has never been used for parking, and is not approved by the County for use as parking.

74. The Board has since extended the date on which it purports to terminate the Parking Agreement to December 31, 2022.

75. The Association is not permitted to terminate the Parking Agreement. The Association does not have the authority to unilaterally revoke a binding contract or terminate a perpetual license under Maryland law.

76. Moreover, by the express terms of the Parking Agreement, the license is irrevocable so long as the Benefited Parties continue to own the real property subject to the license. Counter-Plaintiffs still own the parcels in question, making the Parking Agreement irrevocable at this time.

77. Counter-Plaintiffs provided substantial consideration in return for the perpetual and irrevocable license provided in the Parking Agreement that benefited the Association's members and their guests, including constructing and maintaining the parking spaces and repaving other roads on the Association's property. Counter-Plaintiffs would not have expended these substantial sums if the Association maintained the authority to terminate the Parking Agreement while Counter-Plaintiffs remained in control of the relevant parcels.

78. The Parking Agreement was a required component of CSL-2's approved site plan,

and was negotiated in that context. Termination of the Parking Agreement would render CSL-2 in violation of its approved site plan.

79. The Parking Agreement was a critical component of the Counter-Plaintiffs' lender approvals, and revocation of the Parking Agreement would leave Counter-Plaintiffs in potential default of its obligations under the loan documents.

80. There exists an actual controversy of a justiciable issue between Counter-Plaintiffs and Counter-Defendant within the meaning of the Maryland Uniform Declaratory Judgment Act, Md. Cts. & Jud. Proc. Code § 3-409(a)(1) regarding whether Defendants may unilaterally revoke the parking license granted in the December 2009 Parking Agreement.

81. Counter-Plaintiffs and Counter-Defendant hold antagonistic claims that can only be resolved by a declaratory judgment.

82. A declaratory judgment by this Court will terminate this controversy and will establish the parties' legal rights with regard to the Parking Agreement and placement of the generator.

WHEREFORE, Churchill Senior Housing I, Limited Partnership, Churchill Senior Living II, LLC and Churchill Senior Housing III, Limited Partnership request that this Court enter a judgement:

(i) Declaring that the Parking Agreement is irrevocable so long as the Benefited Parties continue to own the relevant parcels;

(ii) Declaring that Counter-Plaintiffs are not required to remove the generator placed on the Association's property as depicted on the approved site plan;

(iii) Awarding costs, as provided by law; and

(iv) Granting Counter-Plaintiffs such further relief as the Court deems just and

appropriate.

COUNT VI
(Injunctive Relief Regarding Parking Termination)

83. The allegations contained in paragraphs 1-82 are incorporated by reference herein as if repeated verbatim.

84. The actions of the Association demonstrate its intention to revoke the parking license it granted to Counter-Plaintiffs effective December 31, 2022, in contravention of the terms of the Parking Agreement.

85. Should the Association succeed in revoking the parking license, Counter-Plaintiffs will suffer immediate, substantial, and irreparable harms for which they have no adequate remedy at law. These harm include, but are not limited to, the following: (a) the loss of a right bestowed to it by contract; (b) leaving numerous elderly and disabled tenants and their visitors without accessible parking; and (c) forcing Counter-Plaintiffs to default on their loan documents and violate the approved site plan. These harms would be irreparable pending resolution of this action and are not adequately compensable by an award of damages.

86. Counter-Plaintiffs are likely to succeed on the merits. The Association entered into a signed, written contract providing a perpetual and irrevocable license to Counter-Plaintiffs and now seeks to terminate that agreement unilaterally.

87. The balance of harms favors Counter-Plaintiffs. The Association did not provide any reasoning for the sudden purported revocation the Parking Agreement. The Association took this unilateral action only after a dispute arose between Counter-Plaintiffs and the Association regarding homeowner's association assessments. The Association's Board Meeting minutes from February 17, 2021 note that the Board views the revocation of the Parking Agreement as "a bargaining chip" in the assessment matter against Counter-Plaintiffs. The Association is neither

harmed nor inconvenienced by honoring its contract. The Association actually benefits because the Parking Agreement requires Counter-Plaintiffs to maintain the driveway extension serving the additional parking spaces and other areas on the property that Counter-Plaintiffs repaired at their own cost. In contrast, the harm to Counter-Plaintiffs created by the sudden loss of its license and ability of its elderly (and often disabled) tenants and their visitors to park their vehicles in close proximity to an entrance to the Phase II senior-living building far outweighs any inconvenience to the Association.

88. Enjoining the Association from revoking the parking license is not contrary to the public interest.

WHEREFORE, Churchill Senior Housing I, Limited Partnership, Churchill Senior Living II, LLC and Churchill Senior Housing III, Limited Partnership request that this Court enter a Permanent Injunction that enjoins the Association from unilaterally revoking the parking license the Association granted in the Parking Agreement.

Respectfully submitted,

/s/ Paul S. Caiola

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Attorneys for Defendants/Counter-Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of October, 2022, a copy of Counter-Plaintiffs' First Amended Counterclaim was filed and served electronically via the MDEC system and by electronic mail on the following:

Benjamin J. Andres
Jeffrey C. Seaman
Whiteford, Taylor & Preston, LLP
111 Rockville Pike, Suite 800
Rockville, MD 20850
bandres@wtplaw.com

And was served via electronic mail and by first class postage prepaid mail on October 10, 2022, on the following:

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Attorneys for Plaintiff/Counter-Defendant

/s/ Paul S. Caiola
Paul S. Caiola (CPF# 9512120109)

MD. RULE 2-341(e) - COMPARISON COPY

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

WATERS LANDING ASSOCIATION, INC. *
*
Plaintiff/Counter-Defendant, *
*
v. *
* Case No.:485576-V
CHURCHILL SENIOR HOUSING I, LIMITED PARTNERSHIP, *et al.*, *
*
and *
*
CHURCHILL SENIOR LIVING II, LLC *
*
and *
*
CHURCHILL SENIOR HOUSING III, LIMITED PARTNERSHIP *
*

Defendants. *
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CHURCHILL SENIOR HOUSING I, LIMITED PARTNERSHIP *
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and *
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CHURCHILL SENIOR LIVING II, LLC *
*
and *
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CHURCHILL SENIOR HOUSING III, LIMITED PARTNERSHIP *
*
/Counter-Plaintiffs . *
*
v. *
*
WATERS LANDING ASSOCIATION, INC. *
*
Counter-Defendant *
* * * * * * * * * * * *

~~DEFENDANTS' ANSWER TO~~COUNTER-PLAINTIFFS' FIRST AMENDED ~~COMPLAINT AND COUNTERCLAIM~~

~~The Defendants, Churchill Senior Housing I, Limited Partnership ("CSH-1"), Churchill Senior Living II, LLC ("CSL-2") and Churchill Senior Housing II, Limited Partnership ("CSH-3")(collectively CSH-1, CSL-2 and CSH-3 are the "Defendants"), by counsel, answers the Amended Complaint ("Complaint") filed by Waters Landing Association, Inc. (the "Association") herein as follows:~~

~~FIRST DEFENSE~~

~~The Complaint fails to state a claim upon which relief may be granted.~~

~~SECOND DEFENSE~~

~~1. The allegations contained in paragraph 1 of the Complaint are admitted.~~

~~2. The allegations contained in paragraph 2 of the Complaint are denied as alleged except that CSH-1 is the record owner of a portion of property with a mailing address of 21000 Farther Hurley Boulevard, Germantown, MD 20874.~~

~~3. The allegations contained in paragraph 3 of the Complaint are denied as alleged except that CSL-3 is the record owner of a portion of property with a mailing address of 21000 Farther Hurley Boulevard, Germantown, MD 20874.~~

~~4. The allegations contained in paragraph 4 of the Complaint are denied.~~

~~5. Paragraph 5 of the Complaint does not require a response. To the extent a response is required, Defendants admit that this court has jurisdiction and venue in this matter.~~

~~6. The allegations contained in paragraph 6 of the Complaint are denied as alleged, except CSH-1 admits that it owns a portion of the property alleged and it is subject to certain easements and covenants that are recorded among the land records of Montgomery County, Maryland.~~

7. The allegations contained in paragraph 7 of the Complaint are denied as alleged, except CSL-2 admits that it owns a portion of the property alleged and it is subject to certain easements and covenants that are recorded among the land records of Montgomery County, Maryland.

8. The allegations contained in paragraph 8 of the Complaint are denied as alleged, except CSH-3 admits that it owns property that is subject to certain easements and covenants that are recorded among the land records of Montgomery County, Maryland.

9. Paragraph 9 of the Complaint refers to a document which speaks for itself. To the extent a response is required, the allegations contained in paragraph 9 of the Complaint are denied.

10. Paragraph 10 of the Complaint refers to a document which speaks for itself. To the extent a response is required, the allegations contained in paragraph 10 of the Complaint are denied.

11. The allegations contained in paragraph 11 of the Complaint are denied as alleged in that there is no allegation of "combined assessments" in the Complaint.

12. The allegations contained in paragraph 12 of the Complaint are denied as alleged in that the Association's Declaration speaks for itself

13. The allegations contained in paragraph 13 of the Complaint are denied as alleged and the policy referred to speaks for itself.

14. Defendants incorporate their responses to paragraphs 1-13 of the Complaint as if repeated verbatim.

15. The allegations contained in paragraph 15 of the Complaint are denied.

16. The allegations contained in paragraph 16 of the Complaint are denied.

17. The allegations contained in paragraph 17 of the Complaint are denied.

18. The allegations contained in paragraph 18 of the Complaint are denied as alleged. It is admitted that CSH-1 and CSL-2 have not paid the assessments as alleged in the Complaint.

19. The allegations contained in paragraph 19 are denied as alleged in that CSH-1 and CSL-2 are not in default or required to make payment to the Association as alleged.

20. The allegations contained in paragraph 20 of the Complaint are denied as alleged.

21. The allegations contained in paragraph 21 of the Complaint are denied as alleged but it is admitted that the Association is seeking in excess of $75,000 in its Complaint.

22. The allegations contained in paragraph 22 of the Complaint are denied.

23. Defendants incorporate their responses to paragraphs 1-22 of the Complaint as if repeated verbatim.

24. The allegation contained in paragraph 24(a) to (d) of the Complaint are denied as alleged except that it is admitted that a dispute exists between the parties.

25. All allegations not specifically admitted are denied.

THIRD DEFENSE

The Association's claims are barred by the terms of the recorded documents.

FOURTH DEFENSE

If the Association is correct that monies are owed, then its claims are barred by its failure to properly allocate voting by "Living Units" and its actions are *ultra vires*.

FIFTH DEFENSE

The Association's claims are barred by the doctrine of waiver to the extent it is seeking fees relating to the units owned by CSL-2 which it waived by agreement.

SIXTH DEFENSE

~~The Association's claims against CSL-2 are barred by the doctrine of estoppel.~~

~~**SEVENTH DEFENSE**~~

~~The Association's claims as it relates to any land formerly owned by the Episcopal Church and now owned by any of the Defendants are barred by the grant to the Episcopal Church which waives any claims for assessments when the Association's amenities are not used AND contains vague and unenforceable terms for how assessments, if any are to be paid if the Association's amenities are used.~~

~~**EIGHTH DEFENSE**~~

~~Defendants do not use, and the Association does not provide Defendants, the services for which they are charging.~~

~~**NINTH DEFENSE**~~

~~Defendants do not jointly own the properties subject to the Association's claims and are not, therefore jointly and severally liable for any of the claims.~~

~~WHEREFORE, Churchill Senior Housing I, Limited Partnership, Churchill Senior Living II, LLC and Churchill Senior Housing II, Limited Partnership demand judgment in their favor and against Waters Landing Association, Inc., that they be awarded costs of this action and for such other and further relief as is just and proper.~~ **COUNTERCLAIM**

~~The~~ Counter-Plaintiffs, Churchill Senior Housing I, Limited Partnership ("CSH-1"), Churchill Senior Living II, LLC ("CSL-2"), and Churchill Senior Housing ~~H~~III, Limited Partnership ("CSH-3") (~~collectively~~together, CSH-1, CSL-2 and CSH-3 are ~~the~~ "~~Counter-Plaintiffs~~Defendants"), by undersigned counsel, sue the ~~Counter-Defendant~~ Waters Landing Association, Inc. (the "Association") and ~~for causes of action states~~allege as follows based on personal knowledge as to Counter-Plaintiffs' own acts and on information and belief as to

all other matters:

Common Allegations

1. CSH-1 is a limited partnership organized under the laws of the State of Maryland with its principal place of business located in Montgomery County, Maryland.

2. CSL-2 is a limited liability company organized under the laws of the State of Maryland with its principal place of business located in Montgomery County, Maryland.

3. CSH-3 is a limited partnership organized under the laws of the State of Maryland with its principal place of business located in Montgomery County, Maryland.

4. The Association is a corporation organized under the laws of the State of Maryland with its principal place of business located in Montgomery County, Maryland.

5. This Court has subject matter jurisdiction over this matter pursuant to Md. Code Ann., Cts. & Jud. Proc. §§ 1-501 and 3-401 *et seq*.

6. Jurisdiction and venue over the Association in this Court is proper pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-102(a) and § 6-201(a).

7. At all times relevant hereto, CSH-1 has been the fee simple owner of the Subdivided Lot (as used in the Declaration) known as Parcel Z. Parcel Z is improved by the "Phase I" building of Churchill Senior Living, which includes 121 rental apartments for low-income individuals age 62 or older.

8. At all times relevant hereto, CSL-2 has been the fee simple owner of the Subdivided Lot known as Parcel CC. Parcel CC is improved by the "Phase II" building of Churchill Senior Living, which includes 134 rental apartments for low-income individuals age 62 or older.

9. At all times relevant hereto, CSH-3 has been the fee simple owner of the Subdivided Lot known as Parcel DD. CSH-3 is planning to improve Parcel DD with the "Phase III"

building of Churchill Senior Living, which will include 240 rental apartments for low-income individuals age 62 or older. **Exhibit A**, attached, shows an overlay of the three buildings on the three Subdivided Lots.

10. ~~7. Counter-Plaintiffs, individually, each own portions of properties in fee simple, and not as joint tenants or tenants in common, collectively known as Parcel Z Churchill Town Sector Subdivision recorded in the Land Records of Montgomery County, Maryland (the "Land Records") at Plat No. 21276 on December 17, 1999, together with Related Parcels CC and DD, recorded at Record Plat No. 24537 on March 7, 2013 (collectively the "Property"), consisting of approximately 5.49 acres, located on the west side of the Father Hurley Boulevard, 500 feet south of Waters Landing Drive. The Property is located to the north of Association's clubhouse and tennis courts, and to the south of vacant land owned by the Convention of Protestant Episcopal Archdiocese of Washington.~~

~~8. The Property is currently improved with Phase I of the Churchill Senior Living project owned by CSH-1 and Phase II of the Churchill Senior Living Project owned by CSL-2 which combined contain 255 multi-family senior dwelling units providing independent rental housing for individuals of age 62 years and up and is predominantly for low income individuals.. Approximately 95% of these multi-family dwelling senior dwelling units are subject to affordable housing controls that limit the allowable rents to individuals earning 50% and 60% or less of Area Median Income (and are thus considered deeply affordable units).~~

~~9. CSH 3 is currently in the process of developing Phase III of the Churchill Senior Living project which will add an additional 280 multi-family senior dwelling units providing independent rental house and affordable housing for individuals of age 62 years and up.~~

~~10. The Association~~All of the land owned by Counter-Plaintiffs was ~~formed~~

~~pursuant~~made subject to ~~The~~the 1981 Waters Landing Association Declaration of Covenants~~,~~ ~~recorded in the Land Records in Liber 5672 in Folio 692~~ (the "Declaration") ~~which is~~pursuant to two supplemental declarations that are attached to the Plaintiff/Counter-Defendant's Second Amended Complaint ~~filed herein~~ as ~~Exhibit A~~Exhibits B and C.

11. ~~The~~Article V of the Declaration ~~defines~~authorizes the Association ~~property encumbered as Parcel M in a Subdivision known as Plat No. 64, Section 11, Churchill Town Sector, as reflected on Plat No. 12938. This Plat for Parcel M included a small portion of the southern access driveway presently serving Churchill Senior Living~~to assess four categories of assessments: (1) a General Assessment (Article V, Sec. 1) pursuant to a *pro rata* formula described therein; (2) a Neighborhood Assessment (Article V, Sec. 2), which must be determined in accordance with any supplemental declarations; (3) a Foundation Assessments (Article V, Sec. 3), which represents a recoupment from members as a result of an assessment the Association pays to the Churchill Community Foundation; and (4) any Special Assessments (Article V, Sec. 4).

12. In a sworn interrogatory response, the Association acknowledged that all assessments are collected on a *pro rata* basis when it explained: "[The] Board of Directors compiles annual budgets for the [A]ssociation, including the total amount to be assessed to all owners to support operation of the Association. The total is then divided among ***lot owners*** based on lot types and/or sizes." (emphasis added)

COUNT I
(Declaratory Judgment Regarding Unlawful Association Fees)

13. The allegations contained in paragraphs 1-12 are incorporated by reference herein as if repeated verbatim.

14. Article III, Section 1(a) of the Declaration defines a Class A member of the

Association as"[e]very person, group of persons, corporation, trust or other legal entity, or any other combination thereof, who is a record owner of a fee interest in any Lot or Living Unit which is or becomes subject by covenants of record of assessment by the Association." Thus, under the Declaration, each association Class A member is a "record owner of a fee interest in any Lot or Living Unit."

15. Under the Declaration, "Living Unit," "Unit," and "Lot" all have identical definitions.

16. ~~12. However,~~ Article I, Section 1(c) of the Declaration ~~states~~provides that "Living Unit", "Unit", or "Lot" "shall mean and refer to all Subdivided Lots which are part of the Association's Property ***and*** to any portion of a structure within said property intended for use as a one-family residence." (emphasis added)

~~13. None of the Defendants own a subdivided lot nor did any of the Defendants build any one family residence upon the Property.~~

~~14. Not all of the Property is on property which was ever subject to the Declaration.~~

~~15. On or about December 10, 1986 the Convention of the Protestant Church for the Episcopal Diocese of Washington (the "Episcopal Church") purchased property, some of which was pursuant to purchase by the Counter-Plaintiffs. The property formerly owned by the Episcopal Church is subject to a separate covenant, to wit, the Supplemental Declaration of Covenants and Restrictions dated March 11, 1986 and recorded among the Land Records at Liber 7445 Folio 182, a copy of which is attached hereto as Exhibit A (the "Supplemental Declaration").~~

~~16. The Supplemental Declaration provides at pertinent part:~~

~~Each Lot within the Subject Property shall be deemed subject to a covenant running with~~

17. The clauses of this definition are intended to permit owners of land to become members of the Association in one of two different ways, *i.e.*, either (a) by owning a Subdivided

Lot ("clause a"), or (b) where the land owned by the member is not a Subdivided Lot (such as with respect to a condominium unit), by owning in fee simple a portion of a structure within the property intended for use as a one-family residence ("clause b"). Thus, the clauses of this definition are mutually-exclusive – an owner either becomes a member under clause (a) or clause (b), but not both. Clause (a) applies to ownership of Subdivided Lots, and clause (b) applies to ownership of land that is not subdivided.

18. Counter-Plaintiffs are each a record owner of a fee simple interest in one Subdivided Lot. Accordingly, Counter-Plaintiffs satisfy clause (a) of the Declaration's definition of "Living Unit," "Unit," or "Lot." Each Counter-Plaintiff owns one Living Unit, Unit, or Lot.

19. Because none of Counter-Plaintiffs own land that is not subdivided, clause (b) does not apply to Counter-Plaintiffs.

20. Article V, Section 1 obligates any person or entity that "becomes an owner of a Lot or Living Unit, by acceptance of a deed therefor," to pay a General Assessment to the Association. This section further provides that the General Assessment is calculated as

> a monthly sum (hereinelsewhere sometimes referred to as "assessments") equal to one-twelfth (1/12) of the member's proportionate (for the purposes hereof such proportion shall be equal to a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots, subject to assessment) share of the sum required by the Association as estimated and expressed in an adopted budget by its Board of Directors, to meet its annual expenses[.]

Thus, General Assessment must be calculated on a *pro rata* basis based on a budget adopted by the Association's Board, where each Lot owner pays the same amount (*i.e.*, 1 divided by the total number of Lots) as every other Lot owner in the Association.

21. Currently, the Association does not assess members General Assessments consistent with the formula in Article V, Sec. 1. For example, a member who owns a town home pays a different amount than a member who owns a single family home, and a member who owns a

condominium pays yet another amount.

22. The Association has always assessed CSH-1 and CSL-2 unlawfully on a per apartment basis, rather than using the formula for Lot owners in Article V, Sec. 1 and assessing each of them based on its ownership of one Living Unit, Unit, or Lot.

23. Article V, Sec. 2 of the Declaration authorizes the Association to collect a Neighborhood Assessment that "shall be determined in accordance with the provisions of the Supplementary Declaration imposing these covenants upon the Neighborhood annexed."

24. Supplemental Declaration VC-2 (attached to Plaintiff's Second Amended Complaint as Exhibit B) includes a paragraph titled "Neighborhood Assessments," which requires the ~~land requiring the~~ "owner of each Lot ~~in~~" within the ~~Subject Property~~annexed property to "pay a pro rata share, reflecting a fair and equitable allocation of financial responsibilities for facilities or services to be used or enjoyed by owners ~~of~~" within the ~~Subject Property, as distinguished from the owners of other properties to the Declaration.~~annexed property.

25. In contravention of Article V, Sec. 2 of the Declaration, Supplemental Declaration X (attached to Plaintiff's Second Amended Complaint as Exhibit C) does not address how Neighborhood Assessments are to be assessed, thereby leaving in dispute whether the Association is authorized to make such assessments as to the land brought into the Association in Supplemental Declaration X.

~~17. Phase 1 was built on property owned by CSH-1 that was, in part, purchased by from the Episcopal Church by CSH-1.~~

~~18. Phase 2 was built on property owned by CSL-2 that was, in part, purchased from the Episcopal Church.~~

~~19. Phase 3 will be built on property owned by CSH-3 which is solely on land~~

purchased from the Episcopal Church. A plat showing the locations of Phases 1, 2 and 3 relative to property subject to the Supplemental Declaration is attached hereto as Exhibit B.

26. 20. None of the Counter-Plaintiffs' tenants do not use any of the facilities or services ofoffered by the Association, and therefore, should not be assessed Neighborhood Assessments.

21. CSH-1 is being billed association fees by the Association on account of 255 units, consisting of rental units which it owns in Phase 1 and units that CSL-2 owns in Phase 2, with each rental unit being denominated as "Living Units" by the Association despite not being one family owned units or on a subdivided lot.

22. In addition to actually charging CSH-1 for 255 units, the Association asserts that CSL-2 jointly owes the Association for fees with CSH-1 and asserts that CSH-3 will owe the Association for fees.

COUNT I
(Declaratory Judgment Re Association Fees)

23. The allegations contained in paragraphs 1-22 are incorporated by reference herein as if repeated verbatim.

27. To the extent that the Association has assessed Neighborhood Assessments to Counter-Plaintiffs, the Association has unlawfully over-assessed CSH-1 and CSL-2 in contravention of the Declaration and applicable supplements and amendments because such assessments were allocated based on Counter-Plaintiffs' ownership of hundreds of apartments, not based on each entity's ownership of one Living Unit, Unit, or Lot as required by the Declaration.

28. Article V, Sec. 3 of the Declaration (as amended) also authorizes the Association to charge a Foundation Assessment, which derives from the Association's obligation to pay an annual maintenance assessment to Churchill Community Foundation (the "Foundation"), a non-profit

established to maintain the area surrounding a nearby lake, pursuant to the Foundation's declaration.

29. As evidenced by its sworn interrogatory response, the Association calculates assessments by establishing a budget and dividing the costs needed to meet that budget amongst Lot owners. The Association is obligated to pay a specified amount of assessments to the Foundation, so it builds into its annual budget the amount it is obligated to pay the Foundation. It then passes that budget amount to Lot owners by way of the Foundation Assessment on a *pro rata* basis.

30. The Association has unlawfully over-assessed Counter-Plaintiffs for the Foundation Assessments by assessing Counter-Plaintiffs based on their ownership of hundreds of apartments, rather than based on each entity's ownership of one Living Unit, Unit, or Lot.

31. As owners of three Subdivided Lots, Counter-Plaintiffs each own just one Living Unit, Unit, or Lot. In contravention of the plain terms of the Declaration, the Association has wrongfully assessed Defendants as if they own hundreds of Lots.

32. The Association has assessed CSH-1 incorrectly since 2002, and as a result the Association has over-assessed CSH-1 by several hundred thousand dollars.

33. For example, at least as far back as January 2017, the Association has incorrectly assessed CSH-1 at a rate of $1,724.25 per month, as if it owned 121 Lots, and well in excess of what other Lot owners pay.

34. Despite that CSL-2 and CSH-3 each own just one Lot, the Association asserts in this lawsuit that CSL-2 should pay assessments as if it owns 134 Lots and CSH-3 (which is in the process of developing an apartment building with 240 apartments) should be assessed once its building is constructed and leased.as if it owns 240 Lots.

35. The Association has never issued assessments to CSH-3.

36. The Association granted CSL-2 a waiver of assessments for the first three years that the building was leased.

37. ~~24.~~ A dispute presently exists between Counter-Plaintiffs and the Association as to whether the ~~Property~~Association is ~~subject~~required to ~~the Declaration. Specifically~~assess Counter-Plaintiffs based on each Counter-Plaintiff's ownership of just one Living Unit, Unit, or Lot.

~~a. Only a portion of the property owned by CSH-1 may be on land which is subject to the Declaration;~~

~~b. Only a portion of the property owned by CSL-2 may be on land which is subject to the Declaration;~~

~~c. None of the Property owned by CSH-3 is on land which is subject to the Declaration;~~

~~d. None of the properties owned by the Counter-Plaintiffs is subject to the Association's fees because no lot owned by the Counter-Plaintiffs is subdivided as required in the Declaration;~~

~~e. The property owned by CSH-1 and CSL-2 is improved, and the property owned by CSH-3 will be improved, by multi-family rental units which are not "Living Units" as defined in the Declaration; and~~

~~f. None the Counter-Plaintiffs nor tenants/residents of CSH-1 and CSL-2 use or enjoy the amenities or services of the Association.~~

~~25. None of the Counter-Plaintiffs owe fees to the Association for their respective properties.~~

38. ~~26.~~ A declaratory judgment is necessary to afford relief from uncertainty and

insecurity with respect to ~~whether~~ the ~~Association can charge fees to~~proper calculation of assessments owed by Counter-Plaintiffs ~~under the terms of the Declaration or the Supplementary Declaration of Covenants~~presently and ~~Restriction~~in the future.

WHEREFORE, Churchill Senior Housing I, Limited Partnership, Churchill Senior Living II, LLC, and Churchill Senior Housing III, Limited Partnership request that this Court enter a judgement:

a. Declaring that the Association has unlawfully assessed Counter-Plaintiffs ~~are not subject to the fees levied pursuant to~~in contravention of the Declaration ~~and the Supplementary Declaration of Covenants and Restriction;~~by charging assessments based on the number of apartments they own rather than based on each entity's ownership of one Living Unit, Unit, or Lot.

b. ~~Awarding Counter-Plaintiffs costs of this action; and~~ Each Counter-Plaintiff is a fee simple owner of one Living Unit, Unit, or Lot, and should be assessed for the General Assessment based on the fraction: 1 divided by the number of Lots subject to assessment.

c. ~~Granting Counter-Plaintiffs such other and further relief as is just and proper~~ Each Counter-Plaintiff is a fee simple owner of one Living Unit, Unit, or Lot, and should be assessed for the Foundation Assessment based on the fraction: 1 divided by the number of Lots subject to assessment.

d. Each Counter-Plaintiff is a fee simple owner of one Living Unit, Unit, or Lot, and should not be assessed for the Neighborhood Assessment because its tenants do not use the facilities or services. Alternatively, to the extent Counter-Plaintiffs can justify assessing a Neighborhood Assessment, that

assessment should, as to each Counter-Plaintiff, be based on the fraction: 1 divided by the number of Lots subject to assessment.

COUNT II

(~~Unjust Enrichment)~~
~~27.~~ **Breach of Contract)**

39. The allegations contained in paragraphs 1-~~26~~38 are incorporated by reference herein as if repeated verbatim.

40. The Declaration requires that CSH-1 be assessed *pro rata* based on its ownership of one Living Unit, Unit, or Lot.

41. The Association has breached its contractual obligations pursuant to the Declaration by unlawfully assessing CSH-1 based on its supposed ownership of 121 Living Units, Units, or Lots, rather than based on its ownership of just one Subdivided Lot, and thus one Living Unit, Unit, or Lot.

42. As a result of the Association's breach, CSH-1 has suffered damages by being forced to pay excessive assessments, and is entitled to monetary damages in an amount to be proven at trial, which amount represents the difference between what it paid in assessments and what it should have paid.

WHEREFORE Churchill Senior Housing I, Limited Partnership requests that this Court enter a judgement in its favor in an amount to be proven at trial.

COUNT III
(Recoupment)

43. The allegations contained in paragraphs 1-42 are incorporated by reference herein as if repeated verbatim.

44. ~~28. CSH-1 is currently charged~~Currently, the Association is unlawfully assessing CSH-1 at the rate of $1,724.25 per month ~~in fees by the Association at a rate of~~, representing $14.25 per apartment for the 121 apartments CSH-1 owns.

~~29. For the period July 1, 2018 to present CSH-1 has paid the Association not less than $72,418.80.~~

~~30. The fees were charged by the Association despite the fact that it did not have authority to levy the fees under the Declaration and were paid to the Association under mistaken belief that the Association had such authority.~~

~~31. CSH-1 does not use the amenities of the Association and therefore derives no benefits from the Association.~~

45. For the period of 2002 to 2020, the Association also unlawfully assessed CSH-1 based on its supposed ownership of 121 Living Units, Units, or Lots, when it fact the Declaration requires that CSH-1 be assessed a *pro rata* amount based on its ownership of just one Living Unit, Unit, or Lot.

46. From 2002 to 2020, the Association charged, and CSH-1 paid, more than $400,000 in assessments based on the Associations incorrect formula.

47. ~~32.~~ The Association's retention of the ~~not less than $72,418.50~~difference between what CSH-1 paid and what CSH-1 should have paid based on its ownership of just one Living Unit, Unit, or Lot from ~~CHS-1~~2002 to 2020 is unjust under the circumstances.

48. By overcharging CSH-1 from 2002 to 2020, the Association violated its legal duty in its performance of the Declaration.

49. The Association has filed a Second Amended Complaint against Counter-Plaintiffs seeking money damages related to fee assessments for Counter-Plaintiffs' properties.

50. The Association's actions in overcharging CSH-1 from 2002 to 2020 arise from the same transaction on which the Association's claims in its Second Amended Complaint are based.

51. In the event that any assessment is determined by this Court to be due and owing, such amount should be subject to a recoupment and/or set-off in an amount to be determined at trial.

~~33. CSH-1 is entitled to a judgment in the sum of $72,418.50 for the amounts paid to the Association by CSH-1 on account fees which were not properly chargeable.~~

WHEREFORE, ~~Plaintiff~~ Churchill Senior Housing I, Limited Partnership respectfully prays that ~~the Court grant it judgment against Waters Landing Association, Inc. in the sum of not less than $72,418.50, plus such additional damages proven at trial, together with interest at the statutory rate of 6% until date of judgement, interest thereafter after the post-judgment interest rate and costs of this action~~any assessments determined to be owed be expunged or reduced by an amount to be proven at trial.

COUNT IV
(Injunctive Relief Regarding CSH-1 Over Assessments)

52. The allegations contained in paragraphs 1-51 are incorporated by reference herein as if repeated verbatim.

53. The Association has unlawfully assessed CSH-1 based on its supposed ownership of 121 Living Units, Units, or Lots, rather than based on its ownership of just one Living Unit, Unit, or Lot. As a result, CSH-1 has been over-assessed by the Association at all relevant times.

54. Pursuant to Maryland law, while affirmative claims are subject to the applicable statute of limitations, the defense of recoupment is not. Imbesi v. Carpenter Realty Corp., 357 Md. 375, 389-90 (2000) ("[A] claim in the nature of a recoupment defense survives as long as the plaintiff's cause of action exists, even if affirmative legal action upon the subject of recoupment is

barred by a statute of limitations.").

55. To avoid additional, unnecessary litigation concerning assessments owed by CSH-1, this Court should issue an injunction prohibiting collection of assessments by the Association against CSH-1 until such time as the amount of assessments CSH-1 should have paid the Association, based on its ownership of one Living Unit, Unit, or Lot, exceeds the amount of assessments CSH-1 actually paid between 2002-2020.

56. Without an injunction, CSH-1 will suffer irreparable harm because CSH-1 is not permitted to seek a monetary damages award for the amounts it was overcharged outside the limitations period, and will not be able to recover attorneys' fees and costs it incurs to defend against additional meritless claims for assessments owed while it still has a credit in its favor based on the Association's excessive assessments.

57. The balance of harms favors CSH-1 because it should not be forced to defend against claims for assessments so long as the amount of assessments CSH-1 actually paid the Association between 2002-2020 exceeds the amount of assessments CSH-1 should have paid the Association during this period (i.e., so long as there exists an over-assessment credit (the "Over-Assessment Credit")), based on its ownership of one Living Unit, Unit, or Lot. The Association is neither harmed nor inconvenienced since additional collection actions during the period in which an Over-Assessment Credit exists will be futile and thus a waste of the parties' and Court's time.

58. Enjoining the Association from collecting assessments from CSH-1 until such time as the Over-Assessment Credit expires is not contrary to the public interest.

WHEREFORE, CSH-1 requests that this Court enter a Permanent Injunction that enjoins the Association from attempting to collect assessments from CSH-1 until the total CSH-1's

Over-Assessment Credit expires.

COUNT V
(Declaratory Judgment Regarding Parking Termination)

59. The allegations contained in paragraphs 1-58 are incorporated by reference herein as if repeated verbatim.

60. On December 18, 2009, the Association entered into a written contract ("Parking Agreement") with Oakwood Properties (predecessor-in-interest to all three Churchill entities), CSL-2, and CSH-3 ("Benefited Parties") that granted the Benefitted Parties a perpetual license to park vehicles on the land described therein, in exchange for the Benefited Parties' agreement to repair and maintain certain parking areas owned by the Association. The Parking Agreement is attached as **Exhibit B**.

61. Paragraph 1, titled "Parking Rights," along with Paragraph I of the Recitals, establish and confirm for the Benefited Parties "a perpetual license" for "parking motor vehicles" on the described portion of the Association's property.

62. Paragraph 9 provides the duration for the license, explaining that the rights and obligations under the Parking Agreement will continue so long as the Benefited Parties, *i.e.*, Counter-Plaintiffs, own the relevant parcels.

63. The Association has authority pursuant to Article V, Sec. 3(i) of its By-Laws to "grant licenses, easements, rights-of-way and other rights of use."

64. The Association's Board of Directors voted to enter into the Parking Agreement, and thereby authorized the then-President of the Board to execute the Agreement.

65. With this authority, the then-President of the Board executed the Parking Agreement on December 18, 2009.

66. Paragraph 7 of the Parking Agreement further provides a warranty of authority, stating that each party warrants and covenants that it has "full right, power and authority to enter into, carry out and perform [the Parking] Agreement without obtaining any further approvals or consents[.]"

67. The Parking Agreement includes exhibits showing an "Existing Parking Area" (Ex. D-1), which consists of 30 parking spaces, and an adjacent "Proposed Parking Area" (Ex. D-2), on which Counter-Plaintiffs, at their own cost, subsequently constructed six handicapped parking spaces.

68. The location of the six parking spaces is critical because they are close to an entrance of the Phase II building, a senior-living facility owned by CSL-2, making them most convenient for elderly tenants and visitors with limited mobility. There is no other viable alternative parking that addresses this same need.

69. The final county-approved site plan for CSL-2's property (referenced in Paragraph 2 of the Parking Agreement) shows the 36 parking spaces that are subject to the Parking Agreement, as well as a generator to be placed on the Association's property by Counter-Plaintiffs. This site plan was reviewed and approved by the Association.

70. From 2009 to present, Counter-Plaintiffs' elderly tenants (many of whom are disabled) and their visitors have used the parking area granted in the Parking Agreement without issue.

71. On July 11, 2022, Counter-Plaintiffs received a letter (the "Letter") from the Association's counsel stating that the Association's Board of Directors ("the Board") had "voted to revoke the privileges granted by [the Parking Agreement] as of July 31, 2022." The Letter further stated that

> [a]s of August 1, 2022, the owners and tenants of the Churchill Parties' properties shall have no rights of use of access to the Association's parking areas beyond those reserved to all Members by the Association's Declaration of Covenants. On or before that date, you are required to remove (1) any signs purporting to restrict parking placed without the written authorization of the Association's Board of Directors and (2) any equipment, machinery and commercial vehicles stored or parked on Association property.

72. In a separate communication, the Association demanded that Counter-Plaintiffs remove the generator that is placed on land owned by the Association, as depicted on the approved site plan.

73. The land on which the generator sits is a grassy area that has never been used for parking, and is not approved by the County for use as parking.

74. The Board has since extended the date on which it purports to terminate the Parking Agreement to December 31, 2022.

75. The Association is not permitted to terminate the Parking Agreement. The Association does not have the authority to unilaterally revoke a binding contract or terminate a perpetual license under Maryland law.

76. Moreover, by the express terms of the Parking Agreement, the license is irrevocable so long as the Benefited Parties continue to own the real property subject to the license. Counter-Plaintiffs still own the parcels in question, making the Parking Agreement irrevocable at this time.

77. Counter-Plaintiffs provided substantial consideration in return for the perpetual and irrevocable license provided in the Parking Agreement that benefited the Association's members and their guests, including constructing and maintaining the parking spaces and repaving other roads on the Association's property. Counter-Plaintiffs would not have expended these substantial sums if the Association maintained the authority to terminate the Parking Agreement while

Counter-Plaintiffs remained in control of the relevant parcels.

78. The Parking Agreement was a required component of CSL-2's approved site plan, and was negotiated in that context. Termination of the Parking Agreement would render CSL-2 in violation of its approved site plan.

79. The Parking Agreement was a critical component of the Counter-Plaintiffs' lender approvals, and revocation of the Parking Agreement would leave Counter-Plaintiffs in potential default of its obligations under the loan documents.

80. There exists an actual controversy of a justiciable issue between Counter-Plaintiffs and Counter-Defendant within the meaning of the Maryland Uniform Declaratory Judgment Act, Md. Cts. & Jud. Proc. Code § 3-409(a)(1) regarding whether Defendants may unilaterally revoke the parking license granted in the December 2009 Parking Agreement.

81. Counter-Plaintiffs and Counter-Defendant hold antagonistic claims that can only be resolved by a declaratory judgment.

82. A declaratory judgment by this Court will terminate this controversy and will establish the parties' legal rights with regard to the Parking Agreement and placement of the generator.

WHEREFORE, Churchill Senior Housing I, Limited Partnership, Churchill Senior Living II, LLC and Churchill Senior Housing III, Limited Partnership request that this Court enter a judgement:

(i) Declaring that the Parking Agreement is irrevocable so long as the Benefited Parties continue to own the relevant parcels;

(ii) Declaring that Counter-Plaintiffs are not required to remove the generator placed on the Association's property as depicted on the approved site plan;

(iii) Awarding costs, as provided by law; and

(iv) Granting Counter-Plaintiffs such further relief as the Court deems just and appropriate.

COUNT VI
(Injunctive Relief Regarding Parking Termination)

83. The allegations contained in paragraphs 1-82 are incorporated by reference herein as if repeated verbatim.

84. The actions of the Association demonstrate its intention to revoke the parking license it granted to Counter-Plaintiffs effective December 31, 2022, in contravention of the terms of the Parking Agreement.

85. Should the Association succeed in revoking the parking license, Counter-Plaintiffs will suffer immediate, substantial, and irreparable harms for which they have no adequate remedy at law. These harm include, but are not limited to, the following: (a) the loss of a right bestowed to it by contract; (b) leaving numerous elderly and disabled tenants and their visitors without accessible parking; and (c) forcing Counter-Plaintiffs to default on their loan documents and violate the approved site plan. These harms would be irreparable pending resolution of this action and are not adequately compensable by an award of damages.

86. Counter-Plaintiffs are likely to succeed on the merits. The Association entered into a signed, written contract providing a perpetual and irrevocable license to Counter-Plaintiffs and now seeks to terminate that agreement unilaterally.

87. The balance of harms favors Counter-Plaintiffs. The Association did not provide any reasoning for the sudden purported revocation the Parking Agreement. The Association took this unilateral action only after a dispute arose between Counter-Plaintiffs and the Association regarding homeowner's association assessments. The Association's Board Meeting minutes from

February 17, 2021 note that the Board views the revocation of the Parking Agreement as "a bargaining chip" in the assessment matter against Counter-Plaintiffs. The Association is neither harmed nor inconvenienced by honoring its contract. The Association actually benefits because the Parking Agreement requires Counter-Plaintiffs to maintain the driveway extension serving the additional parking spaces and other areas on the property that Counter-Plaintiffs repaired at their own cost. In contrast, the harm to Counter-Plaintiffs created by the sudden loss of its license and ability of its elderly (and often disabled) tenants and their visitors to park their vehicles in close proximity to an entrance to the Phase II senior-living building far outweighs any inconvenience to the Association.

88. Enjoining the Association from revoking the parking license is not contrary to the public interest.

WHEREFORE, Churchill Senior Housing I, Limited Partnership, Churchill Senior Living II, LLC and Churchill Senior Housing III, Limited Partnership request that this Court enter a Permanent Injunction that enjoins the Association from unilaterally revoking the parking license the Association granted in the Parking Agreement.

Respectfully submitted,

~~/s/ Patrick J. Kearney~~
~~Patrick J. Kearney~~
~~ASI No. 8312010237~~
~~Selzer Gurvitch Rabin Wertheimer & Polott, PC~~
~~4416 East West Highway~~
~~Bethesda, MD 20814~~
~~Phone: 301-986-9600~~
~~Fax: 301-986-1301~~~~pkearney@sgrwlaw.com~~

/s/ Paul S. Caiola
Paul S. Caiola (CPF# 9512120109)
Sarah R. Simmons (CPF# 1912180151)
Gallagher Evelius & Jones LLP
218 N. Charles Street, Suite 400
Baltimore, MD 21201
(410) 727-7702
pcaiola@gejlw.com
ssimmons@gejlaw.com

Attorneys for Defendants/Counter-Plaintiffs

~~**DEMAND FOR JURY TRIAL**~~

~~Defendant demands a jury on all matters so triable.~~

~~/s/ Patrick J. Kearney~~
~~Patrick J. Kearney~~

CERTIFICATE OF SERVICE

I ~~hereby certify~~**HEREBY CERTIFY** that on the 10th day of October, 2022, a copy of ~~the foregoing Answer~~Counter-Plaintiffs' First Amended Counterclaim was filed and served electronically via the MDEC system and ~~email this 22nd day of February, 2022 upon~~by electronic mail on the following:

Benjamin J. Andres~~, Esq.~~
Jeffrey C. Seaman
Whiteford, Taylor & Preston, LLP
111 Rockville Pike, Suite 800
Rockville, MD 20850
bandres@wtplaw.com

And was served via electronic mail and by first class postage prepaid mail on October 10, 2022, on the following:

Walter E. ~~Gilcrest~~Gillcrist, Jr.~~, Esq.~~
David DeWitt
Budow ~~And~~& Noble ~~P C~~PC
~~Twinbrook Metro Plaza~~

12300 Twinbrook ~~Pkwy~~Parkway, #540
Rockville, MD 20852
wgillcrist@budownoble.com
ddewitt@budownoble.com

Attorneys for Plaintiff/Counter-Defendant

/s/ Paul S. Caiola

Paul S. Caiola (CPF# 9512120109)

~~/s/ Patrick J. Kearney~~

~~Patrick J. Kearney~~

Document comparison by Workshare 10.0 on Monday, October 10, 2022 5:30:30 PM

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Rendering set	Standard

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Padding cell	

Statistics:	
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Moved from	5
Moved to	5
Style change	0
Format changed	0
Total changes	471

EXHIBIT A

PARCEL W, BLOCK 20
CHURCHILL TOWN SECTOR
P.No. 15902

PARCEL U, BLOCK 20
CHURCHILL TOWN SECTOR
P.No. 14881

CURVE TABLE						
CURVE	RADIUS	LENGTH	DELTA	TANGENT	CHORD BEARING	CHORD
C1	2800.00'	391.75'	8°00'59"	196.20'	S 22°10'14" W	391.43'

R/C
N 31°23'00" E
243.23'
348.70'
105.47'
131.31'
PPF
340.00'

PARCEL CC
57,025 sq. ft.
1.30912 Acres

PARCEL DD
20,585 sq. ft.
0.47257 Acres

S48°56'00"E
72.30'
S58°37'00"E
121.88'
S58°06'07"E
122.82'
S58°37'00"E
42.30'
141.24'
S 31°23'00" W
80.28'
221.52'
N 60°00'00" W
259.03'
S31°23'00"W
43.23'
37.28'
346.52'

L1 L2 L3 L4 L5 L6 L7 L8 L9

Phase II
Existing Building

Approximate
Location Future
Phase III
Building

Phase I
Existing Building
#21000 Father Hurley
Blvd.

Area conveyed from Protestant Episcopal Church of the Diocese of Washington to Churchill Senior Housing, Limited Partnership, L.L.C, Inc., a Maryland Corporation Liber 17778 Folio 010 and recorded as part of Plat 21276

PLAT 16847

N/F
CONVENTION OF THE PROTESTANT
EPISCOPAL CHURCH OF THE DIOCESE
OF WASHINGTON
L. 7445 F.185

PARCEL M
CHURCHILL TOWN SECTOR
P.No. 12338

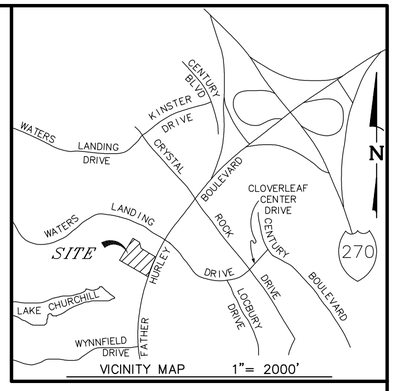
PARCEL Z
161,403 sq. ft.
3.70529 Acres
PLAT 21276

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 58°44'08" W	3.87'
L2	S 31°23'00" W	23.99'
L3	S 58°37'00" E	4.21'
L4	S 31°23'00" W	28.50'
L5	S 58°37'00" E	27.26'
L6	S 31°23'00" W	11.93'
L7	N 31°23'00" E	1.39'
L8	S 58°37'00" E	57.17'
L9	SN 31°23'00" W	1.39'

R=2800.00 C1 L=391.75'

FATHER HURLEY BOULEVARD
(120 R/W)
PREVIOUSLY DEDICATED P No. 12746

131+00 132+00 133+00 134+00 135+00 136+00



TAX MAP No. EU343

GRAPHIC SCALE
(IN FEET)
1 inch = 50 ft.
50 0 25 50 100
15.24 0 7.62 15.24 30.48
(IN METERS)
1 inch = 15.24 m.

PLAT TABULATION

Number of Parcels	=	2
Area of Parcels	=	77,611 sq. ft.
Area of Street Dedication	=	0 sq. ft.
Total Area	=	77,611 square feet or 1.78170 acres

PROPERTY EXHIBIT

PARCELS Z, CC, AND DD, BLOCK 20
CHURCHILL TOWN SECTOR
GERMANTOWN

ELECTION DISTRICT No. 2
MONTGOMERY COUNTY, MARYLAND
SCALE: 1"= 50' 02/11/2022

MHG Macris, Hendricks & Glascock, P.A.
Engineers ▪ Planners
Landscape Architects ▪ Surveyors

9220 Wightman Road, Suite 120
Montgomery Village, Maryland
20886-1279

Phone 301.670.0840
Fax 301.948.0693
www.mhgpa.com

1994.352.43

EXHIBIT B

AGREEMENT

THIS AGREEMENT (this "Agreement") is made and entered into as of this 18TH day of DECEMBER, 2009, by and between (i) WATERS LANDING ASSOCIATION, INC., a Maryland corporation ("Association"), (ii) OAKWOOD PROPERTIES, INC., a Maryland corporation ("Oakwood") and CHURCHILL SENIOR HOUSING III, LP, a Maryland limited partnership ("Churchill III", and together with Oakwood, the "Benefited Owners"), and (iii) CHURCHILL SENIOR HOUSING II, LP, a Maryland limited partnership ("Parcel II Lessee") and CHURCHILL SENIOR HOUSING III(B), LP, a Maryland limited partnership ("Parcel III Lessee", and together with the Phase II Lessee, the "Lessees").

RECITALS:

A. Oakwood is the fee simple owner of a certain parcel of real property (Parcel AA) located in Montgomery County, Maryland, more particularly shown or described in Exhibit "A" attached hereto and made a part hereof ("Parcel II").

B. Churchill III is the fee simple owner of a certain parcel of real property (Parcel BB) located in Montgomery County, Maryland, more particularly shown or described in Exhibit "B" attached hereto and made a part hereof ("Parcel III", and together with Parcel II, the "Benefited Parcels").

C. The Association was established pursuant to a Declaration of Covenants ("Declaration of Covenants"), dated March 19, 1981, and recorded on March 20, 1981, in Liber 5672, Folio 692, in the land records of Montgomery County, Maryland.

D. The Association is the fee simple owner of a certain parcel of real property (Parcel M) located in Montgomery County, Maryland, more particularly shown or described in Exhibit "C" attached hereto and made a part hereof (the "HOA Property"). The HOA Property is located adjacent to the Benefited Parcels.

E. Oakwood intends to ground lease Parcel II to the Parcel II Lessee, whereupon the Parcel II Lessee will be the lessee of, and owner of all improvements on, Parcel II.

F. Churchill III intends to ground lease Parcel III to the Parcel III Lessee, whereupon the Parcel III Lessee will be the lessee of, and the owner of all improvements on, Parcel III.

G. The Benefited Owners and the Lessees are referred to herein collectively as the "Benefited Parties", and the Benefited Parties and the Association are referred to herein collectively as the "Parties".

H. Pursuant to the Declaration of Covenants, as members of the Association, the Benefitted Owners and, through them, the Lessees, have rights and easements of enjoyment in and to the HOA Property.

I. In furtherance of the Declaration of Covenants, the Association and the Benefited Parties desire to enter into this Agreement, for the benefit of the Benefited Parcels, establishing and confirming a perpetual license for the Benefited Parties, as more particularly described in Paragraph 1 below, for parking of vehicles on that portion of the HOA Property, more

particularly shown or described as (1) "Existing Parking Area" in Exhibit "D-1" attached hereto and made a part hereof (hereinafter referred to as the "Existing Parking Area") and (2) "Proposed Parking Area" in Exhibit "D-2" attached hereto and made a part hereof (hereinafter referred to as the "Proposed Parking Area").

J. In furtherance of the Declaration of Covenants, the Association and the Benefited Parties desire to enter into this Agreement, for the benefit of the Benefited Parcels, confirming that the Benefited Parties have a perpetual license, as more particularly described in Paragraph 2 below, for construction, maintenance and repair of a driveway and parking spaces on that portion of the HOA Property more particularly described or shown in Exhibit "E" attached hereto and made a part hereof (hereinafter referred to as the "Construction/Maintenance Area").

NOW, THEREFORE, in consideration of the above recitals, each of which is hereby incorporated in and made a substantive part of this Agreement, and for other good and valuable consideration, the adequacy, sufficiency and receipt of which is hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Parking Rights.

(a) The Association hereby establishes and confirms, for the Benefited Parties, their respective successors and assigns, for the benefit of the Benefited Parcels, a perpetual license, free of charge, on the Existing Parking Area and the Proposed Parking Area (collectively, the "Parking Areas") for parking motor vehicles and for pedestrian and vehicular use of all walkways, passage ways, driveways and roadways as the same may be constructed, installed, situated, located or relocated at any time hereafter on the HOA Property, or any portion thereof, for access to and from the Benefited Parcels, the Parking Areas and/or Father Hurley Boulevard; provided, however, that in no event shall the Benefited Parties nor their respective tenants, sub-tenants, concessionaire, licensees, customers or invitees be entitled to use more than thirty (30) parking spaces within the Existing Parking Area at any one time without the written consent of the Association.

(b) The Association agrees that it will not erect or permit to be erected any fence, barrier, building or other structure within the Parking Areas which would unreasonably impede the free flow of pedestrian and vehicular traffic through the Parking Areas or impede the use by the Benefited Parties of thirty (30) parking spaces therein. The Benefited Parties shall have full, free and uninterrupted use of the Parking Areas for the purposes named herein and shall have all rights and privileges as may be reasonably necessary to the exercise of the foregoing license; provided, however, that each Benefited Party shall take reasonable steps to minimize any damage to the HOA Property, or inconvenience to Association, as a result of its exercise of such rights.

2. Construction and Maintenance License. The Association hereby establishes and confirms that the Benefited Parties, their respective successors and assigns, for the benefit of the Benefited Parcels, have a perpetual license, free of charge, on the Construction/Maintenance Area for the purpose of constructing, maintaining, repairing and replacing certain parking spaces to be located in the Proposed Parking Area (the "Additional Parking Spaces") and a driveway extension (the "Driveway Extension") to serve the Additional Parking Spaces and the Benefited Parcels. The Driveway Extension and the Additional Parking Spaces shall be constructed in a

good and workmanlike manner, lien free and in accordance with the County-approved site plan for Parcel II. The Lessees shall maintain the Driveway Extension in a good state of repair and in a safe and orderly condition.

3. Indemnification. The Parties agree to defend any litigation and to indemnify and save each other, and such Parties' successors, assigns, authorized invitees and agents, harmless from and against any and all claims for injury or death of persons or damage to, or loss of, property, arising out of, alleged to have arisen out of, or occasioned by the indemnifying party's exercise of the rights set forth in this Agreement. The Parties will secure their indemnification obligation with a policy of general liability insurance.

4. Reasonable Use and Enjoyment. The Benefited Parties and their respective tenants, sub-tenants, concessionaires, licensees, customers and invitees shall have full, free and uninterrupted use of the rights set forth herein for the purposes named herein and shall have all rights and privileges reasonably necessary to the exercise of said rights; provided, however, that the Benefited Parties shall exercise such rights in a reasonable manner so as not unreasonably to interfere with the normal operation, use and enjoyment by the Association of the HOA Property.

5. Change of Use; Division of Ownership; Additional Property. The rights of the Parties under this Agreement shall not be affected by any improvement, development, change of use or division of ownership of any portion of the Benefited Parcels or the HOA Property, respectively.

6. Waivers and Consents. Modifications, waivers and consents respecting this Agreement shall only be binding if in writing and signed by the party against whom such modification, waiver or consent is sought to be enforced. No restriction, condition, obligation or provision of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

7. Warranty of Authority.

(a) Association warrants and covenants that it (i) has full right, power and authority to enter into, carry out and perform this Agreement without obtaining any further approvals or consents, and (ii) owns the entire fee simple title, legal and equitable, to the HOA Property.

(b) Oakwood warrants and covenants that it (i) has full right, power and authority to enter into, carry out and perform this Agreement without obtaining any further approvals or consents, and (ii) owns the entire fee simple title, legal and equitable, to Parcel II.

(c) Churchill III warrants and covenants that it (i) has full right, power and authority to enter into, carry out and perform this Agreement without obtaining any further approvals or consents, and (ii) owns the entire fee simple title, legal and equitable, to Parcel III.

8. Benefits and Burdens. The terms, conditions and provisions of this Agreement shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the Association and the Benefited Parties and their respective duly authorized invitees, tenants or licensees (provided that all such invitees, tenants and licensees shall have no greater rights than are specifically granted herein).

9. Duration of Obligations. The rights and obligations of any Benefited Party under this Agreement shall apply only with respect to the period during which the Party is the owner of a fee simple interest in the parcel of land, namely, Parcel II and Parcel III, as the case may be, with respect to which the rights and obligations apply.

10. Miscellaneous. This Agreement constitutes the entire agreement with respect to the subject matter hereof and none of the Parties are liable to or bound in any manner by expressed or implied warranties, guaranties, promises, statements or representations pertaining to the property that is the subject matter hereof unless such warranties, guaranties, promises, statements or representations are expressly and specifically set forth herein. Titles or captions to paragraphs are for convenience only and shall be given no legal effect or significance. The Association agrees to execute such further assurances as may be requisite, and if any customary confirmatory or supplemental instruments are needed in connection with this Agreement, then, upon request by any of the Benefited Parties, the Association shall consent to the execution of any such instruments and, to the extent required, shall execute such confirmatory or supplemental instruments as may be required in connection therewith.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first written above.

WITNESS:

WATERS LANDING ASSOCIATION, INC.,
a Maryland corporation

By: Richard L Walker (SEAL)
Name: Richard L Walker
Title: President

WITNESS:

OAKWOOD PROPERTIES, INC.,
a Maryland corporation

By: Joseph F Parreco (SEAL)
Joseph F. Parreco
General Partner

WITNESS:

CHURCHILL SENIOR HOUSING III, LP,
a Maryland limited partnership

By: Joseph F Parreco (SEAL)
Joseph F. Parreco
General Partner

WITNESS:

CHURCHILL SENIOR HOUSING II, LP,
a Maryland limited partnership

By: Joseph F Parreco (SEAL)
Joseph F. Parreco
General Partner

WITNESS:

CHURCHILL SENIOR HOUSING III(B),LP,
a Maryland limited partnership

By: Joseph F Parreco (SEAL)
Joseph F. Parreco
General Partner

EXHIBIT A

DEPICTION/DESCRIPTION OF PARCEL II

Parcel I.D. = 02-03279961

EXHIBIT "A"
PARCEL AA – BLOCK 20
CHURCHILL TOWN SECTOR GERMANTOWN

Being a parcel of land located in the Second (2nd) Election District of Montgomery County, Maryland and being all of Parcel "AA", Block 20, in the subdivision known as "Section 11, Parcels Z, AA & BB, Block 20, CHURCHILL TOWN SECTOR GERMANTOWN" as per plat recorded in Plat Book 196 at Plat 21276 among the Land Records of Montgomery County, Maryland.

94.352.43.20/EA-DHR- Parcel AA 2009-05-13

EXHIBIT B

DEPICTION/DESCRIPTION OF PARCEL III

Parcel I.D. = 02-03282913

EXHIBIT "B"
PARCEL BB – BLOCK 20
CHURCHILL TOWN SECTOR GERMANTOWN

Being a parcel of land located in the Second (2nd) Election District of Montgomery County, Maryland and being all of Parcel "BB", Block 20, in the subdivision known as "Section 11, Parcels Z, AA & BB, Block 20, CHURCHILL TOWN SECTOR GERMANTOWN" as per plat recorded in Plat Book 196 at Plat No 21276 among the Land Records of Montgomery County, Maryland.

94.352.43.20/EB-DHR- Parcel BB 2009-05-13

EXHIBIT C

DEPICTION/DESCRIPTION OF HOA PROPERTY

Parcel I.D. = 02-01988321

EXHIBIT "C"
PARCEL M – BLOCK 20
CHURCHILL TOWN SECTOR GERMANTOWN

Being a parcel of land located in the Second (2nd) Election District of Montgomery County, Maryland and being all of Parcel "M", Block 20, in the subdivision known as "Plat 64, Parcels M & N, Section 11, CHURCHILL TOWN SECTOR GERMANTOWN" as per plat recorded in Plat Book 110 at Plat No. 12938 among the Land Records of Montgomery County, Maryland.

94.352.43.20/BC-DHR- Parcel M 2009-05-13

EXHIBIT D-1

DEPICTION/DESCRIPTION OF EXISTING PARKING AREA

Parcel I.D. = 02-01988321

EXHIBIT "D-1"
EXISTING PARKING AREA
PARCEL M – BLOCK 20
CHURCHILL TOWN SECTOR GERMANTOWN

Being a strip or parcel of land located in the Second Election District of Montgomery County, Maryland and being part of the land conveyed by The Prudential Insurance Company of America to The Waters Landing Association, Inc by corrective deed dated August 22, 1988 and recorded among the Land Records of Montgomery County, Maryland in Liber 8559 at Folio 804; and also being part of Parcel M, Block 20 as delineated on a subdivision record plat entitled "Plat 64, Parcels M & N, Section 11, CHURCHILL TOWN SECTOR GERMANTOWN" as recorded among the aforesaid Land Records as Plat No. 12938 and being more particularly described in said plat Datum by Macris, Hendricks, and Glascock, P.A. as follows:

Beginning at a point on the northerly or South 60°00'00" East, 605.55 foot line of the aforesaid Parcel M, Block 20, 253.27 feet southeasterly from the northeasterly end thereof, then binding with part of said line

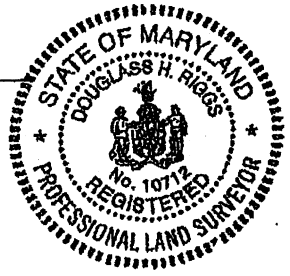
1. South 60°00'00" East, 172.93 feet to a point, then leaving said northerly line to cross and include part of said Parcel M, the following five (5) courses:
2. South 30°00'00" West, 32.58 feet to a point, then
3. North 60°00'00" West, 8.41 feet to a point, then
4. South 30°00'00" West, 32.60 feet to a point, then
5. North 60°00'00" West, 164.52 feet to a point, then

6. North 30°00'00" East, 65.18 feet to the point of beginning; containing 10,998 square feet or 0.25247 of an acre of land

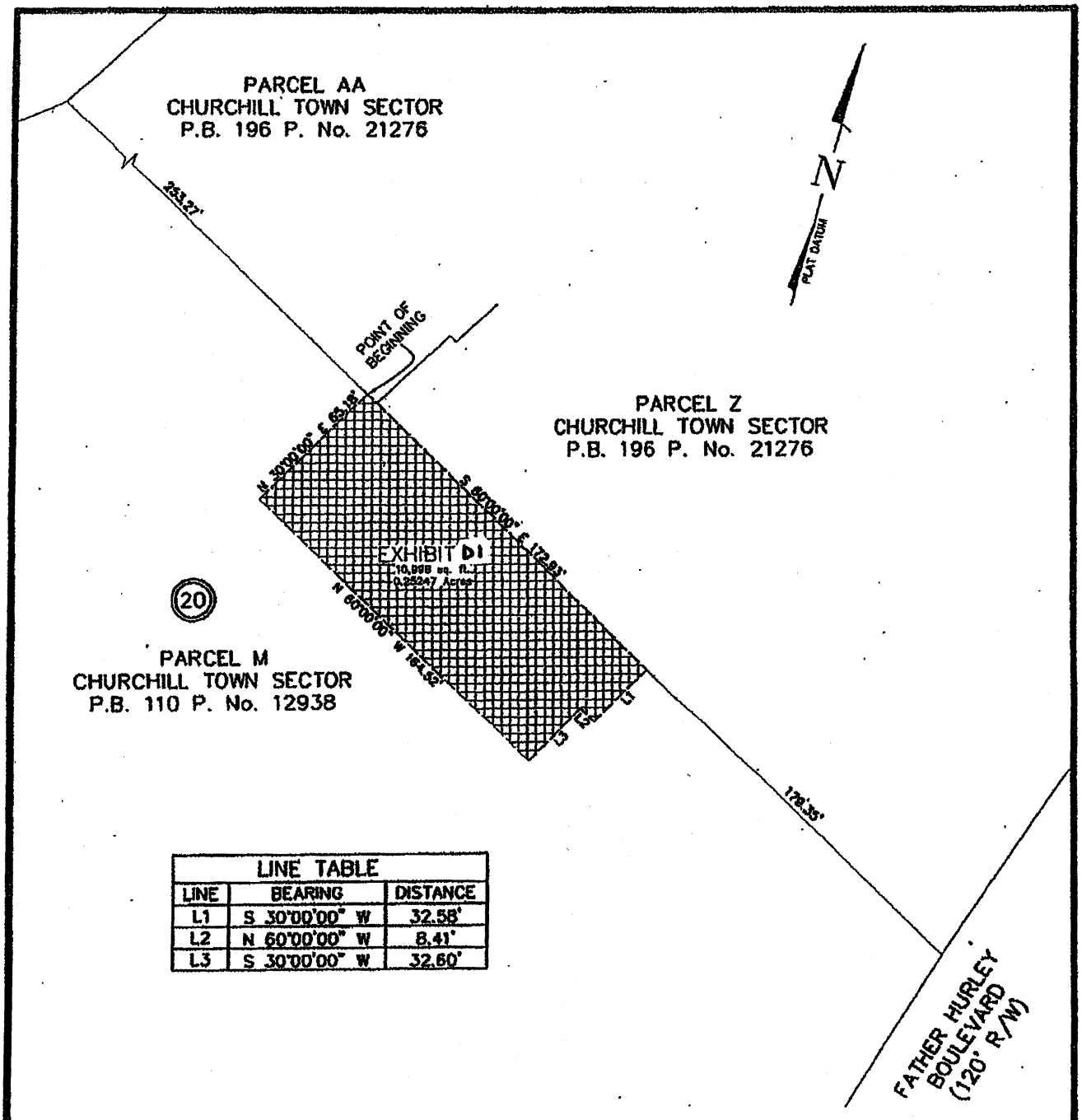
Certified correct to the best of my professional knowledge, information and belief and this description was prepared by me and is in conformance with Title 9, Subtitle 13, Chapter 6, Section .12 of the Minimum Standards of Practice for Land Surveyors. If the seal and signature are not violet colored, the document is a copy that should be assumed to contain unauthorized alterations. The certification contained on this document shall not apply to any copies.

Douglass H. Riggs III

Macris, Hendricks & Glascock, P.A.
Douglass H. Riggs, III, Professional Land Surveyor
Maryland Registration No. 10712



94.352.43.20/EG1-DHR- Parcel M 2009-05-20



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 30°00'00" W	32.58'
L2	N 60°00'00" W	8.41'
L3	S 30°00'00" W	32.60'

EXHIBIT D-1

EXISITING PARKING AREA

CHURCHILL TOWN SECTOR
GERMANTOWN
PART OF PARCEL M

SCALE 1"=60' MAY, 2009

MONTGOMERY COUNTY, MARYLAND

MHG Macris, Hendricks & Glascock, P.A.
Engineers • Planners
Landscape Architects • Surveyors

9220 Wightman Road, Suite 120
Montgomery Village, Maryland
20886-1279

Phone 301.670.0840
Fax 301.948.0693
www.mhgpa.com

EP_43_05
JOB NO.1994.352.43

EXHIBIT D-2

DEPICTION/DESCRIPTION OF PROPOSED PARKING AREA

Parcel I.D. = 02-01988321

EXHIBIT "D-2"
PROPOSED PARKING AREA
PARCEL M – BLOCK 20
CHURCHILL TOWN SECTOR GERMANTOWN

Being a strip or parcel of land located in the Second Election District of Montgomery County, Maryland and being part of the land conveyed by the Prudential Insurance Company of America to The Waters Landing Association, Inc by corrective deed dated August 22, 1988 and recorded among the Land Records of Montgomery County, Maryland in Liber 8559 at Folio 804; and also being part of Parcel M, Block 20 as delineated on a subdivision record plat entitled "Plat 64, Parcels M & N, Section 11, CHURCHILL TOWN SECTOR GERMANTOWN" as recorded among the aforesaid Land Records as Plat No 12938 and being more particularly described in said plat Datum by Macris, Hendricks, and Glascock, P.A. as follows:

Beginning at a point on the northerly or South 60°00'00" East, 605.55 foot line of the aforesaid Parcel M, Block 20, 183.27 feet southeasterly from the northwesterly end thereof, then binding with part of said line

1. South 60°00'00" East, 70.00 feet to a point, then leaving said northerly line to cross and include part of said Parcel M, the following three (3) courses:
2. South 30°00'00" West, 45.21 feet to a point, then
3. North 60°53'54" West, 70.01 feet to a point, then

4. North 30°00'00" East, 46.30 feet to the point of beginning; containing 3,203 square feet or 0.07353 of an acre of land.

Certified correct to the best of my professional knowledge, information and belief and this description was prepared by me and is in conformance with Title 9, Subtitle 13, Chapter 6, Section .12 of the Minimum Standards of Practice for Land Surveyors. If the seal and signature are not violet colored, the document is a copy that should be assumed to contain unauthorized alterations. The certification contained on this document shall not apply to any copies.

Douglass H. Riggs III

Macris, Hendricks & Glascock, P.A.
Douglass H. Riggs, III, Professional Land Surveyor
Maryland Registration No. 10712

STATE OF MARYLAND
DOUGLASS H. RIGGS
No. 10712
REGISTERED
PROFESSIONAL LAND SURVEYOR

94.352.43.20/EG2-DHR- Parcel M 2009-05-20

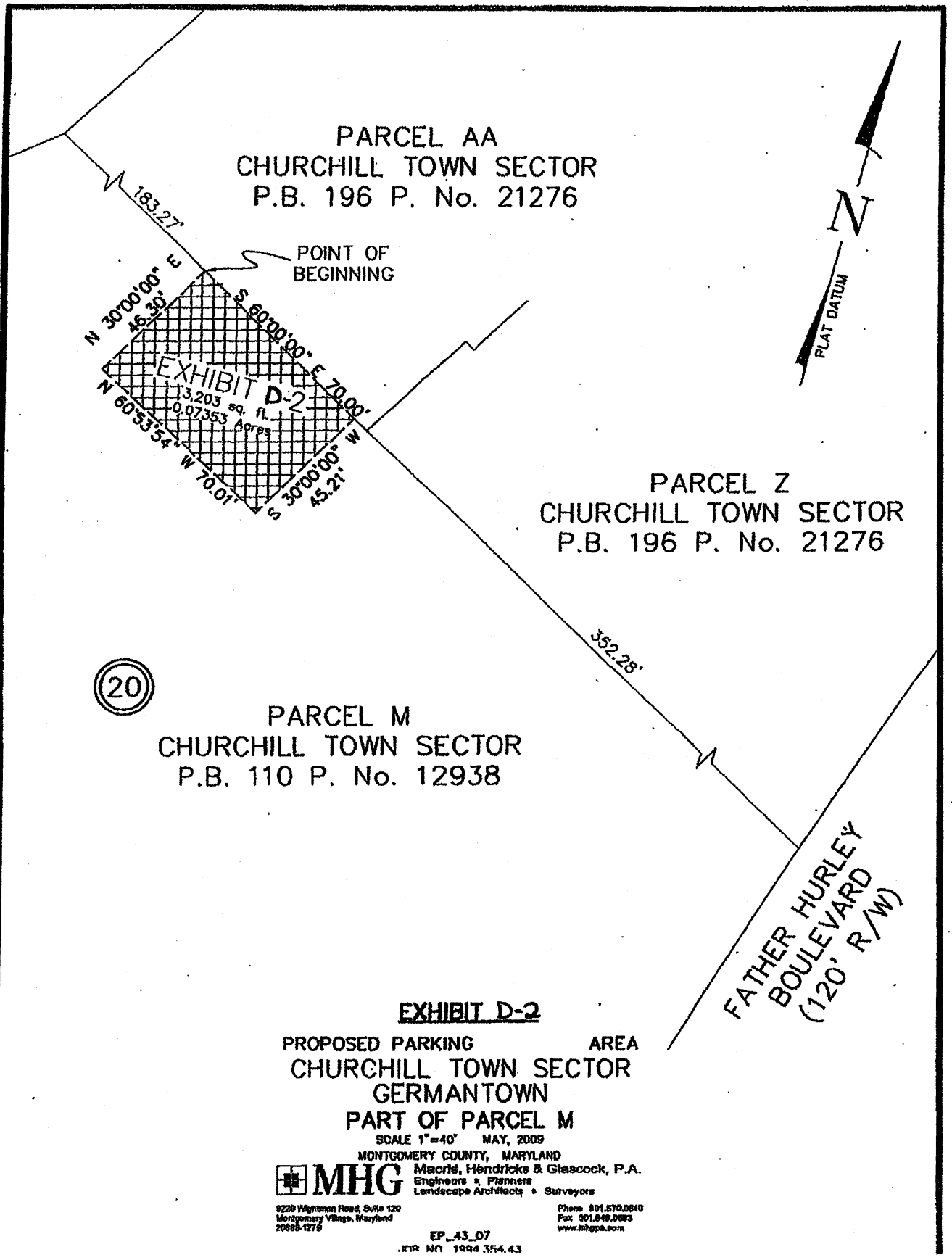


EXHIBIT D-2

PROPOSED PARKING AREA
CHURCHILL TOWN SECTOR
GERMANTOWN
PART OF PARCEL M
SCALE 1"=40' MAY, 2009
MONTGOMERY COUNTY, MARYLAND

MHG Macris, Hendricks & Glascock, P.A.
Engineers • Planners
Landscape Architects • Surveyors
9220 Wightman Road, Suite 120
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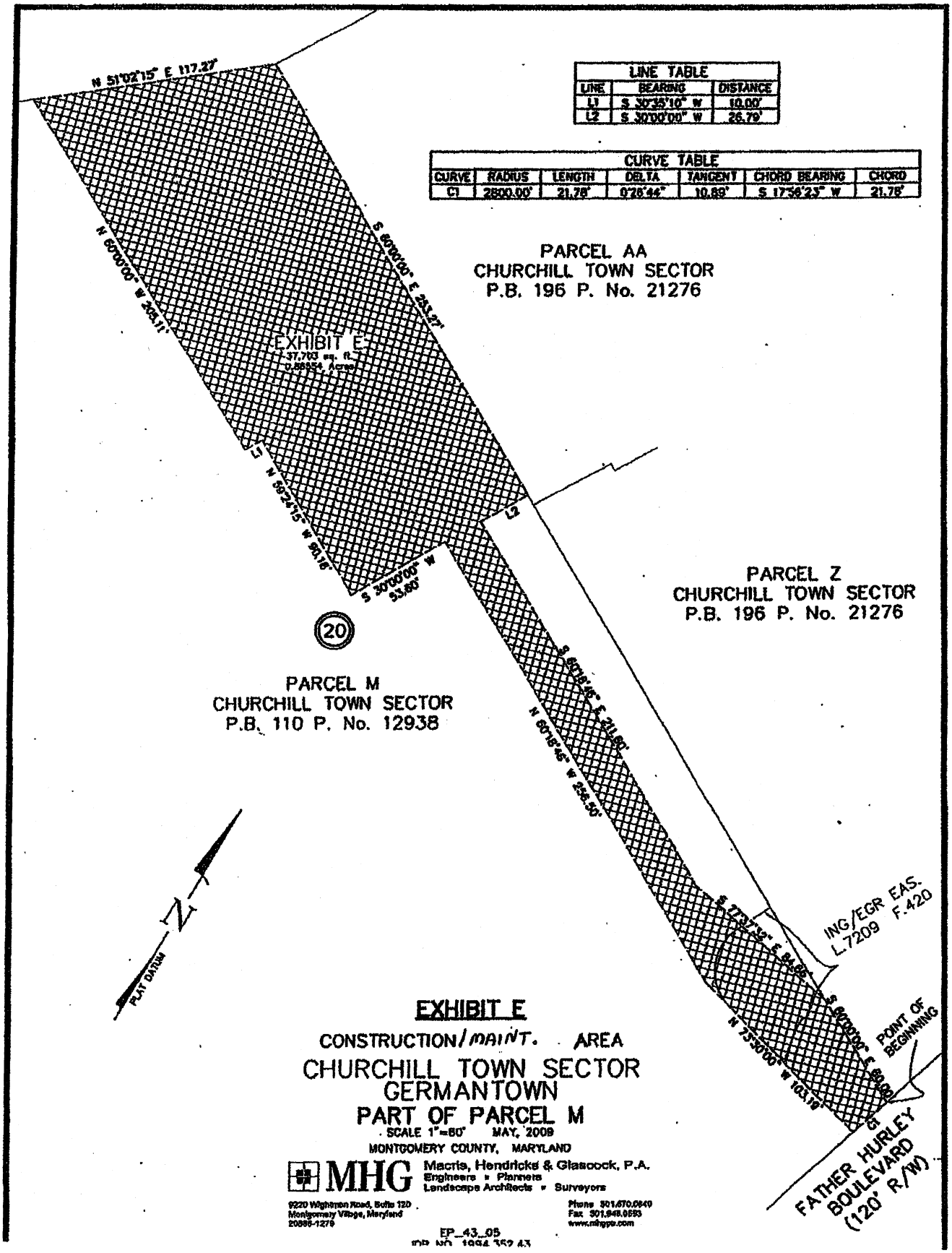
20886-1279
Phone 301.670.0840
Fax 301.948.0693
www.mhgpa.com

EP_43_07
.INR NO. 1994.354.43

EXHIBIT E

DEPICTION/DESCRIPTION OF CONSTRUCTION/MAINTENANCE AREA



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 30°35'10" W	10.00'
L2	S 30°00'00" W	26.79'

CURVE TABLE						
CURVE	RADIUS	LENGTH	DELTA	TANGENT	CHORD BEARING	CHORD
C1	2800.00'	21.78'	0°26'44"	10.89'	S 17°56'23" W	21.78'

EXHIBIT E

CONSTRUCTION/MAINT. AREA

CHURCHILL TOWN SECTOR
GERMANTOWN
PART OF PARCEL M

SCALE 1"=60' MAY, 2009

MONTGOMERY COUNTY, MARYLAND

MHG Macris, Hendricks & Glascock, P.A.
Engineers • Planners
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9220 Wightman Road, Suite 120
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Phone 301.670.0840
Fax 301.948.0693
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EP_43_05

Parcel I.D. = 02-01988321

EXHIBIT "E"
CONSTRUCTION/MAINT. AREA
PARCEL M – BLOCK 20
CHURCHILL TOWN SECTOR GERMANTOWN

Being a strip or parcel of land located in the Second Election District of Montgomery County, Maryland and being part of the land conveyed by the Prudential Insurance Company of America to The Waters Landing Association, Inc. by corrective deed dated August 22, 1988 and recorded among the Land Records of Montgomery County, Maryland in Liber 8559 at Folio 804; and also being part of Parcel M, Block 20 as delineated on a subdivision record plat entitled "Plat 64, Parcels M & N, Section 11, CHURCHILL TOWN SECTOR GERMANTOWN" as recorded among the aforesaid Land Records as Plat No. 12938 and being more particularly described in said plat Datum by Macris, Hendricks, and Glascock, P.A. as follows:

Beginning at a point on the westerly right-of-way limits of Father Hurley Boulevard (120' R/W), said point also being the northeast front corner of the aforesaid Parcel "M", Block 20, then binding with the westerly right-of-way limits of Father Hurley Boulevard and the easterly platted limits of Parcel M, Block 20.

1. 21.78 feet along the arc of a curve deflecting to the left, having a radius of 2800.00 feet and a chord bearing and length of South 17°56'23" West, 21.78 feet to a point, then leaving said Father Hurley Boulevard to cross and include part of said Parcel "M"
2. North 73°30'00" West, 103.19 feet to a point, then
3. North 60°18'46" West, 256.50 feet to a point, then
4. South 30°00'00" West, 53.60 feet to a point, then
5. North 59°24'15" West, 90.16 feet to a point, then

6. South 30°35'10" West, 10.00 feet to a point, then

7. North 60°00'00" West, 205.11 feet to a point, said point being on the westerly platted limits of said Parcel "M" then binding with the platted limits of said Parcel "M" the following two (2) courses:

8. North 51°02'15" East, 117.27 feet to a point, then

9. South 60°00'00" East, 253.27 feet to a point, then leaving the northerly platted limits and continuing to cross and include part of said Parcel "M"

10. South 30°00'00" West, 26.79 feet to a point, then

11. South 60°18'46" East, 211.60 feet to a point, then

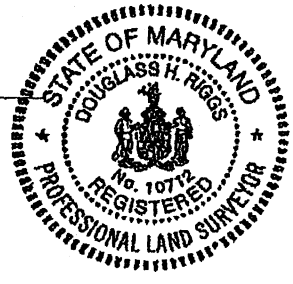
12. South 77°37'32" East, 84.66 feet to a point, said point being on the aforesaid northerly platted limits of Parcel "M" then binding with said limits

13. South 60°00'00" East, 60.00 feet to the point of beginning; containing 37,703 square feet or 0.86554 of an acre of land.

Certified correct to the best of my professional knowledge, information and belief and this description was prepared by me and is in conformance with Title 9, Subtitle 13, Chapter 6, Section .12 of the Minimum Standards of Practice for Land Surveyors. If the seal and signature are not violet colored, the document is a copy that should be assumed to contain unauthorized alterations. The certification contained on this document shall not apply to any copies.

Douglass H. Riggs

Macris, Hendricks & Glascock, P.A.
Douglass H. Riggs, III, Professional Land Surveyor
Maryland Registration No. 10712



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