

*For Settlement Purposes Only & Without Prejudice*

**MEMORANDUM**

**TO:** WATERS LANDING ASSOCIATION BOARD OF DIRECTORS  
c/o Whiteford Taylor Preston as Legal Counsel to the Board  
Tiffany Releford  
Joseph Douglass

**FROM:** SELZER GURVITCH RABIN WERTHEIMER & POLOTT, P.C.  
Brian Bichy  
Bob Dalrymple  
Matthew Gordon

**DATE:** January 26, 2021

**RE:** 21000 Father Hurley Blvd., Germantown (the “Property” or “Churchill Senior Living”) – Legal Memorandum Regarding the Application of the Waters Landing Association’s Organizational Documents to Multi-Family Senior Rental Dwelling Units Which Receive No Services from the Association

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The purpose of this memorandum is to identify and outline Churchill Senior Living’s interpretation of the Waters Landing Association Declaration of Covenants, By-Laws, and Articles of Incorporation (collectively, the “WLA Organizational Documents”) relative to assessments for multi-family senior rental dwelling units. As described in greater detail, it is Churchill Senior Living’s position and conclusion that the WLA Organizational Documents do not apply to multi-family senior rental dwelling units because these dwelling units are not subdivided lots and they are not structures intended for single-family residences.

**I. Churchill Senior Living Background**

The Property consists of three (3) recorded parcels known as Parcels Z, CC and DD of the Churchill Town Sector Subdivision, recorded in the Land Records of Montgomery County, Maryland (the “Land Records”) at Plat No. 21276 on December 17, 1999 and Record Plat No. 24537 on March 7, 2013 (the “Record Plats”). The Record Plats identify the area of these parcels as approximately 5.49 acres. The Property is 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 Waters Landing Association clubhouse and tennis courts, and to the south of vacant land owned by the Convention of Protestant Episcopal Archdiocese.

The Property is currently improved with Phases I and II of the Churchill Senior Living project, which together includes 255 multi-family senior dwelling units providing independent rental housing for individuals of age 62 years and up. The existing improvements were constructed in

accordance with Development Plan Amendment No. 96-1, Preliminary Plan No. 119950880 and Site Plan No. 819970140, as amended (collectively, the “Development Approvals”). 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).

## **II. Waters Landing Association Organizational Documents & Past Practice**

The Waters Landing Association Declaration of Covenants, recorded in the Land Records in Liber 5672 in Folio 692 (the “Declaration”), purportedly applies to a portion of the Property. The Declaration defines the Waters Landing 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. It appears that this Plat for Parcel M included a small portion of the southern access driveway presently serving Churchill Senior Living. However, Article I, Section 1(c) of the Declaration states that “Living Unit”, “Unit” or “Lot” shall mean and refer to all Subdivided Lots which are part of The Property and to any portion of a structure within The Property intended for use as a one-family residence.” Based upon this definition of all three noted terms, Churchill Senior Living interprets this key provision of the Declaration to be a test that includes two essential questions that must be answered in the affirmative for the Declaration to be applicable: (1) is there a subdivided lot which is part of Waters Landing Association property; and (2) is the subdivided lot improved by a structure intended for use as a one-family residence.

In the instance of Churchill Senior Living’s multi-family senior dwelling units, the 255 multi-family rental dwelling units are located across three (3) parcels and the individuals residing in the rental units have no ownership interest, and as such the Declaration does not apply per the test described above (for the Declaration to apply there would need to be 255 subdivided lots intended for ownership by one-family residences. Based upon a review of the four corners of the Declaration, there is no reasonable interpretation that would subject each multi-family senior dwelling unit to assessments because they do not fall within the definitions set out in the Declaration. The only reasonable interpretation subjecting the Property to assessments under the WLA Organization Documents is on the basis of the three (3) subdivided parcels comprising Churchill Senior Living (as opposed to on the basis of the 255 multi-family senior rental dwelling units), but these parcels are not intended for (nor in practice are they) used for single-family residences.

While the plain language of the Declaration is clear and unambiguous and there is no need to look beyond the four corners of the document, we note that the Montgomery County Zoning Ordinance<sup>1</sup> in effect at the time of the Declaration (and pursuant to which Churchill Senior

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<sup>1</sup> The Montgomery County Council adopted a comprehensive rewrite of the Zoning Ordinance in 2014. However, previous Zoning Ordinance was in effect at the time that the Declaration was recorded in Land Records and is referenced above.

Living is entitled per the Development Approvals), defined one-family dwellings and multi-family dwellings as follows:

**Dwelling, one-family:** A dwelling containing not more than one dwelling unit. An accessory apartment or a registered living unit may also be part of a one-family dwelling. A one-family dwelling with either of these subordinate uses is not a two-family dwelling as defined in this section.

**Dwelling, multiple-family:** A dwelling containing 3 or more multiple-family dwelling units, which may or may not share a common entrance. For the purposes of section [59-G-4.3](#), title “Noncomplying multi-family dwellings,” multiple-family dwelling means a dwelling containing 2 or more dwelling units.

*See Section 59-A.2.1.* This only bolsters Churchill Senior Living’s position that the Declaration’s use of the term “one-family residence” does not encompass or include multi-family rental senior dwelling units. Further, the use restrictions and other covenants set forth in the Declaration are consistent with the concept of single-family residences on separately owned subdivided lots, including architectural review of exterior changes to dwelling units and leasing provisions requiring copies of leases submitted to the Association. Such restrictions are inconsistent with the application to a commercial owner operating a rental project comprised of affordable senior housing independent living apartment units.

While Churchill Senior Living has paid assessments for the 121 multi-family senior dwelling units constructed as part of Phase I, it is instructive to note that Churchill Senior Living and its residents receive no (or nominal) services from Waters Landing Association. Churchill Senior Living handles its own landscaping, snow removal, trash removal, etc. Notwithstanding the fact that Churchill Senior Living has been assessed on the basis of its multi-family senior dwelling units in Phase I (121 units), it has not been afforded an opportunity to exercise 121 votes on Waters Landing Association organizational matters. To this end, Waters Landing Association’s treatment of Churchill Senior Living for purposes of voting on association policies is consistent with a finding that assessments should be levied, if at all, on the basis of the three (3) parcels comprising the Property. Last, purely from a public policy perspective, assessments levied on a Property that is predominantly comprised of income restricted affordable housing and that receive no services or amenities in return, creates a significant obstacle and constraint to the viability of delivering affordable housing that is desperately needed in the community.

### **III. Conclusion**

Based upon the foregoing, Churchill Senior Living is requesting concurrence and acknowledgement from Waters Landing Association that moving forward the Property will be assessed, if at all, only on the basis of the three (3) parcels comprising Churchill Senior Living. Churchill Senior Living is also due a refund of assessment fees levied and collected previous to

this date for the rental dwellings included in Phase I of Churchill Senior Housing. Churchill Senior Living paid these assessments as a result of erroneous deference to the false pretense of Waters Landing Association in asserting (by levy) that the assessed fees were applicable to the rental dwelling units. It is the strong desire of Churchill Senior Living to reach a quick and amicable resolution to this with Waters Landing Association; however, it must also be stated that absent the agreement by Waters Landing Association to apply the WLA Organizational Documents based upon the plain language of these documents (as set forth herein), Churchill Senior Living reserves and intends to exercise all available legal remedies and rights to protect and preserve its position.