

# UNOFFICIAL COPY



0718042008

This Instrument Prepared by  
and after recording return to:

Doc#: 0718042008 Fee: \$46.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 06/29/2007 07:48 AM Pg: 1 of 12

Kris E. Curran, Esq.  
Ungaretti & Harris  
3500 Three First National Plaza  
Chicago, Illinois 60602

8357919 Draw 4/6

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## RESTRICTIVE COVENANT AGREEMENT

This Restrictive Covenant Agreement ("Agreement") is made <sup>as of</sup> this 25<sup>th</sup> day of June, 2007, by 1410 WAUKEGAN ~~ROAD~~ LLC, an Illinois limited liability company ("Developer") in favor of RESURRECTION SENIOR SERVICES, an Illinois not for profit corporation ("RSS").

### RECITALS

WHEREAS, Developer is the owner of certain real estate legally described on Exhibit A attached hereto and incorporated herein (the "Developer Property") which is situated easterly of and adjacent to certain property owned by RSS and legally described on Exhibit B attached hereto (the "RSS Property"); and

WHEREAS, Developer desires to develop upon the Developer Property a retail shopping center; and

WHEREAS, Developer and RSS entered into a Purchase and Sale Agreement dated as of December 1, 2006 ("Purchase Agreement"), whereby RSS agreed to sell and convey to RSS a portion of the Developer Property (which was at the time owned by RSS) and whereby Developer among other things, agreed to encumber the Developer Property with certain restrictive covenants binding upon the Developer Property and running with Developer Property in favor of RSS and for the benefit of RSS and its successors and assigns and its successors in title to the RSS Property, all as hereinafter provided.

NOW THEREFORE, for and in consideration of Ten and no/100 (\$10.00) Dollars, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Developer and RSS agree as follows:

1. Declaration of Restrictive Covenants. Developer hereby declares the following restrictive covenants in favor of RSS, its successors and assigns and its successors in title to the RSS Property, such restrictive covenants being agreed to be encumbrances on and binding upon the Developer, its successors and assigns and its successor in title to the Developer Property:

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Box 400-CTCC

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Developer hereby agrees and declares that neither Developer, nor any tenant, occupant, licensee or other party ("Developer Parties"), shall utilize any portion of the Developer Property or permit any portion of the Developer Property to be utilized for any of the following uses, all of which are hereby prohibited within the Developer Property or any portion thereof:

- i). any use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness (excluding normal and customary food odors from restaurants), creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping, disposing, incineration, or reduction of garbage (exclusive of trash compactors or trash containers located near the rear of any building);
- ii). any central laundry, dry cleaning plant, or laundromat (except that a dry cleaner that performs all dry cleaning outside the Shopping Center shall be permitted);
- iii). any living quarters, sleeping apartments, or lodging rooms;
- iv). any animal raising or boarding facilities (except that this prohibition shall not prohibit pet shops or the operation of a veterinary office or clinic providing boarding of animals ancillary to its veterinary practice);
- v). any mortuary or funeral home;
- vi). any "Pornographic Use", which shall include, without limitation, a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational, or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto; the parties hereto acknowledge and agree the sale or rental of videos, DVDs, books, magazines and other publications by a national bookstore or video rental establishment of the type normally located in first-class shopping centers in the State of Illinois (such as, for example,

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Borders, Barnes & Noble and Blockbuster, as said stores currently operate) shall not be deemed a "pornographic use" hereunder;

- vii). any so-called "head shop", or other establishment primarily selling or exhibiting drug-related paraphernalia;
- viii). any bar, tavern, or other establishment selling alcoholic beverages for on- or off-premises consumption, other than incidental to (a) sales for on-premises consumption within a restaurant and (b) sales for off-premises consumption made at a grocery store, drug store or convenience store, so long as, in either case, any such sale of alcoholic beverages is not the primary business being conducted at such premises;
- ix). any flea market, amusement or video arcade (except incidental to a permitted restaurant), pool or billiard hall, night club, discotheque, or dance hall;
- x). any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities such as the sale of State of Illinois lottery tickets, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the occupant;
- xi). any unlawful use;
- xii). any pawn shop, gun shop, tattoo parlor or massage parlor, provided the foregoing shall not prohibit the operation of a beauty parlor or health or beauty spa offering massages to their customers
- xiii). any use involving the sale or distribution of contraceptives or contraceptive devices except such sales shall be permitted as an incidental, and not a primary part, of the operation of a drug store (such as a Walgreens or CVS) or a full service pharmacy;; and
- xiv). any abortion clinic or other medical facility performing abortions or any "family planning" clinic or any use advocating abortion or euthenasia.

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2. Enforcement. In the event of any violation or threatened violation of any of the restrictive covenants described above by Developer and/or any Developer Parties, RSS shall have the right to apply to a court of competent jurisdiction for an injunction against such violation or threatened violation and to obtain and enforce the same.

3. Attorney's Fees. In the event any RSS shall institute any action or proceeding ("suit"), including any arbitration proceeding, against Developer and/or any other Developer Party relating to violations or threatened violations of the restrictive covenants herein contained, or to enforce the provisions hereof then, and only in that event, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable attorney's fees.

4. Successors and Assigns/Termination upon the occurrence of certain events. The restrictive covenants contained in this agreement shall run with and be binding upon Developer's Property, and shall inure to the benefit of and the RSS Property, and shall be binding upon Developer, its successors and assigns, and shall be enforceable by RSS, its successors and assigns. Notwithstanding the foregoing, this Agreement, and the restrictions upon use of the Developer's Property contained herein, shall terminate automatically in the event that both of the following shall occur: (a) RSS or any of its successors, shall convey the entire RSS Property to a third party that is not affiliated with the Roman Catholic Church and (b) the entire RSS Property is put to a use or uses that do not include a residential component (it being acknowledged that a residential component shall include, without limitation, a nursing home, retirement home, assisted living facility, apartment complex, condominium complex or single family development).

5. Notices. All notices, statements and communications given in connection with this Agreement shall be in writing and delivered personally, by overnight courier service, by facsimile (if receipt confirmed) or by certified mail, return receipt requested, to the following addresses:

To Developer: Resurrection Senior Services  
7447 West Talcott  
Chicago, Illinois 60631  
Attn: Robert Hauptman  
Tel: 773-594-8646  
Fax: 773-594-8644

Copy to: Kris E. Curran  
Ungaretti & Harris LLP  
3500 Three First National Plaza  
Chicago, IL 60602-4283  
Tel: 312-977-4369  
Fax: 312-977-4405

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To RSS: 1410 Waukegan LLC  
 c/o Baker Development Corporation  
 222 North Elston Avenue  
 Chicago, Illinois 60614  
 Attn: Warren Baker  
 Fax: 773-755-0700

Copy to: Felice B. Rose, Esq.  
 Schiff Hardin LLP  
 6600 Sears Tower  
 Chicago, Illinois ~~60611~~ 60606 *BR*  
 Fax: 312-258-5700

Any of the above addresses may be changed by the respective parties by notice to the others in accordance with this paragraph.

## 6. General Provisions.

(a) **Authorization.** The parties represent and warrant that the individuals executing this Agreement on their behalf have been duly authorized to do so and that all necessary actions, authorizations, resolutions and approvals have been secured prior to the execution and delivery of this Agreement.

(b) **Governing Law.** The terms and obligations of this Agreement shall be interpreted in accordance with the laws of the State of Illinois without regard to conflicts of law principles.

(c) **Jurisdiction and Venue.** The parties agree that in the event it is necessary to enforce the terms of this Agreement, the parties shall submit to the jurisdiction of the Circuit Court of Cook County, Illinois, and they waive any objection to such jurisdiction, including, *forum non conveniens*.

(d) **Captions and Designations/Exhibits.** Throughout this Agreement, the singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. Paragraph numbers and caption headings are purely descriptive and shall be disregarded in construing this Agreement.

(e) **Severability.** If any provision, clause, word or designation of this Agreement is held to be invalid by any court of competent jurisdiction, such provision, clause, word or designation shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any other provision, clause, word or designation contained herein.

(f) **Perpetuities.** If any of the privileges, covenants or rights created by this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue

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only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of George W. Bush, the current President of the United States.

(g) Counterparts. This Agreement may be executed in counterpart by the parties hereto, each of which shall be deemed an original, and which, when taken together shall constitute a single instrument.

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, this Restrictive Covenant Agreement has been executed as of the day and year first above written.

**RSS:**

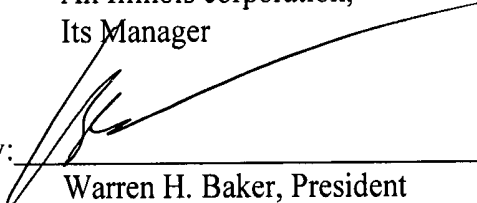
RESURRECTION SENIOR SERVICES, an Illinois not for profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DEVELOPER:**

1410 WAUKEGAN LLC, an Illinois limited liability company

By: Baker Development Corporation,  
An Illinois corporation,  
Its Manager

By:   
Warren H. Baker, President

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IN WITNESS WHEREOF, this Restrictive Covenant Agreement has been executed as of the day and year first above written.

**RSS:**

**DEVELOPER:**

RESURRECTION SENIOR SERVICES, an Illinois not for profit corporation

1410 WAUKEGAN LLC, an Illinois limited liability company

By: J.P. Hill  
Name: James P. Hill  
Title: E.V.P., Administrative Svcs.

By: Baker Development Corporation,  
An Illinois corporation,  
Its Manager

By: \_\_\_\_\_  
Warren H. Baker, President

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## ACKNOWLEDGEMENT OF RSS

STATE OF ILLINOIS        )  
   ) SS.  
 COUNTY OF COOK         )

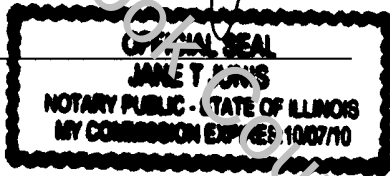
The Undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that James P. Hill, personally known to me to be the same person whose name is subscribed to the foregoing instrument as the E.V.P. of Resurrection Senior Services, an Illinois not for profit corporation, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 21st day of June, 2007.

{SEAL}

Jane T. Jones  
 Notary Public

My Commission Expires:



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## ACKNOWLEDGEMENT OF DEVELOPER

STATE OF ILLINOIS        )  
   ) SS.  
 COUNTY OF COOK         )

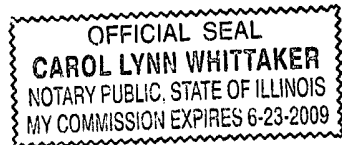
The Undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Warren H. Baker, personally known to me to be the same person whose name is subscribed to the foregoing instrument as the President of Baker Development Corporation, an Illinois corporation, the Manager of 1410 Waukegan LLC, an Illinois limited liability company, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and official seal, this 19<sup>th</sup> day of June, 2007.

{SEAL}

Carol Lynn Whittaker  
 Notary Public

My Commission Expires: 6-23-09



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## Exhibit A

### Developer Property

#### **Parcel 1:**

LOT 1 IN MARYHAVEN UNIT NO. 2, BEING A SUBDIVISION OF THAT PART OF THE EAST 220 FEET OF LOT 7 LYING SOUTH OF A LINE 308.12 FEET, NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SECTION 26, ALL IN WILLIAM REED'S SUBDIVISION OF PART OF THE SOUTH ½ OF SECTIONS 26 AND 27 IN TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF, RECORDED JULY 17, 1963, AS DOCUMENT NO. 18856223, IN COOK COUNTY, ILLINOIS.

#### **Parcel 2:**

LOT 1 IN MICHAEL'S SUBDIVISION IN THE WEST ½ OF THE SOUTHEAST ¼ OF SECTION 26, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN ACORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 20, 1988 AS DOCUMENT 88429165 IN COOK COUNTY, ILLINOIS.

#### **Parcel 3:**

THE WEST 75 FEET OF THE EAST 295 FEET OF LOTS 7 AND 8 (EXCEPT THEREFROM THE SOUTH 50 FEET OF LOT 8) LYING SOUTH OF THE LINE 308.12 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SECTION 26 IN, WILLIAM REED'S SUBDIVISION OF PART OF THE SOUTH HALF OF SECTIONS 26 AND 27, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED AUGUST 16, 1866 AS DOCUMENT 744546, ALL IN COOK COUNTY, ILLINOIS.

PINS: 04-26-400-042-0000; 04-26 400-077-0000 and part of 04-26-400-032-0000

Address: 1410 Waukegan and 1698 East Lake Avenue, Glenview, Illinois

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## Exhibit B

### RSS Property

#### **PARCEL 1:**

LOT 1 IN MARYHAVEN SUBDIVISION OF PART OF THE WEST 31.68 ACRES OF LOTS 7 AND 8 LYING EASTERLY OF THE CENTER LINE OF THE WEST FORK OF THE NORTH BRANCH OF THE CHICAGO RIVER, ALL IN WILLIAM REED'S SUBDIVISION OF PART OF THE SOUTH HALF OF SECTIONS 26 AND 27, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 28, 1958 AS DOCUMENT NO. 17167350, IN COOK COUNTY, ILLINOIS

#### **PARCEL 2:**

ALL THAT PART OF LOTS 7 AND 8 (EXCEPT THE EAST 295 FEET OF SAID LOTS EXCEPT THE SOUTH 50 FEET OF SAID LOT 8) OF WILLIAM REED'S SUBDIVISION OF PART OF THE SOUTH HALF OF SECTIONS 26 AND 27, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 16, 1866 AS DOCUMENT NO. 744546, IN COOK COUNTY, ILLINOIS.

**PINS:** 04-26-300-025-0000 and part of 04-26-400-032-0000

**Property Address:** Property Address: 1698 – 1700 E Lake Ave, Glenview Illinois