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INST. NO. 51019  
POLK COUNTY, IOWA  
FILED FOR RECORD

JUN 3 0 1983  
AT 2:59 P.M.  
KATIE SWINSTEIN-HOLSCHEM, Recorder  
By M. Jones Deputy

AGREEMENT TO ESTABLISH RESTRICTIVE COVENANT

BY THIS AGREEMENT, made and executed this 30th day of June, 1983, Merit Holding Corporation, an Iowa corporation ("Merit") and Iowa Realty Co., Inc., an Iowa corporation ("Iowa Realty") confirm and agree as follows:

WITNESSETH:

WHEREAS, Iowa Realty is, concurrently with the execution and delivery of this Agreement, conveying to Merit the following described real estate situated in Polk County, Iowa, to-wit:

Commencing at the N.E. Corner of Section 33T78NR24 West of the 5th P.M. Des Moines, Polk County, Iowa, thence S0°-37 1/2'E, along the East Line of the N.E. 1/4 of said Section 33, 454.85 feet, to the POINT OF BEGINNING, thence continuing S0°-37 1/2'E, 965.15 feet, thence N90°-00'W, parallel with and 1420.0 feet South of the North Line of the N.E. 1/4 of said Section 33, 948.0 feet, thence N0°-37 1/2'W, parallel with and 948.0 feet West of the East Line of the N.E. 1/4 of said Section 33, 967.15 feet, thence S89°-52 3/4'E, 948.0 feet, to the Point of Beginning. Said tract of land being subject to and together with any and all easements of record. ("Parcel I")

upon which is situated an apartment complex known as Landmark South Apartments, and

WHEREAS, the parties have agreed that Merit, its grantees, successors and assigns shall have the exclusive right and privilege to use the names "Landmark South" and "Landmark" and all names similar thereto in connection with such apartment operations; and

WHEREAS, the parties desire to protect the use of such name and/or names by restricting the use thereof by Iowa Realty (and those claiming by, through and under Iowa Realty) in connection with the following described real estate situated in Polk County, Iowa, to-wit:

Commencing at the North 1/4 Corner of Section 33T78NR24 West of the 5th P.M. Des Moines, Polk County, Iowa, thence N90°-00'E, along the North Line of the N.E. 1/4 of said Section 33, 813.55 feet, thence S0°-37 3/4'E, parallel with and 813.55 feet East of the West Line of the N.E. 1/4 of said Section 33, 50.0 feet, to the POINT OF BEGINNING, thence continuing S0°-37 3/4'E, 400.5 feet, thence N90°-00'W, 108.0 feet, thence S0°-37 1/4'E, 969.5 feet, thence N0°-00'E, parallel with and 1420.0 feet South of the North Line of the N.E. 1/4 of said Section 33, 1932.5 feet, to the East Line of the N.E. 1/4 of said Section 33, thence N0°-37 1/2'W, along the East Line of the N.E. 1/4 of said Section 33, 1370.0 feet, thence N90°-00'W, parallel with and 50.0 feet South of the North Line of the N.E. 1/4 of said Section 33, 1424.4 feet, to the Point of Beginning. Said tract of land being subject to and together with any and all easements of record. EXCEPT the following described tract of land: Commencing at the North 1/4 Corner of Section 33T78NR24

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West of the 5th P.M., Des Moines, Polk County, Iowa, thence N90°-00'E, along the North Line of the N.E. 1/4 of said Section 33, 813.55 feet, thence S0°-37 3/4'E, parallel with and 813.55 feet East of the West Line of the N.E. 1/4 of Section 33, 50.0 feet, to the Point of Beginning, thence continuing S0°-37 3/4'E, 400.5 feet, thence N90°-00'E, parallel with and 450.5 feet South of the North Line of the N.E. 1/4 of said Section 33, 500.0 feet, thence N0°-37 3/4'W, 400.5 feet, thence N90°00'W, parallel with and 50.0 feet South of the North Line of the N.E. 1/4 of said Section 33, 500.0 feet, to the Point of Beginning. AND EXCEPT the following described tract of land: Commencing at the N.E. Corner of Section 33T78NR24 West of the 5th P.M., Des Moines, Polk County, Iowa, thence S0°-37 1/2'E, along the East Line of the N.E. 1/4 of said Section 33, 454.85 feet, to the Point of Beginning, thence continuing S0°-37 1/2'E, 965.15 feet, thence N90°-00'W, parallel with and 1420.0 feet South of the North Line of the N.E. 1/4 of said Section 33, 948.0 feet, thence N0°-37 1/2'W, parallel with and 948.0 feet West of the East Line of the N.E. 1/4 of said Section 33, 967.15 feet, thence S89°-52 3/4'E, 948.0 feet, to the Point of Beginning. All of the above described tract of land being subject to and together with any and all easements of record. ("Parcel II")

which property is adjacent to Parcel I and currently owned by Iowa Realty.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other valuable consideration, receipt and payment of which are hereby acknowledged, the parties hereto agree as follows:

1. Iowa Realty and Merit hereby agree that Iowa Realty, its grantees, lessees, successors and assigns shall be prohibited from using the names "Landmark South," "Landmark," derivations thereof or other names similar thereto in connection with any single- or multiple-family residential development (including, without limiting the generality of the foregoing, an apartment complex) now existing or hereafter to be constructed upon Parcel II.

2. This restrictive covenant is to run with the land, thereby burdening Parcel II and benefiting Parcel I, and shall further be binding on the parties hereto and their grantees, lessees, successors, assigns and others claiming under them until July 1, 2118, at which time this restrictive covenant shall be automatically extended for successive ten-year periods thereafter unless, by a vote of the majority of the then owners of Parcels I and II, it is agreed prior to the first day of any such extended term to amend or terminate the restrictive covenant in whole or in part.

3. The restrictive covenant created hereunder is made for the benefit of Merit, its grantees, lessees, successors and assigns, and such persons are specifically given the right to enforce this restrictive covenant by injunction or other lawful procedures, and to recover damages resulting from any violation thereof.

Dated at Des Moines, Iowa, as of the day and year first above written.

IOWA REALTY CO., INC.


By [Signature]  
William C. Knapp, Chairman of the Board

HERIT HOLDING CORPORATION

By [Signature]  
Albert Ichelson, Jr., President

STATE OF IOWA )  
                  ) ss.  
COUNTY OF POLK )

On this 30<sup>th</sup> day of June, 1983, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared WILLIAM C. KNAPP, to me personally known, who, being by me duly sworn, did say that he is the Chairman of the Board of said corporation; that (no seal has been procured by the said) (the seal affixed thereto is the seal of said) corporation; that said instrument was signed (and sealed) on behalf of said corporation by authority of its Board of Directors; and that the said WILLIAM C. KNAPP as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

 WILLIAM C. KNAPP II

[Signature]  
Notary Public in and for the State of Iowa.

STATE OF IOWA )  
                  ) ss.  
COUNTY OF POLK )

On this 23<sup>rd</sup> day of June, 1983, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared ALBERT ICHELSON, JR., to me personally known, who, being by me duly sworn, did say that he is the President of said corporation; that no seal has been procured by the said corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said ALBERT ICHELSON, JR., as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

 BETTY W. HANSEN

[Signature]  
Notary Public in and for the State of Iowa.

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RECORDED & RETURNED  
JUL 2 1983  
1100 CARROLL BLDG - COLLEGE  
DM IA 50309