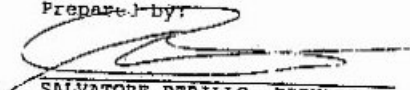


Prepared by:

  
SALVATORE PERILLO, ESQUIRE

RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT made by and between THE CITY OF BRIGANTINE, a municipal corporation of the State of New Jersey, hereinafter referred to as the "City", and the PRICE REVOCABLE TRUST, DAVID G. PRICE, TRUSTEE, hereinafter referred to as "Price", having its offices located at 1633 26th Street, Santa Monica, California 90404, and THOMAS J. COCCO, whose address is P.O. Box 881, Clementon, New Jersey 08021, hereinafter referred to as "Cocco", this 24<sup>th</sup> day of September, 1990.

W I T N E S S E T H

WHEREAS, Island Development Company duly filed with the Office of the Clerk of Atlantic County at Mays Landing, New Jersey, its "Map No. 3, showing golf course and surrounding development located on Brigantine Beach, New Jersey, owned by Island Development Company" by Stiles & VanKleek, golf course architects and H. Eaton, C.E., May 1, 1925, hereinafter referred to as "Map No. 3", upon which, as filed, certain lands are shown as reserved for golf course purposes and upon which certain streets are more particularly shown; and

WHEREAS, continuously for a period of 65 years said land has been reserved for golf course purposes and has been used as such, and the streets as shown have been used by the public at large and maintained by the City; and

WHEREAS, the City has previously adopted Map No. 3 as part of its official map by Resolution of the Common Council dated May 20, 1925; and

WHEREAS, the Brigantine Country Club, a corporation of the State of New Jersey, hereinafter referred to as the "Club" was the owner of certain lands situate in the City of Brigantine, Atlantic County, New Jersey, which it acquired by Deed from the Lester Land Company, dated February 5, 1957 and recorded February 7, 1957 in the Office of the Clerk of Atlantic County in Book of Deeds No. 1843, at page 371, which included, inter alia, those lands referred to hereinabove as being used as a golf course and for golf course purposes as shown on Map No. 3, and

WHEREAS, Club conveyed to the City certain portions of the aforesaid lands by Deed dated August 9, 1957 and recorded in the Atlantic County Clerk's office in Deed Book No. 1875, page 129 and thereafter the City leased back to the Club the lands so conveyed (hereinafter referred to as the "City Holes" as more particularly described in Exhibit "B" annexed hereto); and

WHEREAS, the lease dated August 9, 1957 and recorded in the Atlantic County Clerk's Office on September 23, 1957 in Deed Book 1857, at page 137 provided in part that the City leased the lands so conveyed for a term of 20 years, the rent for said term being \$100,000.00, payable \$5,000.00 annually; and

WHEREAS, subsequent to the execution of the Lease Agreement the Club and the City entered into an Indenture Agreement dated August 3, 1959 and recorded in the Atlantic County Clerk's Office on September 1, 1959 in the Book of Deeds 1970, at page 246; and

WHEREAS, in the Indenture Agreement the Club confirmed and ratified the restrictions contained in the Deed from Island Development Corporation to Vincent S. Haneman dated May 28, 1925 and recorded in Book of Deeds 793, at page 251 in the Office of the Clerk of Atlantic County and "more particularly do (did) create, confirm and ratify the reservation of all lands for golf course purposes (not otherwise subdivided) as shown in green on Exhibit "A" as golf course lands excepting therefrom certain described premises, to the end that those lands shown in green on Exhibit "A" were to be reserved in perpetuity for golf course purposes alone, "it being the intent of the parties hereto to create, confirm and ratify such reservation for the future benefit, well being and welfare of the people of the City of Brigantine and to establish and confirm a neighborhood scheme for the benefit of lands owned by the City of Brigantine within the area of lands shown on Map No. 3 (Exhibit "A") and Grantors do hereby ~~for themselves~~ ~~and their~~ executors, administrators, heirs, successors and assigns, restrict the said lands for golf course purposes only, and they do further release and quit-claim any right which they

or any of them or their executors, administrators, heirs, successors or assigns may have to subdivide the said lands or to otherwise use them for any purpose other than as a golf course, including those lands for which the Grantors have an option to purchase"; and

WHEREAS, a copy of the Exhibit "A" referred to but not recorded with the Indenture Agreement, is annexed hereto, the original of which is on file in the Office of the City Clerk; and

WHEREAS, the prior Grantors, their successors and the parties herein have never denied the validity of the restrictions and reservations; and

WHEREAS, the parties herein desire to restate and reaffirm the validity of the restrictions and reservations; and

WHEREAS, on April 27, 1965 the City and a successor in interest to the Club, Prestwick Park, Inc., a corporation of the State of New Jersey hereinafter referred to as "Prestwick Park" entered into an Indenture in which the City leased to Prestwick Park certain lands owned by the City which are described on Exhibit "B" annexed hereto and are hereinafter referred to as the "City holes", and

WHEREAS, the City holes covered by the April 27, 1965 Indenture were the same property that was leased back to the Club as part of the August 9, 1957 Lease Agreement, and

WHEREAS, the April 27, 1965 Indenture provides in part that the Lessee has the option to purchase the City holes, and

WHEREAS, the Brigantine Country Club Associates, a New Jersey Partnership and a successor in interest to the Club, by Deed dated June 22, 1989 and recorded on June 29, 1989 in Deed Book 4927, page 146 conveyed to Thomas J. Cocco, hereinafter referred to as "Cocco" lands described on Exhibit "C" and "D" annexed hereto which lands included a portion of those lands referred to hereinabove as being used as a golf course for golf course purposes as shown in green on Map No. 3 and designated thereon as holes nos. 1, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18, hereinafter referred to as the "Golf Course Piece" (Exhibit "C") together with the current clubhouse and the lands adjacent thereto which lands are hereinafter referred to as "Bayfront Piece" (Exhibit "D"), all of which are depicted on the Map dated December 2, 1989 prepared by Lawrence E. Hoyt, New Jersey Professional Land Surveyor, and

WHEREAS, Cocco by Deed dated June 22, 1989 which Deed was recorded on June 29, 1989 in the Atlantic County Clerk's Office in Deed Book 4927, at page 96 conveyed privately owned portions of the golf course excluding the Bayfront Piece to David G. Price, as Trustee of the Price Revocable Trust, as amended in its entirety February 2, 1987, hereinafter referred to as "Price"; and

WHEREAS, as a result of the conveyance by Cocco to Price of only a portion of the golf course property, the City of Brigantine and other named Plaintiffs instituted an action in the Superior Court of New Jersey, Chancery Division, Atlantic County, against Thomas J. Cocco, Brigantine Country Club Associates and Price which action bears Docket No. ATL-C-000131-89 and Thomas J. Cocco and David F. Price, as Trustee of the Price Revocable Trust instituted an action against the City in the Superior Court of New Jersey, Chancery Division, Atlantic County, bearing Docket No. ATL-C-000128-89 seeking to compel the City to transfer the City Holes; and

WHEREAS, for the purposes of compromising and settling the differences between the parties including the compromise of the presently pending litigation and to avoid further anticipated litigation between the parties, the parties desire to enter into an Agreement reaffirming, restating and clarifying the restrictions of record and further providing a mechanism for enforcement and a provision for penalties for the violation thereof; and

AS. TC  
WHEREAS, nothing herein shall be construed in any other proceeding as precluding or affecting any claims that Thomas J. Cocco may have against Chicago Title Insurance Company; and

WHEREAS, the parties desire to clarify the restrictions of record to make clear that the construction of any residential buildings of any kind and the construction of any motels and hotels of any kind is not considered by the parties a "golf course purpose" within the meaning of the restrictions of record; and

WHEREAS, the parties desire to further clarify, reaffirm and restate that any subdivision of the respective lands owned by Cocco or Price as shown on Exhibit "C" and "D" annexed hereto and the land owned by the City (City Holes Exhibit "B") which the City is simultaneously with the execution of this Agreement conveying to Price is prohibited;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for One (\$1.00) Dollar and other valuable consideration, the parties agree as follows:

1. Incorporation of Recitals. The parties herein agree that all of the recitals referred to above are accurate.

2. Prohibition Against Residential, Hotel and Motel Development. Cocco, Price, their heirs, successors and assigns agree now and forever that the erection of residential, motel or hotel buildings, structures and facilities is not intended and was never intended to constitute a "golf course purpose" within the prior agreements of the parties. Cocco, Price, their heirs, successors and assigns further agree now and forever that they shall not erect or maintain or permit the erection or maintenance on the Golf Course Piece, the City Holes and the Bayfront Piece any residential structure of any kind or any hotel or motel facility of any kind whatsoever. The parties recognize that there are two sleeping areas above the

existing maintenance building for use by golf course employees only. It is intended by the parties that this Agreement shall not affect these sleeping areas.

3. Prohibition Against Subdivision. Cocco, Price, their heirs, successors and assigns agree now and forever that they shall not subdivide the Golf Course Piece, the City Holes or the Bayfront Piece. It is the intention of the parties to this Agreement that the Golf Course Piece, the City Holes and the Bayfront Piece shall each remain in individual ownership now and forever with the Golf Course Piece and the City Holes being placed in common ownership with the simultaneous execution and recording of a Deed from the City of Brigantine to the Price Revocable Trust.

4. No Additional Buildings. Price, his heirs, successors and assigns agree that no additional buildings shall be constructed on the City Holes or the Golf Course Piece of the golf course except for the proposed single Clubhouse, the cart barn, the maintenance building and such other buildings as the City, in its discretion, may determine to be necessary, proper and consistent with golf course purposes and in the event of partial or total destruction of such buildings it is agreed that said buildings can be replaced so long as the replacement building's footprint is not greater than the footprint of the original buildings and is located within the same area. If additional governmental requirements require the construction of additional building



area for compliance then in addition to the original footprint, the building may be enlarged only to accommodate such additional square footage necessary to comply with the additional governmental requirements.

5. Covenants Running with the Land. The above restrictions shall remain in full force and effect and shall run with the title to the property. These restrictions shall be deemed to be covenants running with the land and shall be for the benefit of and be enforceable by the parties to this Agreement.

6. Liquidated Damages.

(a) In the event that Price or Cocco or their heirs, successors and assigns are believed by the City to have violated these restrictions, the City shall serve them with written notice of that fact. The party violating this Agreement shall then have sixty (60) days within which to cure the violation (hereinafter the "Cure Period"). If the party fails to cure the violation within the Cure Period, the City shall have the right to institute a legal action in law and/or equity to enforce the provisions of this Agreement. If a party is determined by a Court of competent jurisdiction to have violated the terms of this Agreement, the parties further agree that the party found to have violated this Agreement shall pay to the City as liquidated damages the sum of \$1,000.00 (hereinafter "base liquidated

damage amount") per violation for each violation of this Agreement which may be determined to have existed. Each day after the expiration of the Cure Period that a violation exists shall constitute a separate violation.

(b) The parties recognize that as a result of the perpetual nature of this Agreement, the liquidated damage amount of \$1,000.00 shall be adjusted if the United States Department of Labor Consumer Price Index-Housing Items of Rent and Other Rental Costs, Philadelphia, 1967 = 100 ("CPI") for the month of July 1992 and each yearly anniversary thereafter shall be higher in absolute index number than the CPI for the month of July, 1991, then the aforesaid base liquidated damage amount shall be readjusted as provided for herein. The base liquidated amount shall be increased for the year commencing July 1, 1992 and during each one year period next following by adding thereto the amount derived by multiplying the base liquidated damage amount by the resultant percentage derived from a ratio having as its denominator the CPI and a numerator of the difference between the CPI established for the month of the then month that the liquidated damage is assessed and the CPI for the month of July, 1991. In no event, however, shall the adjustment made pursuant to this formula result in a reduction of the base liquidated damage amount.

(c) In the event said CPI shall be converted to a different standard reference base, or otherwise revised, the

formulation of the fraction described above shall be made with the use of such conversion factor, formula or table for converting said CPI. In the event said CPI shall cease to be published, then for the purpose of this Agreement, there shall be substituted therefor such other price index as the parties, in good faith, shall agree upon.

7. Additional Remedies. In addition to any of the remedies contained herein, including the assessment of liquidated damages, any party seeking to enforce this Agreement shall be entitled to maintain an action in law or equity seeking injunctive relief.

8. Costs and Attorney's Fees. In any action between the parties hereto seeking enforcement of any of the terms and provisions of this agreement, the party instituting such action shall be awarded, if successful, in addition to liquidated damages, injunctive or other relief, its reasonable costs and expenses, not limited to taxable costs, and a reasonable attorneys' fee.

9. Prior Agreements Not Effected. Nothing in this Agreement is intended to effect in any way any of the prior Agreements between the parties herein and their predecessors in title.

10. Notices. Any notice which either party may be required hereunder or which either party is permitted or may

desire to give to the other party must be in writing and may be given by personal delivery or by mailing the same by registered or certified mail, return receipt requested, to the party to whom the notice is directed at the address of such party as hereinafter set forth or such other address as the parties may hereinafter designate:

City: City Clerk - City Hall  
1417 West Brigantine Boulevard  
Brigantine, New Jersey 08203

Price: David G. Price  
1633 26th Street  
Santa Monica, CA 90404

Cocco: Thomas J. Cocco  
P.O. Box 881  
Clementon, New Jersey 08021

Any notice given by mail shall be deemed given on the day after that on which the same is deposited in the United States mail, addressed as above provided with postage thereon fully prepaid, if mailed in the County of Atlantic or on the second day after mailing if mailed elsewhere.

11. Severability. If any provision of this Agreement or any other prior Agreement is determined by any Court of competent jurisdiction to be void or otherwise unenforceable, the parties agree that any such provision shall be severed where possible from the Agreement and the balance of the Agreement shall be in full force and effect.

12. Applicable Law and Jurisdiction. The parties, their successors and assigns agree that this Agreement shall

be governed by the Laws of the State of New Jersey and any legal proceeding to enforce or interpret this Agreement shall be brought in the Courts of the State of New Jersey.

13. Amendments. This Agreement may only be amended by written agreement of the parties.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and date first written above.

WITNESS:

Stephen B. [Signature]  
[Signature]

PRICE IRREVOCABLE TRUST

BY: [Signature]  
DAVID G. PRICE, TRUSTEE

[Signature]  
THOMAS J. ECCO

CITY OF BRIGANTINE

[Signature]  
City Clerk

BY: [Signature]  
ROBERT J. SHIPLEY, MAYOR