

MEMORANDUM

TO: Dublin City Council
Marsha I. Grigsby, City Manager

FROM: Stephen J. Smith, Esq.

DATE: February 20, 2014

RE: Resolution 16-14
Settlement Agreement with Sunrise Dublin Senior Living LLC

BACKGROUND

Sunrise Dublin Senior Living LLC obtained Final Development Plan and Corridor Development District approval on November 1, 2007 for a 65,780 square-foot senior citizen assisted living facility and associated site improvements for its property located at 4175 Stoneridge Lane.

As Council is aware, in 2009, Sunrise ceased construction activity at this site in Dublin due to financial difficulties. Currently, the building on the site is at the structural steel framing stage, with most of the foundation complete; the second and third floor metal floor decking has been installed; and concrete has been poured over the decking on portions of the second floor.

Staff has worked with the representatives of Sunrise to reach a Settlement Agreement that is being proposed, as attached, which resolves all outstanding procedural and substantive issues between the City of Dublin and Sunrise.

As noted in the Settlement Agreement, Sunrise is required to meet various deadlines and furnish Dublin all necessary documentation to ensure that the project located at 4175 Stoneridge Lane will be completed timely and in compliance with all Dublin City Codes and State of Ohio requirements.

RECOMMENDATION

The Law Department recommends approval of Resolution 16-14 at the February 24, 2014 Council meeting.

RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc., Form No. 30045

16-14

Resolution No. _____

Passed _____

, 20____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SETTLEMENT AGREEMENT WITH SUNRISE DUBLIN SENIOR LIVING, LLC TO ENSURE THE COMPLETION OF THE SUNRISE SENIOR LIVING FACILITY LOCATED AT 4175 STONERIDGE LANE.

WHEREAS, Sunrise Dublin Senior Living LLC ("Sunrise") obtained Final Development Plan and Corridor Development District approval on November 1, 2007, for a 65,780 square-foot senior citizen assisted living facility and associated site improvements for its property at 4175 Stoneridge Lane; and

WHEREAS, in 2009, Sunrise ceased construction activity at its site at 4175 Stoneridge Lane due to financial difficulties; and

WHEREAS, the building on the site is at the structural steel framing stage with most of the foundation complete; and

WHEREAS, the second and third floor metal floor decking has been installed and concrete has been poured over the decking on portions of the second floor; and

WHEREAS, the City of Dublin and Sunrise have determined it is in the best interest of both parties for Sunrise to complete the project at 4175 Stoneridge Lane; and

WHEREAS, Sunrise has obtained the necessary financing to complete the project; and

WHEREAS, Sunrise is currently preparing a Forensic Construction Analysis of the project to ensure its safe construction; and

WHEREAS, Sunrise is currently preparing revised construction plans to address new requirements in the Ohio Building Code; and

WHEREAS, Sunrise acknowledges and agrees to be bound by Section 153.066(N)(6)(c) entitled "Abandonment" of the Bridge Street Corridor Code; and

WHEREAS, Dublin has agreed to consider the Sunrise development an existing use and existing structure under Sections 153.059(A)(5) and (6) and Section 153.062(B)(2); and

WHEREAS, Sunrise has agreed to provide the City all financial closing documents to include, but not be limited to, guarantees of Sunrise Senior Living, LLC, the parent entity, including supporting financial records; and

WHEREAS, Sunrise acknowledges the necessity to complete the project by a date specific; and

WHEREAS, the City of Dublin agrees to use its best efforts to assist Sunrise in receiving a "Certificate of Zoning Plan Approval."

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Dublin, State of Ohio, _____ of the elected members concurring that:

Section 1. The City Manager is hereby authorized to enter into a Settlement Agreement in substantially the same form as attached, with changes not inconsistent with this Resolution and not substantially adverse to this City and which shall be approved by the City Manager.

Section 2. The City Manager, the Clerk of Council, the Director of Law, the Director of Finance, or other appropriate officers of the City are hereby authorized to prepare

RECORD OF RESOLUTIONS

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and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Resolution. The City Manager is authorized, in the name of the City, to execute any amendments to the Settlement Agreement, which amendments are not inconsistent with this Resolution and not substantially adverse to this City.

Section 3. This Resolution shall take effect upon adoption in accordance with Section 4.04(a) of the Revised Charter.

Passed this _____ day of _____, 2014.

Mayor – Presiding Officer

Attest:

Clerk of Council

SETTLEMENT AGREEMENT

This Settlement Agreement, hereinafter referred to as the "Agreement", is entered into and effective as of this _____ day of February, 2014, by and between Sunrise Dublin Senior Living, LLC, hereinafter referred to as "Sunrise" and the City of Dublin, Ohio, hereinafter referred to as "Dublin". Sunrise and Dublin may be collectively referred to herein as the "Parties".

Recitals

WHEREAS, Sunrise owns property in Dublin identified as the Sunrise Senior Living Facility located at 4175 Stoneridge Lane; and

WHEREAS, Sunrise obtained Final Development Plan and Corridor Development District approval on November 1, 2007, for a 65,780 square foot senior citizen assisted living facility and associated site improvements (the "Project"); and

WHEREAS, in 2009, Sunrise ceased construction activity on the Project due to financial difficulties; and

WHEREAS, the building on the site is at the structural steel framing stage with most of the foundation complete; and

WHEREAS, the second and third floor metal floor decking has been installed and concrete has been poured over the decking on portions of the second floor; and

WHEREAS, the City of Dublin and Sunrise have determined it is in the best interest of both parties for Sunrise to complete the project at 4175 Stoneridge Lane; and

WHEREAS, Sunrise has obtained the financing commitment to complete the Project; and anticipates closing pursuant to the schedule noted in Section 5 below; and

WHEREAS, Sunrise is currently preparing a Forensic Construction Analysis of the project to insure its safe construction; and

WHEREAS, Sunrise is currently preparing revised construction plans to address new requirements that are required in the Ohio Building Code; and

WHEREAS, Sunrise acknowledges and agrees to be bound by Section 153.066(N)(6)(c) entitled "Abandonment" of the Bridge Street District Code, as set forth more fully below; and

WHEREAS, Sunrise has agreed to furnish the City with certain financial and loan closing documents to include, but not be limited to, any loan guaranties of Sunrise Senior Living, LLC, the parent entity, including supporting financial records; and

WHEREAS, Sunrise acknowledges the necessity to complete the Project by a date specific; and

WHEREAS, the City of Dublin agrees to use its best efforts to assist Sunrise in receiving a “Certificate of Zoning Plan Approval”; and

WHEREAS, Sunrise and Dublin hereby express their mutual intent to work together to complete the Project as outlined in the Final Development Plan and Corridor Development District approval from the Dublin Planning and Zoning Commission on November 1, 2007, for a 65,780 square foot senior citizen assisted living facility and associated site improvements, a copy of the approval is hereby attached, marked as “Exhibit A”, and incorporated by reference.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Provisions

1. **Authority**. The parties represent and warrant they have full and complete authority to make, sign, execute and deliver this Agreement, and will furnish all necessary written documentation of said authority, to include, but not be limited to corporate resolutions.
2. Sunrise agrees to furnish Dublin the following documentation:
 - (a) A forensic analysis of the work performed previously on the site and a written report certifying the safety and condition of the construction completed to date. Said documentation shall be to the satisfaction of Dublin.
 - (b) Relevant financial statements, loan documents and guaranties, of both Sunrise and its parent entity. Specifically, Sunrise will furnish Dublin a copy of the Payment and Performance Guaranty Agreement and the Completion Guaranty, both to be entered into by Sunrise Senior Living, LLC as part of the construction loan for the Project. The City agrees that all documents furnished pursuant to this Section 2(b) will be considered confidential to the extent provided by law.
 - (c) Sunrise is required to submit an application for a building permit to the City of Dublin, Building Standards. Such application should include plans and specifications that show compliance with the 2011 Ohio Building Code and other pertinent codes and ordinances as required. Upon review and approval of such application, the City will issue Sunrise a new building permit as set forth below pursuant to applicable Dublin code and Ohio law.
 - (d) Sunrise shall develop the site in accordance with the Final Development Plan and Corridor Development District approval from the Dublin Planning and Zoning Commission dated November 1, 2007.
3. Sunrise hereby acknowledges that Dublin has an “Abandonment” provision in Section 153.066(N)(6)(c) of its Zoning Code that currently governs this property. Sunrise acknowledges that if the project is not completed within twenty four (24) months after

construction commences, Dublin may take any and all action permitted under Section 153.066(N)(6)(c). A copy of the Abandonment Code section is hereby attached, marked as "Exhibit B", and incorporated by reference.

4. Dublin hereby acknowledges that the state of construction on this site is hereby designated as "substantially complete", for zoning purposes only. Therefore, the property at 4175 Stoneridge Lane will constitute an existing use and an existing structure under Sections 153.059(A)(5) and (6) and Section 153.062(B)(2).
5. Sunrise and Dublin further agree on the following timetable to complete this project:
 - (a) Resolution and Agreement to City Council – February 24, 2014.
 - (b) Revise Building Plans due - March 1, 2014.
 - (c) Provide financial documents and loan guaranties by April 1, 2014.
 - (d) Forensic Report due April 15, 2014.
 - (e) Building Permit issued April 15, 2014.
 - (f) Construction commenced May 1, 2014.
 - (g) Construction substantially completed July 1, 2015.
6. Force Majeure. Neither Party is responsible for any failure to perform its obligations under this Agreement, if it is prevented or delayed in performing those obligations by an event of Force Majeure (as defined below).
 - (a) Where there is an event of Force Majeure, the party prevented from or delayed in performing its obligations under this Agreement shall notify the other party and shall use its reasonable efforts to mitigate the effect of the event of Force Majeure upon its performance of the Agreement.
 - (b) Upon completion of the event of Force Majeure, the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Agreement and the dates set forth in Section 5 shall be adjusted accordingly.
 - (c) As used in this Agreement, an event of Force Majeure means (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades; (f) action by any governmental authority; (g) national or regional emergency; and (h) strikes, labor stoppages or slowdowns or other industrial disturbances, in each case affecting the Project.
7. Breach. The Parties agree that in the event Sunrise fails to meet the timeline dates set forth in Section 5(b), (c), (d), or (f), such failure to meet the timeline will be a significant

breach of this Agreement. If such breach occurs, Dublin shall notify Sunrise, in writing, within ten (10) days of such breach. Further, Dublin shall notify the construction lender in the event of a breach. The construction lender shall have the option, but not the responsibility, to cure said breach on the same terms and conditions as Sunrise. Sunrise shall then have ten (10) business days to cure said breach. The Parties agree that if the City is delayed in issuing the building permit as set forth in Section 5(e), the dates set forth in Section 5(f) and (g) shall be extended for a period of time equal to such delay.

8. Additional Time to Complete. Should Sunrise fail to complete construction by the date set forth in Section 5(g), Sunrise will have additional time, not to exceed a total of 24 months from the date set forth in Section 5(f), in which to complete construction. Such 24-month period will also be extended by any delay caused by an event of Force Majeure.
9. Binding Effect. This Agreement shall be binding upon the legal representatives, heirs, successors, and permitted assigns of the Parties.
10. Applicable Law and Jurisdiction. This Agreement shall be governed by and in accordance with the law of the State of Ohio. The Court of Common Pleas, Franklin County, Ohio shall maintain jurisdiction over any dispute that arises under this Agreement.
11. Other Documentation. The parties agree, upon reasonable request of the other, to execute all additional documents which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and to complete the transaction contemplated by this Agreement and/or the appropriation of the property.
12. Amendment. This Agreement shall not be amended or modified, except in writing, and signed by the Parties.
13. Severability. Should any provision or term of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid, unenforceable, or void, such declaration or determination shall not affect the remaining terms of this Agreement, which shall remain independent, fully legal, valid, and enforceable pursuant to the terms of this Agreement.
14. Construction. This Agreement shall be considered to have been jointly drafted by the Parties, and it is agreed that it shall be governed by and constructed in accordance with the laws of the State of Ohio regardless of conflicts of law rules.
15. Proper Process and Procedure. The Parties acknowledge and agree that all the necessary steps required by law to appropriate the property have been taken, that all requirements of the Ohio Revised Code have been met, and that any and all defects or informalities in the Action are deemed amended and corrected.

16. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth in the preamble, and the individuals executing this Agreement represent that they have the full authority to execute this Agreement.

THE CITY OF DUBLIN

Marsha I. Grigsby, City Manager

SUNRISE DUBLIN SENIOR LIVING, LLC

By: Sunrise Senior Living, LLC, its sole member

By: _____
Name and Title

APPROVED AS TO FORM

Stephen J. Smith, Law Director