

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

Resolution or Ordinance (Blue) _____
Waiver of First Requested
Recommendations of Boards, Commissions & Committees (Green)
Other Business (Pink) _____

X

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: February 12, 2008 (B of T) Date: February 21, 2008

TITLE: 2210 & 2220 Fountain Square Drive (Sunrise Senior Living)

SUBMITTED BY: Department of Community Development *John*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmit for your consideration a request authorizing the Village President and Clerk to sign an Assumption and Consent Agreement. (DISTRICT #3)

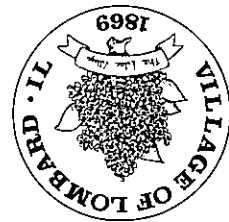
Staff recommends approval of this request.

Please place this item on the February 21, 2008 Board of Trustees agenda.

Fiscal Impact/Funding Source:
Review (as necessary):

Village Attorney X _____
Finance Director X _____
Village Manager X *W. T. Lichter* _____
Date _____
Date *2/13/08* _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: William T. Lichter, Village Manager

FROM: David A. Hulseberg, AICP
DH
Assistant Village Manager/Director of Community Development

DATE: February 12, 2008

SUBJECT: Assignment and Assumption Agreement (Sunrise Senior Living) 2210 and 2220 Fountain Square Drive

Attached for the Village Board's consideration is an Assignment and Assumption Agreement between Sunrise Lombard II Senior Living, LLC and Metsun Three Lombard II Senior Living LLC. Metsun Three Lombard II Senior Living will assume all rights, title, interest, liabilities and obligations in and to the Annexation and Development Agreements related to Lot 2 in the Fountain Square Subdivision.

The consent portion of the agreement will identify Metsun Three Lombard as the successor pursuant to the previously approved agreements and release Sunrise Lombard Senior Living from all liabilities and obligations.

ACTION REQUESTED

Staff recommends that this item be placed on the February 21, 2008 Village Board Agenda with a motion authorizing that the President and Village Clerk to sign the Consent and Release portion of the Assignment and Assumption Agreement.

Assignment and Assumption Agreement shall be governed by the laws of the State of Illinois. This Agreement shall be governed by the laws of the State of Illinois. This Agreement shall be governed by the laws of the State of Illinois. This Agreement shall be governed by the laws of the State of Illinois.

WHEREAS, Assignor desires to assign to Assignee all of its right, title and interest in and to the Agreement related to Lot 2 in the Fountain Square Subdivision in the Village of Lombard, DuPage County, Illinois, containing approximately 4.387± acres being purchased by Assignee (the "Assigned Property"), and more particularly described on Exhibit A attached hereto and made part hereof, and Assignee desires to accept said assignment and to assume all of Assignor's liabilities and obligations related to or arising from and under the Agreement as the Agreement relates to the Assigned Property as referred to therein and the incorporated Development Agreement pertaining thereto;

WHEREAS, Fountain assigned the Agreement to Assignor pursuant to Assignor's acquisition of the Assigned Property, as defined herein, on May 31, 2007; and

WHEREAS, the Village of Lombard, a municipal corporation, Bethany Theological Seminary, an Illinois not-for-profit corporation and Fountain Square of Lombard L.L.C. ("Fountain"), entered into an Annexation Agreement dated March 23, 1998, which incorporates by reference a Development Agreement (collectively, as it may be amended, modified or supplemented from time to time, the "Agreement") regarding the real property commonly known as Fountain Square, and which Agreement was recorded by the DuPage County Recorder of Deeds on April 10, 1998 as Document Number R98-067503; and

This Assignment and Assumption Agreement is dated as of February 5, 2008 and is entered into by and between SUNRISE LOMBARD II SENIOR LIVING, LLC, a Delaware limited liability company ("Assignor") and METSUN THREE LOMBARD II SENIOR LIVING, LLC, a Delaware limited liability company ("Assignee").

ASSIGNMENT AND ASSUMPTION AGREEMENT

Record and Return to:
Beth-Sherril Akyerako, Esq.
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5339

Prepared by:
Nick Demourtzidis, Esq.
McCausland Keen & Buckman
Suite 160, Radnor Court
259 N. Radnor-Chester Road
Radnor, PA 19087

Assignor represents and warrants that it has not pledged, assigned, sold or otherwise transferred any of its rights, title, and interest in, to and under the Agreement to any person or entity other than Assignee pursuant to this Assignment and Assumption Agreement. Assignor further represents and warrants that it has not given nor has it received any written notice of default under the Agreement.

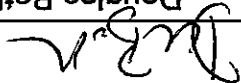
IN WITNESS WHEREOF, this Assignment and Assumption Agreement is executed as of the date noted above.

ASSIGNOR:

ASSIGNEE:

Sunrise Lombard II Senior Living, LLC
a Delaware limited liability company

By: Sunrise Senior Living Investments, Inc., a Virginia corporation,
its Sole Member


By: 
Name: Douglas Bath
Title: President

By: Metsun Three Pool One, LLC,
a Delaware limited liability company,
its Sole Member

By: Master Metsun Three, LP,
a Delaware limited partnership,
its Sole Member

By: Master Metsun Three GP, LLC,
a Delaware limited liability company,
its General Partner

By: Sunrise Senior Living Investments, Inc.,
a Virginia corporation,
its Sole Member

By: 
Name: Douglas Bath
Title: President

COMMONWEALTH OF VIRGINIA)

COMMONWEALTH OF VIRGINIA)

) ss)
) COUNTY OF FAIRFAX)

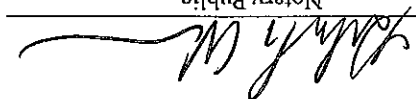
) ss)
) COUNTY OF FAIRFAX)

The foregoing was acknowledged before me this 5th day of February, 2008 by Douglas Bath, the President of Sunrise Senior Living Investments, Inc., a Virginia corporation, for the purposes contained herein.

The foregoing was acknowledged before me this 5th day of February, 2008 by Douglas Bath, the President of Sunrise Senior Living Investments, Inc., a Virginia corporation, for the purpose contained herein.

My Commission expires: 11/30/2010

My Commission expires: 11/30/2010


Notary Public


Notary Public

PN 06-28-100-011

Commonly known as:

23 Fountain Square Drive
(Southwest Corner of 22nd Street and Meyers Road)
Lombard, Illinois 60148

LOT 2 IN FOUNTAIN SQUARE, BEING A SUBDIVISION OF PART OF THE
NORTHEAST QUARTER OF SECTION 29 AND THE NORTHWEST QUARTER OF
SECTION 28, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL
MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 13, 1998, AS
DOCUMENT NO. R98-139154 IN DUPAGE COUNTY, ILLINOIS.

PROPERTY DESCRIPTION

EXHIBIT A

CONSENT AND RELEASE

The undersigned, being the President and Clerk of the remaining party to the Agreement as it relates to the Assigned Property, do hereby consent to this Assignment and Assumption Agreement on behalf of the Village of Lombard, and forever release the Assignor, together with its successors, assigns, heirs, and personal representatives, other than the Assignee, from all liabilities and obligations related to or arising under the Agreement, which relate to Assigned Property.

VILLAGE OF LOMBARD,
a municipal corporation

By: William J. Mueller
Name: William J. Mueller
Its: Village President
Attest: Brigitte O'Brien
Name: Brigitte O'Brien
Its: Village Clerk

STATE OF ILLINOIS, DUPAGE COUNTY, ss:

The foregoing Assignment and Assumption Agreement was acknowledged before me this day of _____, 2008, by William J. Mueller and Brigitte O'Brien, the President and Clerk of the Village of Lombard, State of Illinois, for the purpose contained herein.

My Commission expires: _____

Notary Public