

ORDINANCE NO. 19-14

**AN ORDINANCE AUTHORIZING THE MAYOR TO
EXECUTE A SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS BETWEEN
THE CITY OF COLLINSVILLE AND SANDRIDGE MANORS, LLC,
RETAIL PLACE, LLC, AND OSBORN HOMES, INC.**

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Collinsville, that the Mayor is authorized to execute the Settlement Agreement and Release of Claims attached hereto, which is hereby approved as to form, between the City and Sandridge Manors, LLC, Retail Place, LLC, and Osborn Homes, Inc., regarding the resolution of litigation between the properties relating to Sandridge Villas subdivision.

Passed by the City Council of City of Collinsville, on the 25th day of February, 2019.

Ayes: Jerome, Brombolich, Stehman, Green, Miller

Nays: None

Absent: None

Approved: February 25, 2019.



JOHN MILLER, MAYOR

ATTEST:



KIM WASSER, CITY CLERK

RECORDED:

Feb. 25, 2019

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (hereafter referred to as “this Agreement”) is entered into as of February 25, 2019 (the “Effective Date), by and between (a) Sandridge Manors, LLC, Retail Place, LLC and Osborn Homes, Inc. (hereinafter individually and collectively as the “Claimants”) and (b) the City of Collinsville, Illinois, a municipal corporation (hereinafter the “City”), Troy Turner (“Turner”) and Mitchell Bair (“Bair”). The City, Turner and Bair are sometimes hereinafter referred to collectively, as “Defendants.” Claimants and Defendants are sometimes hereinafter collectively referred to as “the Parties.”

RECITALS

1. The Claimants are owners, contractors or developers of a residential subdivision located in Collinsville, Illinois (“the Subdivision”), more particularly described in the Final Plat of Sandridge Villas filed for record in the Office of the Recorder of Madison County, Illinois on May 2, 2014, as Document 2014R13462 (the “Plat”).
2. In the course of development of the Subdivision, the Parties have engaged in disputes as to the construction and maintenance of various public and private improvements in the Subdivision.
3. The disputes between the Parties has resulted in citations, complaints, and counter-claims being filed against one another, including the following pending civil actions: Sandridge Manors, LLC, et al v. City of Collinsville, et al, Case No. 16-CH-479; Sandridge Manors, LLC, et al v. City of Collinsville, Case No. 17-cv-1287 and Sandridge Manors, LLC, et al v. City of Collinsville, et al, Case No. 18-MR-24 (collectively, the “Litigation”).
4. The Parties have now determined that it is in their respective best interests to resolve their disputes regarding the Subdivision on the terms and conditions stated in this Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the covenants, promises, representations, releases, and other terms and conditions contained herein, the Parties named above agree as follows:

1. **Recitals Incorporated.** The foregoing Recitals are incorporated herein as a material part of this Agreement.

2. **Embankment.** The Claimants shall, within thirty (30) days from the Effective Date, remove all exposed rebar and metal piping and tubing from the embankment on the northerly side of Lot 5 and northeasterly side of Lot 6 in the Subdivision (the "Embankment"). The Claimants shall otherwise be allowed to maintain the Embankment in substantially the same as its existing condition, reasonable wear and tear excepted.

3. **Boundary Consolidation.** The boundaries of Outlot A, Lot 5 and Lot 6 shall be adjusted so that one half of Outlot A is incorporated into Lot 5, the other half of Outlot A is incorporated into Lot 6, and Outlot A is eliminated. The boundary adjustment shall be accomplished by an Amended Subdivision Plat in the form set forth in Exhibit A attached hereto and incorporated herein by reference, which plat shall be recorded promptly after the Effective Date.

4. **Safety Fence.** For safety purposes, the Claimants shall, within six (6) months after the Effective Date, cause the construction of a fence along the top of the Embankment, from the existing westerly boundary of Lot 5 to the existing easterly boundary of Lot 6. The fence shall be located within ten (10) feet of top of the Embankment and shall be six (6) feet in height, made of vinyl materials, with six (6) feet maximum spacing between vertical posts and four (4) inches maximum spacing between vertical boards. No permit or other approval shall be required for construction of the fence. The fence shall otherwise be constructed in accordance with the City's Municipal Code and be completed within six (6) months of the Effective Date. Until such time as the permanent fence is constructed, the

Claimants shall install a temporary safety fence from the existing westerly boundary of Lot 5 to the existing easterly boundary of Lot 6.

5. **Storm Water Drainage Facilities.** Sandridge Manors, LLC (“Sandridge”) currently owns the Subdivision and shall maintain all storm water drainage facilities (including the detention basin currently located on Outlot A with its boundary to be relocated as provided for in paragraph 3) in compliance with the City’s Municipal Code and any other applicable federal, state, county, and local statutes and regulations as long as Sandridge owns any part of the Subdivision. In the event Sandridge owns no part of the Subdivision, the owner or owners of Lots 5 and 6 in the Subdivision shall be jointly and severally responsible for maintenance of such facilities. Notwithstanding anything to the contrary in this paragraph 5, the existing storm water management and drainage facilities in the Subdivision shall be allowed to remain in their current locations and configuration. Claimants acknowledge that the City has not accepted and does not accept maintenance responsibility for any storm water drainage facilities in the Subdivision.

6. **Easements.** The City and all utility companies shall continue to maintain and exercise of the rights granted to it in relation to the present utility easements in the Subdivision for water lines, sanitary sewer systems, and any other public or private utilities, except for the private storm water drainage facilities referred to in paragraph 5.

7. **Street/Sidewalk Right of Way.** Within ninety (90) days of the Effective Date, Sandridge shall cause the existing sidewalks in the Subdivision to comply with the applicable requirements of the Illinois Accessibility Code (71 Ill. Adm. Code 400, et seq.). Reconstruction of the sidewalks shall be subject to usual inspections by the City when sidewalks are initially constructed in residential subdivisions. Sandridge warrants that the paving installed in the platted street right of way shall be free from defects in material or workmanship for a period of five (5) years from the Effective Date. In the event that within five (5) years of the Effective Date Sandridge owns no part of the Subdivision, the owner(s) of Lots 5 and 6 in the Subdivision shall be jointly and severally responsible to repair defects

in material or workmanship of the paving installed street right of way for the remainder of such five (5) year period.

8. Occupancy Permits. The City shall issue to Sandridge Certificates of Occupancy for Lots 5 and 6 of the Subdivision as soon as Sandridge has installed the temporary safety fencing at the location prescribed for the fence referred to in paragraph 4 or has completed construction of the fence.

9. Miscellaneous. The parties acknowledge a separate agreement negotiated and executed between the Claimants and the insurance carrier for the City. The City asserts that it was not consulted with and did not participate in the negotiations of, nor approve in any manner, the separate agreement between the Claimant and the City's insurance carrier.

10. Release of Defendants. Subject to the City's obligations under this Agreement, Claimants, on behalf of themselves and their respective predecessors, affiliates, successors and assigns, hereby release and forever discharge Defendants, and each of them, and their respective insurers, agents, employees, affiliates, predecessors, successors and assigns ("collectively, "City Releasees"), of and from any and every claim, demand, cause of action or suit, of any character or description whatsoever, for any property damage, economic loss or other injury, loss or damage sustained by any of Claimants, whether known or unknown or which has occurred or may occur in the future, arising out of or in any way related to the events referred to in the Litigation. Without limiting the generality of the preceding sentence, this paragraph is intended to effectuate a general release that shall forever release and discharge City Releasees of all claims of any character or description whatsoever that might or could exist as of this date in favor of Claimants and against any one or more of City Releasees relating to use or development of the Subdivision or any part thereof or construction of any improvements thereon and extends to any and all claims, regardless of whether based on contract or tort or of statutory, administrative or common law origin.

11. Release of Claimants. Subject to the their obligations under this Agreement, Defendants, on behalf of themselves and their respective heirs, personal representatives,

predecessors, affiliates, successors and assigns, hereby release and forever discharge Claimants, and each of them, and respective insurers, shareholders, officers, directors, agents, employees, affiliates, predecessors, successors and assigns (“collectively, “Claimant Releasees”), of and from any and every claim, demand, cause of action or suit, of any character or description whatsoever, for any fine, penalty, or ordinance violation and any property damage, economic loss or other injury, loss or damage sustained by any of Defendants, whether known or unknown or which has occurred or may occur in the future, arising out of or in any way related to the events referred to in the Litigation. Without limiting the generality of the preceding sentence, this paragraph is intended to effectuate a general release that shall forever release and discharge Claimant Releasees of all claims of any character or description whatsoever that might or could exist as of this date in favor of any of Defendants and against any one or more of Claimant Releasees relating to use or development of the Subdivision or any part thereof or construction of any improvements thereon and extends to any and all claims, regardless of whether based on contract or tort or of statutory, administrative or common law origin.

12. **Dismissal of Lawsuits.** Within 30 days of the Effective Date, the Parties agree to submit a Joint Stipulation and Dismissal with prejudice of all claims and counterclaims in the Litigation, with each party to bear his or its own costs.

13. **Runs with the Land.** This terms and provisions of this Agreement shall be deemed to run with the land as to Lots 5 and 6 of the Subdivision.

14. **Recording.** Either of the Parties hereto may choose to record this Agreement, or a Memorandum thereof, with Madison County Recorder’s Office.

15. **Entire Agreement.** This Agreement and the separate agreement referred to in paragraph 9 contain the entire agreement between the Parties with respect to the subject matter hereof. There are no promises, agreements, covenants, representations, warranties, or other terms or conditions pertaining to the subject matter hereof, except as may be implied by law.

16. **Modification.** This Agreement may not be modified except by a writing signed by all of the Parties hereto.

17. **Time.** Time is and shall remain of the essence of this Agreement.

18. **Laws and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Venue for any legal actions or proceedings between the Parties shall be in the Circuit Court of Madison County, Illinois.

19. **Draft Presumption.** The initial draft of this Agreement has been prepared by counsel for City as a convenience to all parties. Each of the other Parties hereby acknowledges that they and their counsel, have reviewed the initial draft and have participated fully in any revisions thereof. No presumption regarding the interpretation of this Agreement shall arise from the fact that the initial draft hereof was prepared by counsel for the City.

20. **Authority.** Each person executing this Agreement in a representative capacity on behalf of one of the Parties hereby warrants and represents that they are duly authorized to do so.

21. **Binding.** This Agreement shall be binding upon the Parties and their respective heirs, successors and assigns.

22. **Duplicates.** This Agreement and all instruments or documents in accordance herewith may be executed in one or more counterparts or duplicates, and via electronic facsimile, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same Settlement Agreement and Release of Claims.

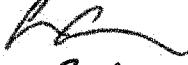
23. **Effectiveness.** This Agreement will become effective upon execution by all Parties.

24. Considerations. It is expressly understood that this Agreement and the payment referred to in paragraph 9 above are accepted as the sole consideration for full and final satisfaction and accord to compromise disputed claims, that neither the settlement nor the negotiations for settlement shall be considered as an admission of liability by any Party, all of whom expressly deny any liability for any injury or damages of any kind or nature to any other Party.


25. Severability. The parties agree that the provisions of this Agreement are severable and that if any provision is found to be contrary to law or otherwise invalid all remaining provisions shall remain in full force and effect.

CLAIMANTS:

Sandridge Manors, LLC


By: Cade Osborn
Date: 2/14/19


Retail Place, LLC



By: _____
Date: 2-18-19

Osborn Homes, Inc.

By: Scott Osborn
Date: 2/14/19

DEFENDANTS:


Mayor
Date: 2-25-19


Troy Turner
Date: 25-Feb-2019

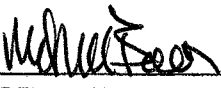

Mitchell Bair
Date: 2/26/19

EXHIBIT A

