

On Monday, February 22, 2010 City Council placed on First Reading an Ordinance to enter into an agreement with Coral SECC and PIRHL Cedar Center Housing for an affordable senior housing component as part of Phase One of the Cedar Center Revitalization Project. The housing option will target seniors, ages 55 and over. "Air Rights" refer to the right to use, control or occupy the vertical space above a designated property. The designated "air rights" can be leased, sold or donated to another party by the property owner, in this case, the City of South Euclid. Below is a copy of the Air Rights Option Agreement as introduced to City Council on February 22, 2010 for further consideration. Sections of the Agreement are still being negotiated and have been intentionally left "blank":

DRAFT (2/16/10)

AIR RIGHTS OPTION AGREEMENT

THIS AIR RIGHTS OPTION AGREEMENT (this "Agreement") is made and entered into this ___ day of _____, 2010, by and among PIRHL CEDAR CENTER HOUSING, LLC, an Ohio limited liability company ("PIRHL"), THE CITY OF SOUTH EUCLID, OHIO, an Ohio municipal corporation (the "City"), and CORAL SECC, LLC, an Ohio limited liability company ("Coral").

RECITALS:

A. The City is the owner of certain real property located in the City and currently known as the Cedar Center Shopping District (the "Cedar Center Property").

B. The City and Coral have entered into an Amended and Restated Project Development Agreement and Contract for Sale of Land dated as of September 30, 2009 (the "Development Agreement") relating to the overall redevelopment of the Cedar Center Property.

C. Coral has provided the City with a Preliminary – Site Layout Plan for the development of the Cedar Center Property, a copy of which is attached hereto as Exhibit A (the "Site Plan").

D. Pursuant to the terms of a Development Agreement dated as of even date herewith between Coral and PIRHL (the "Building 1B Development Agreement"), Coral and PIRHL have agreed that PIRHL will construct a forty-nine (49) unit affordable senior housing development (the "PIRHL Project") as floors 2 through 4 above the retail building to be constructed by Coral as part of Phase 1 of the development of the Cedar Center Property, which building is shown as Building 1B on the Site Plan ("Building 1B").

E. In furtherance of the PIRHL Project, PIRHL intends to submit an application for federal housing tax credits ("Tax Credits") to the Ohio Housing Finance Agency ("OHFA"). In connection with such application, PIRHL desires to obtain an option to acquire from the City and

Coral (i) the air rights over Building 1B (the “Air Rights”), (ii) easement rights for ingress and egress and for utilities over, across and under the Cedar Center Property and through Building 1B sufficient to provide utilities for the PIRHL Project and for access to and from the PIRHL Project (the “Access and Utility Easement”) and (iii) an exclusive easement for parking for forty-nine (49) vehicles in the parking area identified on the Site Plan as “PIRHL Parking” (the “Parking Easement”, and together with the Air Rights and the Access and Utility Easement being herein referred to as the “Optioned Rights”).

F. Both the City and Coral are supportive of the PIRHL Project and desire to grant PIRHL an option to acquire the Optioned Rights upon and subject to the terms and conditions set forth in this Agreement.

AGREEMENTS:

In consideration of the foregoing Recitals, the sum of _____ paid by PIRHL to the City, and the mutual covenants and agreements set forth herein, the parties hereto hereby agree as follows:

1. GRANT OF OPTION.

(a) The City and Coral hereby grant to PIRHL an option (the “Option”) to acquire the Optioned Rights during the period (the “Option Period”) beginning on the date of this Agreement and ending on the later of:

- (i) October 1, 2010; or
- (ii) the earlier of (x) March 31, 2011 or (y) thirty (30) days after the date on which Coral has provided PIRHL with written notice (the “Closing Notice”) that Coral has obtained a firm commitment for all financing necessary to construct (1) the first floor retail portion of Building 1B, (2) the platform upon which the PIRHL Project will be constructed (the “Platform”) and (3) all related improvements to be constructed by Coral in connection with Building 1B as contemplated by the Building 1B Development Agreement.

The Closing Notice referred to in clause (ii), above, shall be accompanied by copies of all financing commitments, as well as such other documents or instruments as may be necessary to demonstrate the satisfaction of all contingencies set forth in such commitments.

(b) The Option shall be exercised by PIRHL delivering to the City and Coral a written notice of exercise of the Option (the “Exercise Notice”) at any time prior to the termination of the Option Period. The closing of the acquisition of the Optioned Rights by PIRHL shall take place within ten (10) business days following the date on which Coral has delivered the Platform to PIRHL as contemplated by the Building 1B Development Agreement. The date of closing of such acquisition being herein referred to as the “Closing Date”.

(c) Coral hereby acknowledges the Option and waives the option to purchase and right of first refusal granted to it pursuant to the Development Agreement with respect to the Optioned Rights.

2. TERMINATION OF OPTION.

(a) The Option shall expire and terminate unless it is exercised by PIRHL prior to the end of the Option Period. In addition, PIRHL shall have the right to terminate the Option at any time prior to the end of the Option Period by written notice to the City, with a copy to Coral and the Escrow Agent (as hereinafter defined).

(b) Upon termination of the Option, (i) all rights of PIRHL to acquire the Optioned Rights shall terminate, and (ii) the Deposits, as hereinafter defined (or such portion thereof that has been deposited by PIRHL with the Escrow Agent) shall be delivered by the Escrow Agent to the City or returned by the Escrow Agent to PIRHL as provided herein.

3. PURCHASE PRICE.

(a) The purchase price for the Optioned Rights upon exercise of the Option shall be _____ . The purchase price shall be payable as follows:

- (i) _____ shall be deposited with the Escrow Agent upon execution of this Agreement (the “Initial Deposit”);
- (ii) An additional _____ shall be deposited with the Escrow Agent within fifteen (15) business days following the date (the “Award Date”) on which PIRHL receives an allocation of Tax Credits for the PIRHL Project from OHFA (the “Additional Deposit” and together with the Initial Deposit, the “Deposits”); and
- (iii) The balance of the purchase price shall be deposited by PIRHL with the Escrow Agent within one (1) business day after exercise of the Option and shall be payable to the City on the Closing Date.

(b) The Deposits shall be held by the Escrow Agent in an interest bearing account, with interest applied against the purchase price at closing or paid to the party to which the Deposits are payable in the event of termination of this Agreement. The Deposits shall be fully refundable until the Award Date. After the Award Date, the Deposits shall become non-refundable absent a failure by the City to perform its obligations hereunder.

4. CONVEYANCE OF OPTIONED RIGHTS.

(a) At closing the City and/or Coral, as the case may be, shall:

- (i) Convey the Air Rights to PIRHL by general warranty deed or other instrument acceptable to PIRHL, free and clear of all liens, claims and encumbrances other than those that are acceptable to PIRHL; and
- (ii) Grant the Access and Utility Easement and the Parking Easement to PIRHL by an easement agreement or agreements in form and substance acceptable to PIRHL.

(b) Pursuant to the terms of the Building 1B Development Agreement, _____ will cause to be prepared such surveys, legal descriptions, lot splits and other documents as shall be necessary to enable the City to convey the Optioned Rights as provided herein. Such surveys, legal descriptions, lot splits and other documents shall be subject to review by, and the approval of, the City, which approval shall not be unreasonably withheld, conditioned or delayed.

(c) The City acknowledges and agrees that the Optioned Rights must be conveyed in a manner that will permit PIRHL to obtain financing for the PIRHL Project and must be mortgagable.

5. CLOSING.

(a) The closing of the acquisition of the Optioned Rights shall take place through an escrow established with _____ (the "Escrow Agent"). This Agreement, together with any supplemental instructions agreed to by PIRHL, Coral and the City ("Supplemental Escrow Instructions"), shall constitute escrow instructions to the Escrow Agent. The Escrow Agent may attach its Standard Conditions of Acceptance of Escrow to this Agreement; provided, however, that in the event of any conflict between the terms of this Agreement or the Supplemental Escrow Instructions, on the one hand, and such Standard Conditions, on the other hand, the terms of this Agreement and the Supplemental Escrow Instructions shall prevail.

(b) The parties shall place all necessary documents in escrow with the Escrow Agent no later than three (3) business days prior to the Closing Date, and shall cooperate with each other and the Escrow Agent in closing the acquisition of the Optioned Rights.

6. PRORATIONS. All real estate taxes and assessments related to the Optioned Rights arising or relating to any period prior to the Closing Date shall be the responsibility of, and, to the extent payable, shall be paid by, the City. Following the Closing Date, the parcel comprising the Air Rights shall be a separate tax parcel and PIRHL shall be responsible for all taxes and assessments related thereto for all periods from and after the Closing Date.

7. CLOSING COSTS. The closing costs shall be divided between the City and PIRHL as follows:

- (a) The City shall pay (i) the cost of preparing the deed or other conveyance instrument in respect of the conveyance of the Air Rights, (ii) the cost of a title search and title commitment, and (iii) all conveyance fees or transfer taxes; and

- (b) PIRHL shall pay (i) the cost of recording the deed or other conveyance instrument in respect of the conveyance of the Air Rights, (ii) the premium for an ALTA Owner's Policy of Title Insurance, (iii) the escrow fee charged by the Escrow Agent, and (iv) all costs associated with its financing of the purchase of the Optioned Rights.

8. INSPECTION RIGHTS.

(a) During the Option Period, PIRHL and its agents and/or contractors shall have access to the Cedar Center Property at all reasonable times and shall have the right to conduct such investigations and inspections thereof as PIRHL shall determine to be necessary or appropriate. Both the City and Coral will cooperate with PIRHL in connection with its investigations and inspections, and each will provide PIRHL with all documents in their possession or control relating to the Cedar Center Property or the development thereof, including, without limitation, all environmental reports, site plans, master plans, development plans, surveys, title commitments, title policies and other third party reports.

(b) PIRHL shall indemnify and hold the City and Coral harmless from and against all claims arising from the acts of PIRHL or its agents and/or contractors in connection with its investigations and inspections of the Cedar Center Property.

9. BUILDING 1B CONSTRUCTION. The ability of PIRHL to develop the PIRHL Project is dependent upon the construction and delivery to PIRHL of the Platform as contemplated by the Building 1B Development Agreement. The City and Coral agree that if Coral fails to deliver the Platform to PIRHL as required by the Building 1B Development Agreement, Coral shall be deemed to have waived its rights with respect to the land under Building 1B, PIRHL shall have the right to take such action as may be necessary to cause Building 1B and the related improvements to be constructed and, in that regard, the City shall accord PIRHL the same rights as Coral has under the Development Agreement as it relates to the development of Building 1B and the related improvements.

10. OHFA APPLICATION. The City and Coral agree to reasonably cooperate with PIRHL in connection with the submission of its Tax Credit application for the PIRHL Project. Without limiting the generality of the foregoing, (i) the City will provide PIRHL with letters in the form required by OHFA evidencing the City's support for the PIRHL Project and (ii) Coral shall provide PIRHL with the documents required to be provided under the Building 1B Development Agreement.

11. PIRHL'S FAILURE TO CLOSE. In the event PIRHL exercises the Option and fails to proceed with the acquisition of the Optioned Rights in accordance with the terms of this Agreement (for a reason other than a default or breach of this Agreement by the City or Coral), the parties hereto shall be relieved of any further liability and the Deposits paid by PIRHL shall be remitted by the Escrow Agent to the City as liquidated damages and as the sole remedy of the City for PIRHL's failure to close. Each of PIRHL and Coral acknowledge that pursuant to the

Building 1B Development Agreement they may have separate obligations and liabilities to the other arising as a result of PIRHL's failure to proceed with the acquisition of the Optioned Rights or a breach of the Building 1B Development Agreement and nothing herein is intended to, nor shall, relieve either PIRHL or Coral of its obligations and liabilities under the Building 1B Development Agreement.

12. CITY DEFAULT. If the City defaults in any of its obligations under this Agreement then provided PIRHL is not in default hereunder, PIRHL may either: (i) declare this Agreement terminated, in which the Deposits and all other amounts theretofore paid or deposited by PIRHL pursuant to this Agreement shall be returned to PIRHL and thereafter all rights and obligations of the parties hereunder shall be terminated and PIRHL may sue to collect its out-of-pocket costs and expenses in connection herewith; or (ii) enforce specific performance of the City's obligations under this Agreement.

13. LEGAL FEES. In the event of any legal action to enforce any of the provisions of this Agreement following a default by the City or PIRHL, the prevailing party in such action shall be entitled to recover from the non-prevailing party all costs and expenses incurred by the prevailing party in such action, including, without limitation, reasonable attorneys' fees and expenses.

14. MISCELLANEOUS.

(a) Amendments. This Agreement may be amended only by a writing signed by each of the parties, and any such amendment shall be effective only to the extent specifically set forth in such writing.

(b) Assignment. PIRHL shall have the right to assign this Agreement in connection with the PIRHL Project or to nominate another entity to acquire the Optioned Rights, provided that if the proposed assignee is other than a limited partnership or limited liability company of which PIRHL or an affiliate is the general partner or the managing member, such assignment shall be subject to the prior written consent of the City, which consent shall not be unreasonably withheld. Neither the City nor Coral shall have the right to assign any rights under this Agreement.

(c) Counterparts; Electronic Delivery. This Agreement may be executed in any number of counterparts, and by each of the parties on separate counterparts, each of which, when so executed, shall be deemed an original, but all of which shall constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by electronic transmission (e.g. telecopy or e-mail) shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by electronic transmission also shall deliver a manually executed counterpart of this Agreement, but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability or binding effect of this Agreement.

With a copy to: Paul J. Singerman, Esq.
Singerman, Mills, Desberg & Kauntz Co., L.P.A.
3401 Enterprise Parkway, Suite 200
Beachwood, Ohio 44122

City: The City of South Euclid
1349 South Green Road
South Euclid, Ohio 44121
Attention: Mayor

With a copy to: Michael P. Lograsso, Esq.
Law Director
City of South Euclid
1414 South Green Road, #310
South Euclid, Ohio 44121

And to: Virginia Benjamin, Esq.
Calfee Halter & Griswold LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, Ohio 44114

Coral: Coral SECC, LLC
13990 Cedar Road
Cleveland, Ohio 44118
Attention: Peter L. Rubin, President

With a copy to: _____

(l) Memorandum of Option. At the request of PIRHL, the City and Coral shall execute and deliver a Memorandum of Option in recordable form and sufficient to put third parties on notice of the rights of PIRHL under this Agreement.

(m) Entire Agreement. This Agreement contains the whole agreement between the parties and there are no other terms, obligations, covenants, representations, statements, or conditions, oral or otherwise.

(signature page follows)

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

PIRHL:

CITY:

PIRHL DEVELOPERS, LLC

CITY OF SOUTH EUCLID

By: _____
David Uram, President

By: _____
Georgine Welo, Mayor

CORAL:

APPROVED AS TO FORM:

CORAL SECC, LLC

Director of Law, City of South Euclid

By: _____
Peter L. Rubin, President

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EXHIBIT A

SITE PLAN