BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Appeal of Nebraska Avenue Neighborhood Association )
From Decision of DCRA Issuing Building Permits ) Appeal No. 17127
B456618 & B454315 with respect to Sunrise Assisted )
Living Facility Located at 5111 Connecticut Ave, N.W. )
In R-2 and R-5-B Zone (Square 1989, Lot 162) )
)

Opposition of Nebraska Avenue Neighborhood Association to Motion to Dismiss

Sunrise Assisted Living Facility ("Sunrise") has filed a motion to dismiss the above-captioned appeal filed by Nebraska Avenue Neighborhood Association ("NANA"), which appeal challenged six building permit numbers issued to Sunrise, which revise construction permits previously issued to Sunrise in connection with its assisted living facility located at 5111 Connecticut Avenue, N.W. Sunrise argues that this appeal is barred by principles of "administrative *res judicata*," arguing that this appeal seeks to re-litigate issues that were actually litigated or could have been litigated in prior appeals before this Board.

The conditions under which the principle of administrative *res judicata* or collateral estoppel will prevent parties from re-litigating claims that were or could have been asserted in prior administrative proceedings are set forth in Rhema Christian Ctr. v. District of Columbia Bd. of Zoning Adjustment, 515 A.2d 189 (D.C. App. 1986) (Rhema) and Towles v. District of Columbia Bd. of Zoning Adjustment, 578 A.2d 1128 (D.C. App. 1990) (Towles). Both of these cases involved efforts by a developer to resubmit identical applications for zoning variances that had previously been denied by the Board of Zoning Adjustment, and thus, are not precisely on point inasmuch as the present case concerns an appeal of building permits rather than an application for special exception or variance. These cases provide that administrative *res judicata* can preclude a subsequent applications, where (1) the earlier proceeding was the essential equivalent of a judicial proceeding, and (2) the second application (or appeal) is for the

BZA
Case No. 17127
Exhibit No. 21

Board of Zoning Adjustment
District of Columbia
CASE NO. 17214
EXHIBIT NO. 21