

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

This Exclusive Negotiating Rights Agreement (the "**ENRA**") is entered into as of _____, 2020 (the "**Effective Date**"), by and between the Village of Romeoville, an Illinois home rule municipal corporation (the "**Village**"), and S.J. Russell, L.C., an Iowa limited liability company ("**Developer**" and, together with the Village and the Developer, the "**Parties**").

RECITALS:

A. The Village owns that certain real property commonly known as _____ consisting of approximately _____ acres, generally located in the Village, and as shown on the site plan in **Exhibit A** attached to, and hereby made a part of, this ENRA (the "**Property**").

B. Developer, or an entity or entities affiliated with or related to Developer (collectively, the "**Developer**"), desires to acquire the Property and construct on the Property a senior living facility, and related uses (the "**Project**").

C. The Village desires that the Developer construct the Project on the Property upon terms and conditions acceptable to the Parties.

D. The Village has agreed to grant the exclusive right to conduct due diligence and to negotiate with the Village with respect to the acquisition of the Property from the Village and the development of the Project thereon.

E. The Village has agreed to grant an exclusive right to the Developer to negotiate a definitive development agreement (the "**Development Agreement**") regarding the construction of the Project on the Property.

F. The purpose of this ENRA is to establish procedures and standards for the negotiation between the Village and the Developer of a definitive agreement or agreements, including, without limitation, the Development Agreement (collectively, the "**Definitive Agreements**"), providing for the acquisition by the Developer of the Property from the Village and the development of the Project thereon. As more fully set forth in Section 4.1, this ENRA does not obligate the Village to sell the Property or any portion thereof to the Developer, nor does this ENRA grant the Developer the right or obligation to develop the Project on the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

ARTICLE 1 EXCLUSIVE NEGOTIATING RIGHT

Section 1.1 Good Faith Negotiations/Due Diligence. The Parties shall negotiate diligently and in good faith, during the Negotiating Period defined in Section 1.2, the terms of the Definitive Agreements. Moreover, the Developer shall conduct its due diligence during the Negotiation Period in good faith. During the Negotiating Period, the parties shall use good faith efforts to accomplish the respective tasks outlined in Article 3 to facilitate the negotiation of mutually satisfactory Definitive Agreements.

Among the issues to be addressed in the negotiations are acquisition of the Property (including, without limitation, the price for the Property and the methodology for addressing physical and title conditions of the Property and the conveyance of the Property), zoning and land use entitlements, the development schedule for the Project, financing the construction of the Project, marketing and management of the Project, the design of the Project, the terms and conditions of the Definitive Agreements, and the construction of public improvements related to the Project.

Section 1.2 Negotiating/Due Diligence Period. The negotiating/due diligence period under this ENRA (the "**Negotiating Period**") shall be the period of six (6) months commencing on the Effective Date of this ENRA. The Negotiating Period may be extended by written agreement signed by all Parties.

Section 1.3 Exclusive Negotiations. During the Negotiating Period the Village shall not negotiate with any entity or entities other than the Developer regarding the sale or development of the Property.

Section 1.4 Recitals. The recitals set forth above are hereby incorporated into this ENRA by reference as if fully set forth herein.

ARTICLE 2 THE DEVELOPER

Section 2.1 Development Entity. Subject to Section 3.7, the Developer shall make full disclosure to the Village of all information pertinent to the ownership, control and financial capacity of the development entity or entities that will be parties to the Definitive Agreements.

ARTICLE 3 NEGOTIATION/DUE DILIGENCE TASKS

Section 3.1 Overview. During the Negotiating Period, the Parties shall use reasonable good faith efforts to accomplish the due diligence tasks set forth in this Article 3 and to

accomplish the negotiation of a mutually acceptable purchase and sale agreement and Development Agreement.

Section 3.2 Information Sharing. Subject to Section 3.7, the Developer shall provide the Village with copies of all reports, studies, analyses, and similar documents, prepared or commissioned by the Developer with respect to this ENRA, the Property, and the Project, promptly upon their completion. Subject to Section 3.7, the Village shall provide to the Developer all information reasonably requested by the Developer regarding the Property, utilities serving the Property, and other matters reasonably related to the acquisition of the Property and the proposed construction of the Project on the Property. The Parties each acknowledge that the other Party will need sufficient, detailed information about the Property and the proposed Project (including, without limitation the financial information described in Section 3.5) to make informed decisions. The Developer together with its agents or representatives conducting the testing shall name the Village together with its officers, agents, and employees as non-contributory additional insureds on their general liability policies with coverage levels reasonably acceptable to the Village. Such policies shall be written on an occurrence basis and certificates delivered to the Village prior to entry on the Property.

Section 3.3 Physical Inspection of Property; Utilities.

(a) Physical Inspection of Property. The Village agrees that, during the Negotiating Period, the Village shall permit the Developer or the Developer's agents or representatives reasonable access to the Property for the purposes of: (1) conducting physical or environmental inspections of the Property, as well as environmental sampling, including, without limitation, borings, test pits, and other physical samplings of the Property; (2) preparing surveys, plats, reports, and similar documents related to the physical characteristics of, and the conditions on, the Property; (3) reviewing any documents related to the Property, including, without limitation, title reports, surveys, and environmental reports; and (4) any other lawful purpose related to the Developer's reasonable due diligence with respect to the acquisition of the Property and the construction of the Project. The Developer shall give the Village reasonable prior notice of the Developer's intention to conduct any inspection of the Property and, if the intended inspection includes or involves intrusive physical or environmental testing of the Property, such notice shall be in writing and include a description of the type of inspections to be conducted. The Developer shall restore the Property to its prior condition within a reasonable time after testing by the Developer.

(b) Utilities. The Developer shall consult with the Village and all utility companies serving the Property to determine if existing utility facilities require expansion, relocation or underground installation in connection with the development of the Project. The Village shall assist and cooperate in good faith with the Developer in such consultations.

Section 3.4 Purchase Price for the Site. The Parties shall use good faith efforts in seeking to agree upon the purchase price for the Property and the nature, timing and cost of and Village assistance to the Project, if any.

Section 3.5 Financial Proforma Analysis. Subject to Section 3.7, within one hundred twenty (120) days after the Effective Date of this ENRA, the Developer shall

provide the the Village with a detailed financial proforma for the Project containing, among other matters typically contained in such proformas, a detailed development cost budget and a detailed operating income and expense estimate (excluding confidential or proprietary information) based on the current design concepts. The financial proforma will be used to evidence the financial feasibility of the Project and to assist in the negotiations of any required financial assistance from the and Village.

Section 3.6 Progress Reports. Upon reasonable notice, as from time to time requested by the Village, the Developer shall make oral or written progress reports advising the Village regarding the status of studies being made and matters being evaluated by the Developer with respect to this ENRA and the Project.

Section 3.7 Nondisclosure Agreement. The Parties shall not have any obligation to provide any documents or information to the other Parties pursuant to this ENRA unless and until the Parties enter into a nondisclosure agreement (the “**Nondisclosure Agreement**”) in the form attached as Exhibit A.

ARTICLE 4 GENERAL PROVISIONS

Section 4.1 Limitation on Effect of Agreement. This ENRA shall not obligate the Village or the Developer to enter into any agreement or to enter into any particular agreement, including, without limitation, the Definitive Agreements. By executing this ENRA, the Parties only agree to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent action by the governing bodies of the Parties any decision regarding the execution of any Definitive Agreements. Any Definitive Agreements resulting from negotiations pursuant to this ENRA shall become effective only if and after such Definitive Agreements have been considered and approved by the Parties in accordance with all applicable laws, ordinances, rules, and procedures.

Section 4.2 Notices. Formal notices, demands and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, with signature required, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

Village: Village of Romeoville

Developer: S.J. Russell, L.C.
4700 E. 53rd Street
Davenport, IA 52807
Attn: Jennifer Smith

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 4.3 Costs and Expenses. Except as otherwise specified herein, each Party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this ENRA, and the performance of each Party's obligations under this ENRA.

Section 4.4 No Commissions. The Village shall not be liable for any real estate commissions or brokerage fees that may arise from this ENRA or any Agreement that may result from this ENRA, except to the extent the Village has entered into a separate listing or representation agreement for the Property.

Section 4.5 Default and Remedies.

(a) Default. Failure by any Party to negotiate in good faith as provided in this ENRA shall constitute an event of default hereunder. The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If a default remains uncured thirty (30) days after receipt by the defaulting Party of such notice, the non-defaulting Party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by any Party, the other Party may terminate this ENRA or pursue any available remedy at law or in equity. If the non-defaulting Party terminates, following such termination, no Party shall have any further right, remedy or obligation under this ENRA; provided, however, that Section 3.7 shall survive such termination.

Section 4.6 Assignment. No Party may transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the other Parties, which consent shall be granted or withheld in the other Parties' sole discretion. Any attempted transfer or assignment without the prior written consent of the other Parties shall be void. Notwithstanding the foregoing, Developer shall have the right to assign this agreement to a special purpose entity without consent of the Village.

Section 4.7 No Third Party Beneficiaries. This ENRA is made and entered into solely for the benefit of the Parties and no other person shall have any right of action under or by reason of this ENRA.

Section 4.8 Construction of Agreement. Each Party to this ENRA has had an equal opportunity to consult with its attorneys. Therefore, the usual construction of an agreement against the drafting Party shall not apply to this ENRA.

Section 4.9 Governing Law; Venue. This ENRA shall be governed by and construed in accordance with the laws of the State of Illinois. Venue shall be in Will County, Illinois

Section 4.10 Entire Agreement. This ENRA constitutes the entire agreement of the Parties regarding the subject matters of this ENRA.

Section 4.11 Counterparts. This ENRA 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.

Section 4.12 Authority to Execute. The undersigned represent and warrant that they are each duly authorized to execute this ENRA on behalf of the respective Parties for which they sign and to take the actions necessary to perform hereunder without the need to seek further authorization from the respective Parties they each represent.

VILLAGE:
Village of Romeoville

By:

DEVELOPER:
S.J. Russell, L.C.

By:

EXHIBIT A
SITE PLAN OF PROPERTY