

RELEASE AND WAIVER AGREEMENT

This Release and Waiver Agreement (the "Agreement") is entered into between the Village of Romeoville, (the "EMPLOYER"), and Stephen J. Gulden, ("EMPLOYEE") this 4th day of November, 2020.

PREAMBLE

WHEREAS, it is the desire of the EMPLOYER and EMPLOYEE to settle and resolve all the terms of EMPLOYEE'S retirement from employment with the EMPLOYER and to fix and determine the rights of each party with regard to EMPLOYEE'S voluntary retirement from said employment, as Village Manager, and all related matters, including all matters provided for under an Employment Agreement entered into between the parties on May 3, 2017, any disputes existing between them as of the effective date of this Agreement, any claims that could be brought by EMPLOYEE against the EMPLOYER, and/or any claims that the EMPLOYER could bring against EMPLOYEE in relation to the at-will-employment relationship between EMPLOYEE and the EMPLOYER and the ending of that relationship; and

WHEREAS, the considerations exchanged herein do not constitute and shall not be interpreted as an admission of liability or of any sort of wrongdoing on the part of EMPLOYEE or the EMPLOYER, or as any violation of any federal, state or local statute, ordinance, regulation, order or common law by either party; and

WHEREAS, it is in the best interests of both parties to enter into this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the payment of money, and the making of mutual promises and covenants hereinafter contained, the receipt and sufficiency of which is acknowledged, the EMPLOYER and EMPLOYEE agree as follows:

1. Incorporation of Preamble. The initial statements contained in the Preamble are incorporated into this Section 1 as if fully set forth herein and are material terms of this Agreement.

2. EMPLOYEE'S Retirement. EMPLOYEE acknowledges and agrees that EMPLOYEE has submitted his irrevocable letter of retirement to the EMPLOYER effective as of the 30th of November, 2020. Pursuant to such letter of retirement, EMPLOYEE relinquishes any and all rights to employment or re-employment with the EMPLOYER in any capacity or position.

3. Effect of Retirement under COBRA. EMPLOYEE'S Retirement Date shall constitute a qualifying event for purposes of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). A notification of COBRA rights is attached hereto as Exhibit 1.

4. Additional Compensation and Benefits for Releases; Letter of Recommendation. In consideration of EMPLOYEE'S retirement and the releases herein contained, EMPLOYER shall:

- A. Pay EMPLOYEE additional compensation to which EMPLOYEE would not be entitled in the event of the termination of his employment in the gross amount of Seventy Five Thousand and No/100 Dollars (\$75,000.00), less all statutory and voluntary deductions, in full and complete satisfaction of the release of all claims herein contained that were or could have been asserted against EMPLOYER by EMPLOYEE. Provided that the EMPLOYEE does not exercise the revocation option contained in Section 7.F and Section 14 of this Agreement, EMPLOYER shall make the payment provided for herein on or before December 11, 2020. Contemporaneously with its payment to EMPLOYEE of the sum herein referenced, Village shall, so long as EMPLOYEE does not exercise the revocation option set forth in Section 7.F and Section 14 of this Agreement, provide a letter of recommendation for future employment in the form attached hereto and incorporated herein by reference as Exhibit 2; and
- B. EMPLOYER shall provide all other accrued employee benefits and continued benefits to EMPLOYEE as provided for and subject to and in accordance with the terms of the Employment Agreement.

5. Return of EMPLOYER Property. EMPLOYEE shall return all EMPLOYER property including, but not limited to, vehicles, vehicle keys, cell phones, pager(s), PDA(s), computer(s), lap top(s), keys, Village credit cards, i.d. badge, computer disks and files, physical or electronic data storage media, and provide to the Village in writing all Village-related passwords and access codes in his possession or control in writing prior to receiving any payment under this Agreement. EMPLOYEE acknowledges that he has removed or will remove all of his personal property from the Village property as of November 30, 2020.

6. General Release.

A. In consideration of EMPLOYER's agreement to provide the payment set forth in Section 4 of this Agreement, EMPLOYEE AGREES TO FULLY AND ABSOLUTELY RELEASE AND DISCHARGE EMPLOYER, and all of its officers, elected and appointed officials and employees, agents, attorneys and consultants in both their personal and official capacities, from any and all claims, lawsuits or causes of action of every kind or nature, at law or equity, which EMPLOYEE may now have or claim to have, whether known or unknown from the beginning of the EMPLOYEE's employment to and through the date of this Agreement. THIS RELEASE COVERS ALL TYPES OF LEGAL CLAIMS, whether arising from tort, statute, ordinance, regulation, common law or collective bargaining agreement, including but not limited to any and all actions, causes of action, claims, rights, obligations, charges, damages, costs, attorney's fees, suits and demands arising out of or based upon employment relations, collective bargaining agreements, rights to arbitration, wrongful or retaliatory discharge, constructive discharge. THIS AGREEMENT INCLUDES THE RELEASE OF ANY AND ALL CLAIMS AGAINST EMPLOYER ARISING UNDER FEDERAL OR STATE LAW including, without limitation all of EMPLOYEE's rights under any and all State, Federal and local statutes, laws, ordinances, executive orders, and regulations; the Constitution of the United States (including all amendments thereto); the Constitution of the State of Illinois; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq.; the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621 et. seq.; the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12101 et seq.; all claims under 42 U.S.C. §§ 1983, 1985, 1988; the Family and Medical Leave Act of 1993, 29 U.S.C. §2601 et seq.; the Fair Labor Standards Act of 1938 as amended, 29 U.S.C. §201 et seq.; the Civil Rights Act of 1866, 42 U.S.C. §1981 et seq.; Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.; the Illinois Minimum Wage Law, 820 ILCS 105 et seq.; the Illinois Public Labor Relations Act, 5 ILCS 315; the Illinois Wage Payment and Collection Act, 820 ILCS 115 et seq.; and any other statute or principle

under which EMPLOYEE could assert a claim or cause of action. This Release is intended to be a broad, general release of all known or unknown claims that may be in existence as of the time of this Agreement, but shall not constitute a release of any obligations under this Agreement or of any claims that cannot be released by law. THIS AGREEMENT DOES NOT RELEASE CLAIMS OR RIGHTS THAT EMPLOYEE MAY HAVE UNDER THE WORKERS COMPENSATION ACT, 820 ILCS 305-1 ET SEQ.

- B. EMPLOYEE further agrees that if EMPLOYEE files a charge with the EEOC or IDHR or is a party to such a charge, EMPLOYEE SHALL NOT BE ENTITLED TO RECOVER ANY DAMAGES OR ATTORNEY'S FEES as a result of disposition of the charge.
- C. EMPLOYEE and his attorneys, if any, shall receive no compensation, bonuses, commissions, severance pay, employee benefits, fees, or other consideration from any Release in this Agreement except as specifically set forth herein.
- D. Except to challenge the enforceability of this Agreement, in the event EMPLOYEE brings any claims against EMPLOYER that have been released by Section 5.A of this Agreement, EMPLOYEE shall pay any reasonable attorney fees and costs incurred by EMPLOYER or any other Releasee to defend such claims, to enforce this Agreement or otherwise to protect its rights against EMPLOYEE, in addition to any other damages or relief EMPLOYER or the Releasee may be entitled to, provided, however, that nothing in this Paragraph is intended or should be construed to mean that the release of claims under the ADEA in this Agreement is unenforceable or invalid, it being the intent of the parties to release all such claims.

7. **Specific ADEA and OWBPA Release; EMPLOYEE Right to Revoke Agreement.** EMPLOYEE acknowledges and agrees that he is waiving and releasing any rights he may have under the Age Discrimination in Employment Act of 1967, as amended. EMPLOYEE acknowledges that he has been informed pursuant to the Older Workers Benefit Protection Act of 1990, as amended, that:

- A. He has read and understands the agreement and enters into the Agreement voluntarily, knowingly and without reservations or duress;
- B. He has been advised to consult with legal counsel before signing this agreement;
- C. He is not waiving rights or claims under the Age Discrimination in Employment Act that may arise after the date this Agreement is executed.
- D. He has been offered at least **twenty-one (21) days** to consider the Agreement, and that signing this Agreement before the end of the twenty-one (21) day period waives the balance of this time in which to consider this Agreement;
- E. He is receiving consideration for the Agreement in addition to that which he would otherwise have been entitled;
- F. He may revoke this agreement by delivering written notice to the Village President or designee within **seven (7) days** after signing this agreement. The Agreement will not be effective until that revocation period has expired.

8. FOIA. Subject to any applicable exception set forth in FOIA, as amended, EMPLOYEE and the EMPLOYER acknowledge that this Agreement is a public record, as that term is defined under the current FOIA and, therefore, is subject to inspection and copying by the public if requested pursuant to a FOIA request.

9. Tax Consequences of Payment under Agreement. EMPLOYEE agrees that his portion of the tax liability which may result from the payment of money as set forth in this Agreement rests with him alone and is not a liability or obligation of the EMPLOYER.

10. Admissibility of Agreement; Effect of Agreement on Subsequent Claims. The parties agree that this Agreement shall be admissible in evidence in any action in which the terms of this Agreement are sought to be enforced. Except in regard to any action brought to enforce the terms of this Agreement or any COBRA benefits sought by EMPLOYEE, it is expressly understood and agreed by the parties that this Agreement may be pleaded as a complete defense to, and in bar of, any claim or legal, administrative or other kind of action or proceeding brought, maintained or conducted by either party in connection with or on account of any of the matters covered by this Agreement.

11. Severability. EMPLOYEE and EMPLOYER agree that the provisions of this Agreement are severable and, if any part is found unenforceable or illegal, the remaining terms and provisions shall be valid and enforceable.

12. Construction of Agreement. The language of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against either of the parties to this Agreement.

13. Binding Effect of Agreement. This Agreement shall be binding upon, and inure to the benefit of, EMPLOYEE, his heirs, executors, administrators, representatives, successors, transferees and assigns, and the EMPLOYER and its former, current and future elected and appointed officers, officials, trustees, employees, agents, attorneys, transferees, assigns and successors-in-interest.

14. Effective Date of Agreement; EMPLOYEE Right to Revoke Agreement. Pursuant to the Age Discrimination in Employment Act, as amended, this Agreement shall become effective and enforceable seven (7) calendar days after it is executed by EMPLOYEE, which shall be the "effective date" of this Agreement, provided that the EMPLOYER executes this Agreement within said seven (7) calendar day period. EMPLOYEE may revoke his acceptance of this Agreement any time within the period of seven (7) calendar days following the date of his execution of this Agreement. If any of the signatories to this Agreement shall fail to execute this Agreement, or if EMPLOYEE revokes his acceptance within the aforesaid seven (7) calendar day period, the Agreement shall be null and void in its entirety.

15. EMPLOYER'S Confidential Information. EMPLOYEE acknowledges that during the course of his employment with EMPLOYER as Village Manager, he had access to and received information that EMPLOYER considers and has treated as confidential. The term "Confidential Information" as used in this Agreement includes, but is not limited to, employee information, attorney/client privileged information, general personnel information, employment investigations, litigation strategy involving EMPLOYER, and any information which EMPLOYER treats as confidential, the use or disclosure of which might reasonably be construed to be contrary to the interest of EMPLOYER, including without limitation information received from third parties under confidential conditions. Therefore, EMPLOYEE agrees that he will not directly or indirectly disclose, reveal, publish or transfer to any third party any Confidential Information, in the form of general records, personnel records, or

personal recollection, or use any such Confidential Information or any information whatsoever learned as a result of his employment at EMPLOYER, except under court order or as a result of a valid government order. Before responding to any Order or Subpoena or any request for information, EMPLOYEE shall promptly and in writing disclose to EMPLOYER the Order, Subpoena or request for information. EMPLOYEE understands his failure to strictly adhere to the confidentiality or cooperation requirements of this Agreement shall constitute a breach of this Agreement and immediately require the repayment of any and all consideration provided in the agreement. Further, EMPLOYEE agrees to cooperate with EMPLOYER in the defense of any and all litigation or administrative investigations in which EMPLOYEE is currently involved or may become involved and agrees to meet with EMPLOYER administrators and legal counsel for EMPLOYER regarding the defense of any and all claims of which he has knowledge as a result of his employment as the Village Manager.

16. EMPLOYEE'S Understanding and Execution of Agreement; EMPLOYEE'S Waiver of 21 Day ADEA Review Period. EMPLOYEE acknowledges that he fully understands all of the terms, conditions, provisions and obligations of this Agreement, that he was not coerced into signing it, that he was represented by an attorney of his own choosing during the negotiation of this Agreement or voluntarily and knowingly elected to forgo such representation, and that he executed this Agreement voluntarily and with full knowledge and understanding of the meaning and significance of its terms, conditions, provisions and obligations. **By his execution of this Agreement, EMPLOYEE voluntarily agrees and consents to waive the twenty-one (21) day review period for this Agreement as provided for under the Age Discrimination in Employment Act, as amended.**

17. No Admissions. The parties agree that nothing herein is intended or should be construed as an admission that EMPLOYER or any of its elected or appointed officials or employees engaged in any illegal or wrongful conduct or interfered with EMPLOYEE'S employment, civil rights or other rights in any respect, it being understood that EMPLOYER expressly denies any such wrongdoing.

18. Jurisdiction, Venue and Applicable Law. Jurisdiction over disputes with regard to this Agreement shall be exclusively in the courts of the State of Illinois, and the sole and exclusive venue for any such action shall be the Circuit Court of the Twelfth Judicial Circuit,

Will County, Illinois and this Agreement shall be construed and interpreted in accordance with and governed by the laws of the State of Illinois.

19. Entire Agreement. This Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof, and supersedes all contrary provisions pertaining to the subject matter hereof set forth in any prior agreement between the parties.

20. EMPLOYEE'S Right to Consult with an Attorney. EMPLOYER has advised and hereby expressly advises EMPLOYEE to consult with an attorney of his choosing prior to executing this Agreement which contains a general release and waiver. EMPLOYEE acknowledges that he fully understands his right to review this Agreement with an attorney of his choosing and has had such opportunity. EMPLOYEE has read and fully understands all the provisions of this Agreement and that EMPLOYEE is freely, knowingly and voluntarily entering into this Agreement.

21. Effect of EMPLOYEE Breach of Agreement. In the event that EMPLOYEE breaches any of his obligations under this Agreement, any outstanding payment obligations of EMPLOYER hereunder shall immediately terminate, and any payments previously made to EMPLOYEE pursuant to Section 4 of this Agreement shall be returned to EMPLOYER, including any reasonable attorneys' fees and costs incurred by EMPLOYER recovering them, whether or not a lawsuit is filed.

22. Non-Disparagement. EMPLOYEE shall not voluntarily make any adverse or disparaging comments about EMPLOYER, its elected or appointed officials, administrators, employees or agents which may tend to impugn or injure their reputation, good will, and relationships with their past, present and future employees, and the community in general. The restrictions of this paragraph shall not apply to speech protected by the First Amendment, statements which are true in fact or statements made as part of, or during the course of a political campaign, provided such statements are not defamatory.

IN WITNESS WHEREOF, the EMPLOYER, pursuant to the authority granted by the passage of a Resolution by its Board of Trustees, has caused this Release and Waiver

Agreement to be executed by the EMPLOYER President and attested by the Village Deputy Clerk, and the EMPLOYEE has voluntarily executed the Agreement (and his signature has been verified by a Notary Public) on the respective dates set forth below.

STEPHEN J. GULDEN

VILLAGE OF ROMEOVILLE

By: _____
Stephen J. Gulden

By: _____
Village President

Date: _____

Date: _____

ATTEST:

By: _____
NOTARY PUBLIC

By: _____
VILLAGE Deputy Clerk

Date: _____

Date: _____

Exhibit 1—Notice of COBRA Rights

Exhibit 2—Letter of Recommendation

November 30, 2020

To Whom It May Concern:

I have served the Village of Romeoville as Mayor since 2008, and prior to that served as a Village Trustee from 2005 to 2008. As Mayor, I have directly supervised and worked with the Village's former Village Manager, Mr. Steve Gulden during my entire term in office until his November 30, 2020 retirement. I offer this letter in support of his consideration for any position able to make use of his work experience and capabilities.

As Village Manager, Mr. Gulden was responsible for the daily operations of the Village, serving the needs of approximately 39,000 residents with over 300 full time and 300 part time and seasonal employees across eight administrative departments and an annual budget of approximately \$164 million dollars. To ensure that these operations effectively served the public, Mr. Gulden took the initiative to develop and implement a variety of policies to deliver the best possible customer service to our residents and business community. Mr. Gulden also took an active role in leading our efforts to promote successful development and redevelopment within the Village of Romeoville through the negotiation of numerous annexation and development agreements, economic incentive agreements, and the creation of several Tax Increment Financing (TIF) Districts. During his tenure as Village Manager, Mr. Gulden also oversaw the development of several significant public building or infrastructure projects, including the construction of the Village Hall/Police Department complex, the development of the Romeoville Athletic and Events Center, and the development and redevelopment of two Village Fire Stations.

Throughout his service to the Village of Romeoville, Mr. Gulden has always demonstrated his dedication, character and professionalism in managing the operations of the Village, and I firmly believe that he would be an asset to any organization that has a challenging opportunity that can take advantage of these qualities.

Very truly yours,

Mayor John D. Noak
Village of Romeoville