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**THE VILLAGE OF TINLEY PARK**

**Cook County, Illinois**

**Will County, Illinois**

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**RESOLUTION**

**NO. 2019-R-001**

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**A RESOLUTION APPROVING AN EXCLUSIVE NEGOTIATING RIGHTS  
AGREEMENT BETWEEN THE VILLAGE OF TINLEY PARK AND MELODY  
SQUARE, LLC PERTAINING TO THE TINLEY PARK MENTAL HEALTH CENTER**

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**JACOB C. VANDENBERG, PRESIDENT  
KRISTIN A. THIRION, VILLAGE CLERK**

**MICHAEL J. PANNITTO  
BRIAN H. YOUNKER  
CYNTHIA A. BERG  
WILLIAM P. BRADY  
MICHAEL W. GLOTZ  
JOHN A. CURRAN  
Board of Trustees**

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Published in pamphlet form by authority of the President and Board of Trustees of the Village of Tinley Park  
Peterson, Johnson, & Murray Chicago, LLC, Village Attorneys  
200 W. Adams, Suite 2125, Chicago, IL 60606

**VILLAGE OF TINLEY PARK**  
Cook County, Illinois - Will County, Illinois

**RESOLUTION NO. 2019-R-001**

**A RESOLUTION APPROVING AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT  
BETWEEN THE VILLAGE OF TINLEY PARK AND MELODY SQUARE, LLC  
PERTAINING TO THE TINLEY PARK MENTAL HEALTH CENTER**

**WHEREAS**, Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois provides that any municipality which has a population of more than 25,000 is a home rule unit, and the Village of Tinley Park, Cook and Will Counties, Illinois, with a population in excess of 25,000 is, therefore, a home rule unit and, pursuant to the provisions of said Section 6(a) of Article VII, may exercise any power and perform any function pertaining to its government and affairs, including, but not limited to, the power to tax and to incur debt; and

**WHEREAS**, the Corporate Authorities of the Village of Tinley Park, Cook and Will Counties, Illinois, have determined that it is in the best interest of Village of Tinley Park and its residents to enter into the Exclusive Negotiating Rights Agreement attached hereto as Exhibit I ("the Agreement") with Melody Square, LLC pertaining to the Tinley Park Mental Health Center Property in; and

**NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF TINLEY PARK, COOK AND WILL COUNTIES, ILLINOIS, STATE AS FOLLOWS:**

SECTION 1: The foregoing recitals shall be and are hereby incorporated as findings of fact as if said recitals were fully set forth herein.

SECTION 2: That the President and Board of Trustees hereby approve said Agreement with the Melody Square, LLC substantially in the form attached hereto as Exhibit 1; and the Village President and/or Village Manager are hereby authorized to execute said Agreement, subject to review and revision as to form by the Village Attorney.

SECTION 3: Any policy, resolution, or ordinance of the Village that conflicts with the provisions of this Resolution shall be and is hereby repealed to the extent of such conflict.

SECTION 4: That the Village Clerk is hereby ordered and directed to publish this Resolution in pamphlet form, and this Resolution shall be in full force and effect from and after its passage, approval, and publication as required by law.

PASSED THIS 3<sup>rd</sup> day of January, 2019.

AYES: Younker, Berg, Brady, Curran

NAYS: Pannitto, Glotz

ABSENT: None

APPROVED THIS 3<sup>rd</sup> day of January, 2019.

  
VILLAGE PRESIDENT

ATTEST:  
  
DEPUTY VILLAGE CLERK

**EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT  
(TINLEY PARK MENTAL HEALTH CENTER)**

This Exclusive Negotiating Rights Agreement (the "ENRA") is entered into as of January 3, 2019 (the "Effective Date") by and between the Village of Tinley Park, a public body, corporate and politic (the "Village"), and Melody Square LLC, an Illinois limited liability company (the "Developer"), with reference to the following facts:

**RECITALS:**

A. The Village is currently working with the State of Illinois to acquire rights to that certain real property in the Village limits commonly known as the former site of the Tinley Park Mental Health Facility.

B. The Village has agreed to grant an exclusive right for the Developer to conduct due diligence on the property and to negotiate the ultimate acquisition of the Property. The purpose of this ENRA is to establish procedures and standards for the negotiation by the Village and the Developer of an agreement allowing for the acquisition by Developer of the Property and development of the Project thereon ("Agreement"). As more fully set forth in Section 4.1, this ENRA in itself does not obligate the Village to sell the Property or any portion thereof to the Developer or obligate the Developer to purchase the Property or any portion thereof, nor does this ENRA grant the Developer the right to purchase or develop 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 Village and the Developer shall negotiate diligently and in good faith, during the Negotiating Period described in Section 1.2, the terms of an Agreement for the acquisition and development of the Project. Moreover, Developer shall conduct its due diligence during this 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 a mutually satisfactory Agreement.

Among the issues to be addressed in the negotiations are land disposition and methodology and price for the Site, physical and title conditions of the Site, the development schedule for the Project, financing of the Project's development, marketing and management of the Project, design and aesthetic considerations of the Project, and the provision 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 six (6) months from the date of this ENRA, subject to extension as provided below. The Agreement may be extended by written agreement signed by both parties.

Section 1.3 Exclusive Negotiations. During the Negotiating Period, the Village shall not negotiate with any entity, other than the Developer, regarding the sale or development of the Site or any portion thereof, or solicit or entertain bids or proposals to do so.

## ARTICLE 2 THE DEVELOPER

Section 2.1 Identification of Developer Representatives. The Developer, its address, and its authorized representatives to negotiate the Agreement with the City are as follows:

Melody Square LLC  
c/o Robert C Kenny  
Schain, Banks, Kenny & Schwartz  
70 W Madison Street, Suite 5300  
Chicago, IL 60602

Section 2.2 Development Entity. The Developer shall make full disclosure to the Village of all information pertinent to the ownership, control and financial capacity of the Developer.

## 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 Agreement. To facilitate negotiation of the Agreement, the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 3 in a timeframe that will support achievement of these goals.

Section 3.2 Reports. 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. The Developer acknowledges that the Village will need sufficient, detailed information about the proposed Project (including, without limitation the financial information described in Section 2.2) to make informed decisions.

Section 3.3 Utilities. The Developer shall consult with the utility companies serving the area of Property to determine if existing utility facilities require expansion, relocation or underground installation in connection with development of the Project. The Village shall assist and cooperate with the Developer in such consultations.



Section 3.4 Purchase Price for the Site. The Village and the Developer shall seek to agree upon the purchase price for the Property, and the nature, timing and cost of other Village assistance to the Project, if any.

Section 3.5 Financial Proforma Analysis. The Developer shall provide 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 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 on studies being made and matters being evaluated by the Developer with respect to this ENRA and the Project.

#### ARTICLE 4 GENERAL PROVISIONS

Section 4.1 Limitation on Effect of Agreement. This ENRA shall not obligate either the Village or the Developer to enter into an Agreement or to enter into any particular agreement. By execution of this ENRA, the Village is not committing itself to or agreeing to undertake acquisition, disposition, or exercise of control over any Site or any portion of the Site. Execution of this Agreement by the Village is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent Village Board action the final discretion and approval regarding the execution, if any, of an Agreement and all proceedings and decisions in connection therewith. Any Agreement resulting from negotiations pursuant to this ENRA shall become effective only if and after such Agreement has been considered and approved by the Village Board, following conduct of all legally required procedures.

Section 4.2 Notices. Formal notices, demands and communications between the Village 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 or sent via email, 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 Manager  
16250 S. Oak Park  
Tinley Park, IL 60477



With a Copy to

Patrick Connelly  
Peterson Johnson & Murray-Chicago  
200 W Adams, Ste 2125  
Chicago, IL 60606  
pconnelly@pjmchicago.com

Developer: Melody Square LLC  
c/o Robert C. Kenny  
Schain, Banks  
70 W Madison Street, Suite 5300  
Chicago, IL 60602  
rkenny@schainbanks.com

With a copy to:

Christopher J. Goluba  
Christopher J. Goluba, P.C.  
5277 Trillium Blvd.  
Hoffman Estates, IL 60192  
chris.goluba@galubalaw.com

And a copy to:

Valerie Haugh  
Haugh & Associates  
525 Dee Lane, Suite 200  
Roselle, IL 60172  
v.haugh@haughlawgroup.com

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 Waiver of Lis Pendens. It is expressly understood and agreed by the parties that no lis pendens shall be filed against the Property, or any portion of the Property, with respect to this ENRA or any dispute or act arising from it.

Section 4.4 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 4.5 No Commissions. The Parties agree that neither the Village nor the Developer shall 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.



Section 4.6 Default and Remedies.

(a) Default. Failure by either 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 the Village, the Developer's sole remedy shall be to terminate this ENRA. Following such termination, neither party shall have any further right, remedy or obligation under this ENRA.

In the event of an uncured default by Developer, the Village sole remedy shall be to terminate this ENRA. Following such termination, neither party shall have any right, remedy or obligation under this ENRA; provided, however, that the Developer's obligation to turn over work pursuant to Section 3.2 shall survive such termination.

Except as expressly provided above, neither party shall have any liability to the other for damages or otherwise for any default, nor shall either party have any other claims with respect to performance under this ENRA. Each party specifically waives and releases any such rights or claims they may otherwise have at law or in equity.

Section 4.7 Assignment. The Developer may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the Village, which consent shall be granted or withheld in the Village's sole discretion, and such attempted transfer or assignment without the prior written consent of the Village shall be void.

Section 4.8 No Third Party Beneficiaries. This ENRA is made and entered into solely for the benefit of the Village and the Developer and no other person shall have any right of action under or by reason of this ENRA.

Section 4.9 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 4.10 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 Cook County, Illinois

Section 4.11 Entire Agreement. This ENRA constitutes the entire agreement of the parties regarding the subject matters of this ENRA.

Section 4.12 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. Signatures may be provided by facsimile or scanned pdf signatures and shall be deemed valid upon receipt provided that an original shall be provided at the request of either party.

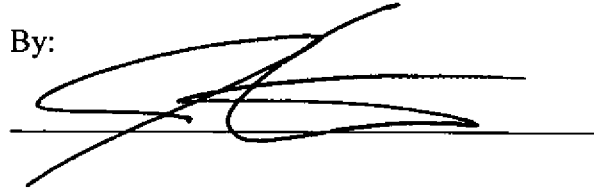
A handwritten signature, possibly "D.J.", is enclosed within a hand-drawn circle in the bottom right corner of the document.

Section 4.13 Authority to Execute. The undersigned represent and warrant they are each duly authorized to execute this ENRA on behalf of the respective party and to take the actions necessary to perform hereunder without the need to seek further authorization from the entity each represents.

VILLAGE:

Village of Tinley Park,

By:

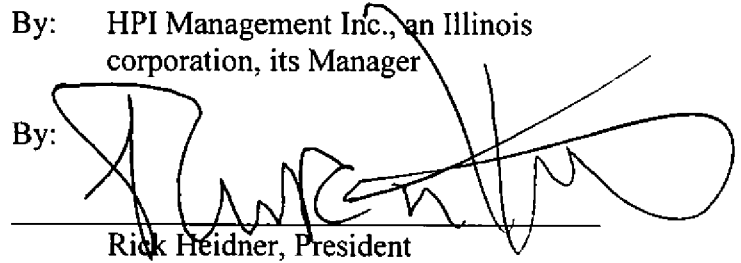


DEVELOPER:

Melody Square LLC, an Illinois limited liability company

By: HPI Management Inc., an Illinois corporation, its Manager

By:



Rick Heidner, President





STATE OF ILLINOIS     )  
COUNTY OF COOK       )     SS  
COUNTY OF WILL       )

CERTIFICATE

I, KRISTIN A. THIRION, Village Clerk of the Village of Tinley Park, Counties of Cook and Will and State of Illinois, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2019-R-001, "A RESOLUTION APPROVING AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT BETWEEN THE VILLAGE OF TINLEY PARK AND MELODY SQUARE, LLC PERTAINING TO THE TINLEY PARK MENTAL HEALTH CENTER," which was adopted by the President and Board of Trustees of the Village of Tinley Park on January, 3, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Village of Tinley Park this 3<sup>rd</sup> day of January 2019.

  
DEPUTY VILLAGE CLERK

