

RESOLUTION 2009-131

**A RESOLUTION APPROVING AN AMENDMENT TO THE
MEMORANDUM OF UNDERSTANDING APPROVED BY PRIOR
RESOLUTION 2009-061 BY AND BETWEEN THE VILLAGE OF
VERNON HILLS, LAKE COUNTY, ILLINOIS AND PATHWAY SENIOR
LIVING, LLC FOR THE DEVELOPMENT OF AFFORDABLE SENIOR
HOUSING**

WHEREAS, the Village of Vernon Hills (the "Village") pursuant to its November 14, 2008 notice, published its request for bids, seeking proposals for the development and construction of an affordable senior housing campus ("Development Project") on the approximately 3.5 acre Lot 4 of the Deerpath Atrium Subdivision currently owned by the Village ("Development Property"); and

WHEREAS, the Village received six (6) bid responses, on or before the required December 18, 2008 due date; and

WHEREAS, Pathway Senior Living, LLC (the "Developer"), a recognized developer, experienced in constructing, developing and operating affordable senior housing, responded to the request for bids; and

WHEREAS, the Village of Vernon Hills approved the creation of a Memorandum of Understanding with the Developer on January 13, 2009, which provided that the Village designated the Developer as the developer of record for the Development Project on the Development Property and that the Village and Developer would proceed to negotiate a mutually agreeable Purchase and Sale Development Agreement ("Purchase and Sale Development Agreement") to memorialize the terms and conditions of the sale of the Development Property and the scope of the Development Project; and

WHEREAS, the Village and an affiliate of the Developer are currently negotiating the terms of the Purchase and Sale Development Agreement for the Development Project on the Development Property; and

WHEREAS, the Memorandum of Understanding is scheduled to expire on November 1, 2009, and the Village and Developer desire to continue and finalize the negotiations of the Purchase and Sale Development Agreement; and

WHEREAS, Article 5 of the Memorandum of Understanding grants the Village the right to terminate this Understanding prior to November 1, 2009, upon written notice to Developer, in the event that Developer has not provided the Village written evidence of its tax credit approval on or before June 30, 2009 for either the SLF Project or the SA Project; and

WHEREAS, due to delays in the review process by the Illinois Housing Development Authority, the Developer is requesting that the Village amend Article 5 of the Memorandum of Understanding to extend the deadline to provide written evidence to the Village of tax credit approval to August 5, 2009; and

WHEREAS, the Corporate Authorities of the Village find it in the best interests of the Village to amend the terms of Article 5 of the Memorandum of Understanding and to continue said negotiations with the Developer to develop the Development Property.

NOW THEREFORE BE IT RESOLVED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS, AS FOLLOWS:

Section 1. That the Corporate Authorities of the Village hereby find that the recitals set forth in the preambles to this Resolution are fully true and correct and incorporate them into this Resolution by this express reference.

Section 2. That the Corporate Authorities of the Village find that it is in the best interests of the Village to amend the terms found in Article 5 of the Memorandum of Understanding to extend the deadline by which the Developer must provide to the Village written evidence of its tax credit approval for either the SLF Project or the SA Project to August 5, 2009.

Section 3. That upon receipt from the Developer of two (2) executed copies of the Memorandum of Understanding, the Village President is hereby authorized to execute, and the Village Clerk is hereby authorized to attest, the Memorandum of Understanding, in substantially that form attached hereto as Exhibit "A," with such changes therein as shall be approved by the officials of the Village executing the same, their execution thereof to constitute conclusive evidence of the approval of such changes.

Section 4. That the officials, officers and employees of the Village are hereby authorized to take such further actions as may be necessary to carry out the intent and purpose of this Resolution and Memorandum of Understanding.

Section 5. That this Resolution shall be in full force and effect immediately upon its passage and approval.

DATED this 7th day of July, 2009.

ADOPTED by a roll call vote as follows:

AYES: 5-Schwartz, Williams, Hebda, Koch, Marquardt

PRESENT: 1-Schultz

NAYS: 0-None

ABSENT AND NOT VOTING: 0-None


Roger L. Byrne, Village President

PASSED: 7/07/2009

APPROVED: 7/07/2009

ATTEST:

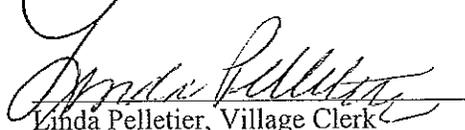

Linda Pelletier, Village Clerk



EXHIBIT A

**AMENDMENT TO
MEMORANDUM OF UNDERSTANDING**

THIS AMENDED MEMORANDUM OF UNDERSTANDING (the "Understanding") is made and entered into as of the 7th day of July, 2009 (the "Effective Date") by and between the VILLAGE OF VERNON HILLS, a municipal corporation located in Lake County, Illinois (the "Village"), and PATHWAY DEVELOPMENT, LLC, an affiliate of PATHWAY SENIOR LIVING, LLC ("Developer"). (The Village and Developer are sometimes individually referred to as a "Party" and collectively referred to as the "Parties.")

RECITALS:

A. Developer has submitted its bid, pursuant to and substantially consistent with the conceptual site plan attached hereto as Exhibit "A" and made a part hereof, and proposes to acquire, construct, develop and operate an affordable senior housing campus ("Development Project") on certain Village owned property, commonly known as Lot 4 of the Deerpath Atrium Subdivision (the "Development Property"), legally described on Exhibit "B," attached hereto and made a part hereof.

B. The Corporate Authorities, after due and careful consideration, have concluded that Developer's bid proposal to acquire, construct, develop and operate the Development Project on the Development Property, subject to the negotiation and entering into of the Purchase and Sale Development Agreement, as provided for herein, will further the desired goal of the Village to provide affordable senior housing, and otherwise be in the best interests of the Village by furthering the health, safety, morals and welfare of its residents.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

**ARTICLE 1
RECITALS PART OF UNDERSTANDING**

The representations, covenants and recitations set forth in the foregoing recitals are hereby incorporated into and made a part of this Understanding as though they were fully set forth in this Article 1.

ARTICLE 2
DESIGNATED DEVELOPER

For the period of time up to and including November 1, 2009, but subject to the provisions of Article 5 below, the Village designates the Developer as the exclusive Developer of Record for the Development Project on the Development Property, subject to and contingent upon finalization of a mutually acceptable Purchase and Sale Development Agreement, as provided below in Article 3, and related documentation.

ARTICLE 3
PURCHASE AND SALE DEVELOPMENT AGREEMENT

For the period of time up to and including November 1, 2009, but subject to the provisions of Article 5 below, the Parties shall negotiate in good faith a mutually agreeable Purchase and Sale Development Agreement for the Development Project on the Development Property, which shall (i) provide for the terms, conditions and provisions of the conveyance by the Village of the Development Property through a bargain sale to a non-profit partner of Developer who will then contribute a portion of the Development Property to Vernon Hills SLF Associates, L.P. for a low-income housing tax credit financed supportive living project (the "SLF Project") and the balance of the Development Property to Vernon Hills SA Associates, L.P. for a low-income housing tax credit financed senior apartments project (the "SA Project"); and (ii) be subject to approval of all the requisite re-zoning, special use and potential variances that may be required to implement the Development Project on the Development Property, pursuant to required Planning and Zoning Commission public hearings and Village Board approval.

ARTICLE 4
DEVELOPMENT PROJECT REVIEW

The Village, having preliminarily reviewed the conceptual site plan for the Development Project as presented by the Developer for the Development Property, has determined that the conceptual site plan is suitable for the Development Property and in furtherance of the Village's bid requirements for the Development Project and, upon approval and execution by both parties of this Understanding, the Developer may proceed to submit the necessary application and plans, pursuant to the Village Code, ordinances and policies to commence the development review process.

ARTICLE 5
ASSIGNABILITY AND TERMINATION

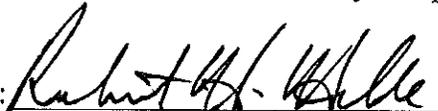
This Understanding shall not be assignable by Developer without the prior written consent of the Village, which may be withheld or granted, in the Village's sole and absolute discretion. The Village shall have the sole right to terminate this Understanding prior to November 1, 2009, upon written notice to Developer, in the event that Developer has not provided the Village written evidence of its tax credit approval on or before August 5, 2009 for either the SLF Project or the SA Project.

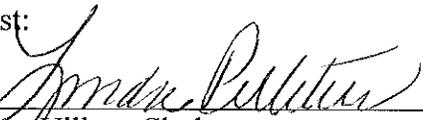
IN WITNESS WHEREOF, the Parties have duly executed this Memorandum of Understanding pursuant to all requisite authorizations as of the Effective Date.

VILLAGE OF VERNON HILLS,
an Illinois municipal corporation

DEVELOPER: PATHWAY DEVELOPMENT,
LLC, an Illinois limited liability company

By: 
Village President

By: 
Its: Manager Member

Attest:
By: 
Village Clerk

Attest:
By: 
Its: managa member

EXHIBIT A
DEVELOPMENT PROJECT PLAN

EXHIBIT B

LEGAL DESCRIPTION

LOT 4 IN DEERPATH ATRIUM SUBDIVISION, BEING A SUBDIVISION OF THE NORTHEAST ¼ OF SECTION 5 AND THE SOUTHWEST ¼ OF SECTION 4, TOWNSHIP 43 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED SEPTEMBER 21, 2000, AS DOCUMENT NO. 4584694 BY THE RECORDER OF DEEDS OF LAKE COUNTY, ILLINOIS.