



**AGENDA ITEM # 9D/E**

**AGENDA ITEM EXECUTIVE SUMMARY**

**Village Board Meeting**

**September 9, 2019**

**Item Title: Salerno Memorial Gardens Agreements for the Creation and Maintenance of an Inurnment Registry for a Memorial Garden Columbarium**

**Staff Contact: Patrick N. Watkins, Community Development Director**

**VILLAGE BOARD ACTION**

- 1. Adopt a resolution authorizing the Mayor to sign and directing the Village Clerk to attest to an agreement for the creation and maintenance of an inurnment registry for a memorial garden with the Summerfield Joint Venture Partnership, an Illinois General Partnership, its affiliates, subsidiaries and assigns.**
- 2. Adopt a resolution authorizing the Mayor to sign and directing the Village Clerk to attest to an agreement between the Village of Roselle and the Summerfield Joint Venture Partnership, an Illinois General Partnership, its affiliates, subsidiaries and assigns for the creation and maintenance of an inurnment registry for a columbarium.**

**Executive Summary:**

Attached are the two agreements for the Inurnment Registry for both the Memorial Garden and the Columbarium. The first agreement pertains to the registry for the Memorial Garden that is currently vacant situated directly east on Lake Street from the Salerno Rosedale Chapel. The second agreement pertains to the Registry for the Columbarium which will be located as part of the Salerno Rosedale Chapel building. These will be indoor niches. Both of the agreements call for a \$200 fee for each niche sold. The agreements will be “backed” by a Special Service Area (SSA) as a safeguard to ensure niche payments are made. The Special Service Area will be forthcoming in the future months as there is a specific process that must be adhered to in creating these districts. The Village is in full control of the establishment of the SSA’s; thus providing final approval on special uses and agreements for the properties is not problematic.

The Memorial Garden Registry Agreement also has a “trigger” built in for the utilization of the outlot as an additional Memorial Garden area. The trigger includes an automatic provision based upon the funeral home reaching the benchmark of 10,000 niches sold within 10 years. There is also the option for the owner to request utilization of the outlot with Village Board approval. This is in place in case the petitioner is approached by a

large user that may desire a large purchase of niches. Thus, it will not be necessary for the petitioner to go through the zoning process again.

**Implications:**

**Is this item budgeted?** This would create a new revenue line item.

**Any other implications to be considered?** The Agreements will provide an additional revenue source for the Village to offset the Registry activities dictated by the Agreements.

**Attachments:**

Resolutions

Agreements

:

**RESOLUTION NO. 2019-\_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AND DIRECTING THE VILLAGE CLERK TO ATTEST TO AN AGREEMENT FOR THE CREATION AND MAINTENANCE OF AN INURNMENT REGISTRY FOR A MEMORIAL GARDEN WITH THE SUMMERFIELD JOINT VENTURE PARTNERSHIP, AN ILLINOIS GENERAL PARTNERSHIP, ITS AFFILIATES, SUBSIDIARIES AND ASSIGNS**

**WHEREAS**, the Village of Roselle is an Illinois Municipal Corporation; and

**WHEREAS**, the Village has authority to contract with private persons pursuant to 65 ILCS 5/2-2-12; and

**WHEREAS**, Summerfield Joint Venture Partnership, an Illinois General Partnership ("Summerfield") is seeking the rights to develop a memorial garden, which may include columbarium(s) and/or other structures, for the placement of cinerary urns which has the potential of accommodating approximately 120,000 inurnments ("Project") on real estate owned by Summerfield; and

**WHEREAS**, the Village recognizes that recent events in Illinois concerning the desecration of human remains at cemeteries impacts the reputation of municipalities containing those cemeteries; and

**WHEREAS**, the Village and Summerfield have concluded that the establishment of a publicly accessible inurnment reporting system whose purpose is to create a tracking and authenticating system marketable to potential customers of the memorial garden assures the proper treatment of decedents and the trust that the public may place that inurned remains of decedents are properly placed and maintained in memorial garden system which protects the dignity of those human remains; and

**WHEREAS**, Summerfield has concluded that the Village's establishment of a publicly accessible inurnment reporting system will enhance its ability to market its Project; and

**WHEREAS**, proper marketing of the Project will stimulate commercial growth, increase employment opportunities in the Village and enhance the tax base of the Village; and

**WHEREAS**, Summerfield recognizes the benefits that it would receive from the Village registry and enters into this agreement not as an imposition required by the Village but instead as a voluntary agreement which benefits both the Village and Summerfield.

**NOW THEREFORE, BE IT RESOLVED** by the Mayor and Board of Trustees of the Village of Roselle, an Illinois Municipal Corporation, DuPage and Cook Counties, Illinois, that:

1). The Mayor is hereby authorized to sign and the Village Clerk is hereby directed to attest to that certain agreement between the Village of Roselle and Summerfield, for the creation and maintenance of an inurnment registry for the Project (as defined above) at the property properly known as 430 W. Lake Street attached hereto and incorporated herein as if fully set forth as SUMMERFIELD EXHIBIT 1; and

2.) Village staff is hereby authorized to undertake any and all reasonable acts necessary to effectuate and administer the inurement registry agreement and inurement registry for the Project.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019

AYES:

NAYS:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Andrew J. Maglio, Mayor, Village of Roselle

\_\_\_\_\_  
Patricia Burns, Village Clerk

**AGREEMENT FOR THE CREATION AND MAINTENANCE OF AN INURNMENT  
REGISTRY FOR A MEMORIAL GARDEN**

This Agreement for the creation and maintenance of a Memorial Garden Inurnment Registry (“Agreement”) dated as of this \_\_\_\_ day of September 2019 is made by and between the Village of Roselle, Illinois, an Illinois municipal corporation, having its principal offices at 31 Prospect Street, Roselle, Illinois, 60172 (“Village”) and Summerfield Joint Venture Partnership an Illinois general partnership its affiliates, subsidiaries or assigns, each having its principal office at 450 W. Lake Street, Roselle, Illinois, 60172 (“Salerno”).

**RECITALS**

**WHEREAS**, Salerno is planning to construct and operate a memorial garden which may be built in multiple phases on an as-needed basis and which phases will require compliance with applicable Village Zoning, Building and Life Safety ordinances and which may include columbarium(s) and/or other structures, for the placement of cinerary urns which has the potential of accommodating approximately 120,000 inurnments (“Project”) on the real estate owned by Salerno which is legally described in Exhibit “A” (“Property”); and

**WHEREAS**, the Project’s concentrated inurnment capacity will generate increased numbers of visitors to the Village’s business district increasing the Village’s tax base; and

**WHEREAS**, Salerno recognizes that recent events in Illinois concerning the desecration of human remains at cemeteries will likely have an impact on the success of the Project; and

**WHEREAS**, Salerno believes that the Village’s establishment of a publicly accessible inurnment reporting system will benefit their business by creating a tracking and authenticating system which is marketable to potential customers as an indicator that Salerno assures the appropriate treatment and inurnment of decedents; and

**WHEREAS**, The Village is a duly constituted, organized and validly existing municipality within the meaning of Section 1 of Article VII of the 1970 Constitution of the State of Illinois, and is operating under the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq., as amended; and

**WHEREAS**, Salerno is authorized by 410 ILCS 18/10 to construct and operate a Crematory on the Property without the need for further Village zoning approval; and

**WHEREAS**, the State of Illinois has declared, pursuant to the Cemetery Oversight Act at 225 ILCS 411/5-10 that cemetery operations affect the public health, safety and well-being of its citizens and they are to be subject to regulation and control in the public interest; and

**WHEREAS**, Salerno recognizes that 225 ILCS 411/75-25 provides the State of Illinois with exclusive authority over regulation and licensing of cemeteries, unless a cemetery authority qualifies for an exemption enumerated in 225 ILCS 411/5-20; and

**WHEREAS**, Salerno intends to acquire an exemption as enumerated in 225 ILCS 411/5-20 the State of Illinois Department of Financial and Professional Regulation for the Project; and

**WHEREAS**, regardless of whether said exemption is obtained by Salerno, Salerno is asking the Village to keep a publicly accessible registry of inurnments (“Village Registry”) so that

Salerno can market to prospective purchasers the benefits resulting from the Village maintained registry; and

**WHEREAS**, Salerno and the Project will benefit from the creation and continued existence of the Village Registry in addition to any State regulation; and

**WHEREAS**, the Village is interested in stimulating commercial growth in order to increase employment opportunities in the Village, and enhance the tax base of the Village; and

**WHEREAS**, the Village is willing to maintain the Village Registry provided that the Village is compensated consistent with the amount identified hereinafter in this Agreement and that the inurnment reporting obligation along with the obligation to pay the Registry Fee, as defined hereinafter in Section 4, runs with the land; and

**WHEREAS**, Salerno recognizes that third parties may rely upon the Village Registry and that the terms of this Agreement must apply to existing owners of the Property and that its terms must run with the land to future owners and other parties of interest of the Property; and

**WHEREAS**, Salerno recognizes its request for a Village Registry and the Village requirement of a fee for the creation and ongoing maintenance of the registry is not an imposition required by the Village but is instead a voluntary agreement entered by both the Village and Salerno for the mutual benefit of both parties; and

**WHEREAS**, the Village and Salerno have authority to enter into this Agreement pursuant to the provisions of Article VII, Section 10 of the 1970 Illinois Constitution, which authorizes units of local government to contract and otherwise associate with individuals in manners not prohibited by law or ordinance; and

**WHEREAS**, the Village believes the existence of the Project will generate increased visitors, thereby promoting economic development and increasing the tax base of the Village; and

**WHEREAS**, the Village has the authority to contract with private persons pursuant to 65 ILCS 5/2-1-12.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Village and Salerno agree as follows:

**Section 1.**     *Recitals.* The Recitals set forth above are an integral part of this Agreement and by this reference are incorporated herein this Section I.

**Section 2.**     *Representations, Warranties and Obligations of Salerno.* To induce the Village to execute this Agreement and perform the obligations of the Village hereunder, Salerno hereby represents and warrants to the Village, and agrees to perform as follows:

(a) Salerno is a duly organized and existing general partnership in good standing under the laws of the State of Illinois and authorized to do business in Illinois;

(b) No litigation or proceedings are pending, or to Salerno's actual knowledge, are threatened against Salerno, which could: (i) affect the ability of Salerno to perform its

obligations pursuant to and as contemplated by the terms and provisions of this Agreement; or (ii) materially affect the operation or financial condition of Salerno;

(c) To Salerno's actual knowledge, the execution, delivery and performance by Salerno of this Agreement does not constitute, and will not, upon giving of notice or lapse of time, or both, constitute a breach or default or "event of default" under any other agreement to which Salerno is a party to or by which it may be bound;

(d) The parties executing this Agreement on behalf of Salerno have been duly authorized by all appropriate action to enter into, execute, and deliver this Agreement and perform the terms and obligations contained herein;

(e) To the extent that Salerno determines in its sole discretion and without any obligation to do so, that the Project will proceed, Salerno agrees to participate fully with the requirements of the Village Registry on this and on its adjoining property, including compliance with the reporting requirements thereof and the payment of fees associated therewith that are described hereafter;

(f) The above representations and warranties are made in addition to all other representations and warranties made throughout this Agreement.

**Section 3.** *Representations, Warranties and Obligations of the Village.* To induce Salerno to execute this Agreement, the Village hereby represents, warrants and covenants to Salerno, and agrees to perform as follows:

(a) The Village is an Illinois municipal corporation duly incorporated and existing under the laws of the State of Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform this Agreement;

(b) The Village agrees that the Salerno Project, as represented by Salerno, is in furtherance of the objectives of the Village's promotion of the public health, welfare and safety of the community as well as enhancing economic development in support of the same;

(c) The Village agrees to maintain the Village Registry that establishes a public tracking and authentication system for inurnments occurring at the Project;

(d) The Village will make the Village Registry available at the Village Clerk's office for inspection by the public during normal business hours;

(e) The Village Registry shall run with the Property.

(f) No Village zoning approvals are required for the construction of a Crematory on the Property.

**Section 4.** *Fees.* To maintain the Inurnment Registry, the operator of the Property shall cause a fee of \$200 to be paid ("Registry Fee") to the Village for each sale of an inurnment niche.

(a) Salerno shall collect the Registry Fee from the buyer of each niche at the point of sale for each niche and tender payment of the Registry Fee to the Village prior to the end of the calendar month following the month which the sale took place. Payment will be

accompanied with the name of the individual(s) who purchased the niche(s) and other reasonable information necessary to identify the niche(s) sold. Prior to each inurnment, the operator of the Property shall provide the Village with all information reasonably required by the Village from time-to-time for tracking and authentication of the decedent placed in each niche.

(b) If the purchaser of any niche(s) returns ownership of any of the sold niche(s) to Salerno for which a Registry Fee was tendered to the Village, the Village will refund seventy-five (75%) of the Registry Fee which had been paid to the Village to Salerno who will refund the full 75% to the person(s) returning said niche(s). The Village will be entitled to the payment of a new Registry Fee due at the time said niche(s) is/are resold.

(c) Beginning on January 1, 2030, the Village Registry Fee shall be adjusted by the average of the increase in the Consumer Price Index (“CPI”) over the previous ten-year period, or 5%, whichever is lower. If the CPI is negative, the increase will be zero (\$0). CPI shall be determined by the United States Department of Labor, Bureau of Labor Statistics, All Urban Consumers Midwest Region, or other such measurement as may replace this measurement or be selected by the Village Board of Trustees. Thereafter at the expiration of each five (5) year period, the Village Registry Fee shall again be adjusted as set forth in this section.

(d) This Agreement does not create an affirmative obligation to commence the Project and if the Project is commenced, it may be developed in phases as determined in the sole discretion of Salerno. While the Property may have as many as 120,000 inurnments located upon the Property, Salerno may elect to implement a plan with any lesser number of inurnments.

**Section 5.** *Survival of Representations and Warranties.* The parties agree that, to the best of their respective knowledge, all of their representations and warranties set forth in this Agreement are true as of the execution date of this Agreement and shall survive for the term of this Agreement.

**Section 6.** *Compliance with Law.* Neither Salerno nor any of its contractors, subcontractors or material suppliers shall discriminate based upon race, color, religion, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military status, parental status or source of income in the construction of the Project and shall comply with any and all federal, state and local laws, statutes, ordinances or regulations with regard to non-discrimination in the construction of the Project.

**Section 7.** *Defaults/Remedies:* If either party defaults under this Agreement or fails to perform or keep any term or condition required to be performed or kept by such Party, the defaulting party shall, upon written notice from the other non-defaulting party, proceed to cure or remedy such default or breach within sixty (60) days after receipt of such notice; provided, that in the event such default is non-monetary and cannot with due diligence be wholly cured within said sixty (60) day period, then the defaulting party shall not be in default so long as the defaulting party shall commence the curing thereof and thereafter proceed diligently to cure the same. In the case of an uncured Village default, Salerno shall have as its sole and exclusive remedy the right of specific performance. In the case of an uncured Salerno default, the Village shall have all remedies available in law and equity.

**Section 8.** *Events of Default.* For purposes of the Agreement, the occurrence of any one or more of the following (or any other events identified elsewhere in this agreement as an Event of Default), shall constitute an “**Event of Default**”:

(a) If, at any time, any material term, warranty, representation or statement made or furnished by the Village or Salerno is not true and correct in any material respect because of which either party is unable to fulfill its obligations hereunder; or

(b) Failure by Salerno to meet any of the conditions, obligations or covenants contained in this Agreement; or

(c) If any lender of Salerno (or a lender of any affiliated entity of Salerno), forecloses on any of the Property or accepts a deed in lieu of foreclosure from Salerno for any of the Property or if any portions of the Property are in any other manner surrendered to a lender; or

(d) If Village fails to maintain the Village Registry as set forth hereabove or takes action to interfere with or prohibit the use of the Property for the Project; or

(e) If the real estate tax is not paid when due or during any applicable redemption period allowed by law; or

(f) If the Village is not paid the Village Registry Fee pursuant to the terms of this Agreement.

**Section 9.** *Waiver and Estoppel.* Any delay by the Village or Salerno in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or operate to deprive the Village or Salerno of or limit such rights in any way. No waiver made by the Village or Salerno with respect to any specific default shall be construed, considered or treated as a waiver of the rights of the Village or Salerno with respect to any other defaults.

**Section 10.** *Time of the Essence.* Time is of the essence of the Agreement.

**Section 11.** *Permitted Delays.* Neither the Village nor Salerno shall be considered in breach of its obligations with respect to the commencement and completion of the Project because of the impossibility of performance or the limitations of Illinois law, or in the event of delay in the performance of such obligations is due to unforeseeable causes beyond such party's control and without such party's fault or negligence, including any delays or due to court order, acts of God, acts of the public enemy, acts of the United States, acts of the other party, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, embargoes, economic exigencies, shortages of labor or materials and severe weather or delays of subcontractors due to such causes or any other situation recognized as a force majeure ("Permitted Delays"). Subject to the limitations and restrictions of the Act, the time for the performance of the obligations shall be extended for the period of the enforced delay if the Village or Salerno, as the case may be, seeking the extension shall notify in writing the other within twenty (20) days after becoming actually aware of any such delay and shall use diligence in attempting to complete performance of its obligations.

**Section 12.** *Drafter Bias.* The parties acknowledge and agree that the terms of this Agreement are the result of on-going and extensive negotiations between the parties, both of whom are represented by independent counsel, and that this Agreement is a result of said negotiations. As a result, in the event that a court is asked to interpret any portion of this contract, neither of the parties shall be deemed the drafter hereof and neither shall be given benefit of such presumption that may be set out by law.

**Section 13.** *Partnership not intended nor Created.* Nothing in this Agreement is intended to, nor shall be deemed to, constitute a partnership or joint venture between the parties.

**Section 14.** *Entirety and Binding Effect.* This document represents the entirety of the agreement between the parties and shall be binding upon them and inure to the benefit of and be enforceable by and against their respective successors, personal representatives, heirs, legatees, and assigns.

**Section 15.** *Third-Person Beneficiaries.* There are no third-person beneficiaries of this Agreement, and nothing in this Agreement shall be interpreted to waive, release or compromise the Village's statutory or common law immunities.

**Section 16.** *Survival of Provisions.* If any of the provisions of this agreement are found to be invalid pursuant to any statute or rule of law of the State of Illinois or of any court of competent jurisdiction in which it may be so brought to be enforced, then such provisions shall be deemed null and void to the extent that they may conflict herewith, however the remainder of this instrument and any other application of such provision shall not be affected thereby.

**Section 17.** *Covenants to Run with The Land.* This Agreement and terms thereof are to run with the land and shall be binding on all parties acquiring any interest in such Property and on their successors and assigns. This Agreement shall be recorded by the Village Clerk at Salerno's expense.

**Section 18.** *Use of Headings.* The headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the clauses to which they pertain.

**Section 19.** *Amendments and Modifications.* Except as otherwise provided for herein, this Agreement may not be amended, modified, or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination, or waiver shall be effective for any purpose unless it is in writing, and bears the signatures of all of the parties hereto.

**Section 20.** *Defaults.* In the event of a default and/or litigation arising out of enforcement of this Agreement, the parties hereto acknowledge and agree that each party shall be responsible for their own costs, charges, expenses, and their reasonable attorney's fees arising as a result thereof.

**Section 21.** *Notices.* All Notices and requests pursuant to this Agreement shall be sent as follows:

To the Salerno:

Summerfield Joint Venture Partnership  
Attn: George Salerno  
450 W. Lake Street  
Roselle, Illinois, 60172

With Copy to its registered agent of record with the Illinois Secretary of State.

To the Village:  
Village of Roselle  
Attn: Mayor  
31 Prospect Street  
Roselle, Illinois, 60172

With Copy To:  
Village of Roselle  
Attn: Clerk  
31 Prospect Street  
Roselle, Illinois, 60172

Or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, nationally recognized delivery service (i.e. Fed Ex) or by certified mail, return receipt requested, with proof of delivery thereof. Mailed Notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

**Section 22.** *Counterparts.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the main effect as if the signatures thereto and hereto were upon the same instrument.

**Section 23.** *Previous Agreements.* The foregoing is the agreement between the Parties hereto as it now exists at the execution hereof and it is expressly understood, agreed and distinctly acknowledged that all previous communications and negotiation between the Parties, either written or oral, that are not contained herein are hereby withdrawn, nullified, and void.

**Section 24.** *Construction.* This Agreement shall be subject to and construed under the laws of the State of Illinois

**Section 25.** *Venue.* The exclusive venue of any action involving this Agreement between the parties shall be the Circuit Court for the 18<sup>th</sup> Judicial Circuit, DuPage County, Illinois.

**Section 26.** *Jury Trial Waiver.* EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL CONSIDERATION AND INDUCEMENT TO THE EXECUTION OF THIS AGREEMENT AND CONSTITUTES A KNOWING AND VOLUNTARY WAIVER.

**Section 27.** *Special Service Area.* The owner of the Property shall not object to the creation of a special service area which is limited to the purpose and terms set forth in this Agreement.

**Section 28.** *Registry Database.* Salerno will provide to the Village, at Salerno's initial expense customary and market available software for the creation, operation and management of the registry. The Village Finance Director shall determine the acceptability of the software within his reasonable discretion. The software license for the registry shall be held exclusively by the Village as Licensee. Maintenance of the registry software and any costs associated with the same following the initial installation shall be the responsibility of the Village.

**REST OF PAGE INTENTIONALLY BLANK**

**SIGNATURE PAGE**

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE VOLUNTARILY SET THEIR HANDS AND SEALS ON THIS AGREEMENT, AND BY DOING SO HAVE ACKNOWLEDGED THAT THEY HAVE READ THE FOREGOING INSTRUMENT IN ITS ENTIRETY AND ACKNOWLEDGE THAT THE SAME IS A LEGALLY BINDING AGREEMENT, AND THAT THEY HAVE CONSCIOUSLY EXECUTED THE SAME AS THEIR OWN FREE AND VOLUNTARY ACT AND DO HEREBY SUBMIT TO AND ACKNOWLEDGE THE TERMS AND CONDITIONS HEREIN.**

**Salerno:**  
Summerfield Joint Venture Partnership  
an Illinois General Partnership

By: \_\_\_\_\_  
Its General Partner

**Village:**  
Village of Roselle,  
an Illinois Municipal Corporation

By: \_\_\_\_\_  
Its Mayor

ATTEST

By: \_\_\_\_\_  
Its Village Clerk

**Exhibit A**  
Legal Description

LOTS 2 AND 3 OF SALERNO'S RESUBDIVISION OF LOT 3 IN SUMMERFIELD ASSOCIATES SUBDIVISION, BEING A RESUBDIVISION OF PART OF LOT 375 IN THE SEASONS UNIT 4, BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 9 AND PART OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY ILLINOIS.

PIN: 02-09-413-020

**RESOLUTION NO. 2019-\_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AND DIRECTING THE VILLAGE CLERK TO ATTEST TO AN AGREEMENT BETWEEN THE VILLAGE OF ROSELLE AND THE SUMMERFIELD JOINT VENTURE PARTNERSHIP, AN ILLINOIS GENERAL PARTNERSHIP, ITS AFFILIATES, SUBSIDIARIES AND ASSIGNS FOR THE CREATION AND MAINTENANCE OF AN INURNMENT REGISTRY FOR A COLUMBARIUM**

**WHEREAS**, the Village of Roselle is an Illinois Municipal Corporation; and

**WHEREAS**, the Village has authority to contract with private persons pursuant to 65 ILCS 5/2-2-12; and

**WHEREAS**, 1857 North Harlem-Galewood, Inc. and Summerfield Joint Venture Partnership, an Illinois General Partnership (“Summerfield”) (hereinafter “Galewood/Summerfield”) seeking to construct and operate a columbarium facility with the potential of accommodating up to 130,000 inurnments (“Project”) on real estate owned by Summerfield and currently operated by Galewood currently as a funeral home; and

**WHEREAS**, the Village recognizes that recent events in Illinois concerning the desecration of human remains at cemeteries impacts the reputation of municipalities containing those cemeteries; and

**WHEREAS**, the Village and Galewood/Summerfield have concluded that the establishment of a publicly accessible inurnment registry, whose purpose is to create a tracking and authentication system, marketable to potential customers of the columbarium, assures the proper treatment of decedent remains and the public trust that the inurned remains of decedents are properly placed and maintained in a columbarium system which protects the dignity of those human remains; and

**WHEREAS**, the proposed columbarium for the Summerfield property is not subject to state registration requirements which adequately protect the dignity of the inurned remains; and

**WHEREAS**, Galewood/Summerfield has concluded that the Village’s establishment of a publicly accessible inurnment reporting system will enhance its ability to market its columbarium; and

**WHEREAS**, proper marketing of the columbarium will stimulate commercial growth in the Village, increase employment opportunities and enhance the tax base of the Village; and

**WHEREAS**, Galewood/Summerfield recognizes the benefits that it would receive from a Village-managed registry and enters into this agreement not as an imposition

required by the Village but instead as a voluntary agreement which benefits both the Village and Galewood/Summerfield.

**NOW THEREFORE, BE IT RESOLVED** by the Mayor and Board of Trustees of the Village of Roselle, an Illinois Municipal Corporation, DuPage and Cook Counties, Illinois, that:

1. The Mayor is hereby authorized to sign and the Village Clerk is hereby directed to attest to that certain agreement between the Village of Roselle and Galewood/Summerfield for the creation and maintenance of an inurnment registry for columbarium for the property properly known as 450 W. Lake Street, Roselle, Illinois, 60172 attached hereto and incorporated herein as if fully set forth as SALERNO EXHIBIT 1.

2. Village staff is hereby authorized to undertake any and all acts reasonably necessary to effectuate and administer the terms of the inurement registry agreement and inurement registry.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019

AYES:

NAYS:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Andrew J. Maglio, Mayor, Village of Roselle

\_\_\_\_\_  
Patricia Burns, Village Clerk

**AGREEMENT FOR THE CREATION AND MAINTENANCE OF AN INURNMENT  
REGISTRY FOR COLUMBARIUM**

This Agreement for the Creation and Maintenance of an Inurnment Registry for Columbarium (“Agreement”) dated as of this \_\_\_\_ day of September 2019, is made by and between the Village of Roselle, Illinois, an Illinois municipal corporation, having its principal offices at 31 Prospect Street, Roselle, Illinois, 60172 (“Village”) and 1857 North Harlem-Galewood Inc., an Illinois Corporation, its affiliates, subsidiaries or assigns (“Galewood”), and Summerfield Joint Venture Partnership an Illinois general partnership, its affiliates, subsidiaries or assigns (“Summerfield”), each having its principal office at 450 W. Lake Street, Roselle, Illinois, 60172; with Village, Galewood and Summerfield being collectively referred to as “Parties” or any one as “Party”.

**RECITALS**

**WHEREAS**, Galewood is seeking to construct and operate a columbarium facility which may be built in multiple phases on an as-needed basis and which phases will require compliance with applicable Village Zoning, Building and Life Safety Ordinances and regulation and which has the potential of accommodating approximately 130,000 inurnments (“Project”) on the real estate owned by Summerfield which is legally described in Exhibit “A” (“Property”); and

**WHEREAS**, Galewood is the owner/operator of the business and building located on the Property while Summerfield is the owner of the Property and consents to the conditions imposed within this Agreement which run with the land; and

**WHEREAS**, the Project’s concentrated inurnment capacity will generate increased numbers of visitors to the Village’s business district increasing the Village’s tax base; and

**WHEREAS**, Galewood recognizes that recent events in Illinois concerning the desecration of human remains at cemeteries will likely have an impact on the success of the Project; and

**WHEREAS**, Galewood believes that the Village’s establishment of a publicly accessible inurnment reporting system will benefit their business by creating a tracking and authenticating system which is marketable to potential customers as an indicator that Galewood assures the appropriate treatment and inurnment of decedents; and

**WHEREAS**, The Village is a duly constituted, organized and validly existing municipality within the meaning of Section 1 of Article VII of the 1970 Constitution of the State of Illinois, and is operating under the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq., as amended; and

**WHEREAS**, Galewood is authorized by 410 ILCS 18/10 to construct and operate a Crematory on the Property without the need for further Village zoning approval; and

**WHEREAS**, the State of Illinois has declared, pursuant to the Cemetery Oversight Act at 225 ILCS 411/5-10 that cemetery operations affect the public health, safety and well-being of its citizens and they are to be subject to regulation and control in the public interest; and

**WHEREAS**, Galewood recognizes that 225 ILCS 411/75-25 provides the State of Illinois with exclusive authority over regulation and licensing of cemeteries, unless a cemetery authority qualifies for an exemption enumerated in 225 ILCS 411/5-20; and

**WHEREAS**, Galewood has acquired the applicable exemption which is evidenced by License Number 251.001911 issued by the State of Illinois Department of Financial and Professional Regulation; and

**WHEREAS**, regardless of whether said exemption is maintained by Galewood, Galewood is asking the Village to keep a publicly accessible registry of inurnments (“Village Registry”) so that Galewood can market to prospective purchasers the benefits resulting from the Village maintained registry; and

**WHEREAS**, Galewood and the Project will benefit from the creation and continued existence of the Village Registry; and

**WHEREAS**, the Village is interested in stimulating commercial growth in order to increase employment opportunities in the Village, and enhance the tax base of the Village; and

**WHEREAS**, the Village is willing to maintain the Village Registry provided that the Village is compensated consistent with the amount identified hereinafter in this Agreement and that the inurnment reporting obligation along with the obligation to pay the Registry Fee, as defined hereinafter in Section 4, runs with the land; and

**WHEREAS**, Galewood recognizes that third parties will rely upon the Village Registry and that the terms of this Agreement must apply to existing owners of the Property and that its terms must run with the land to future owners and other parties of interest of the Property; and

**WHEREAS**, Galewood recognizes its request for a Village Registry and the Village requirement of a fee for the creation and ongoing maintenance of the registry is not an imposition required by the Village but is instead a voluntary agreement entered by both the Village and Galewood for the mutual benefit of both parties; and

**WHEREAS**, the Village, Summerfield and Galewood have authority to enter into this Agreement pursuant to the provisions of Article VII, Section 10 of the 1970 Illinois Constitution, which authorizes units of local government to contract and otherwise associate with individuals in manners not prohibited by law or ordinance; and

**WHEREAS**, the Village believes the existence of a columbarium will generate increased visitors, thereby promoting economic development and increasing the tax base of the Village; and

**WHEREAS**, the Village has authority to contract with private persons pursuant to 65 ILCS 5/2 – 2-12.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Village, Summerfield and Galewood agree as follows:

**Section 1.** *Recitals.* The Recitals set forth above are an integral part of this Agreement and by this reference are incorporated herein this Section 1.

**Section 2.** *Representations, Warranties and Obligations of Galewood.* To induce the Village to execute this Agreement and perform the obligations of the Village hereunder, Galewood hereby represents and warrants to the Village, and agrees to perform as follows:

(a) Galewood is a duly organized and existing corporation in good standing under the laws of the State of Illinois and authorized to do business in Illinois;

(b) No litigation or proceedings are pending, or to Galewood's actual knowledge, are threatened against Galewood, which could: (i) affect the ability of Galewood to perform its obligations pursuant to and as contemplated by the terms and provisions of this Agreement; or (ii) materially affect the operation or financial condition of Galewood;

(c) To Galewood's actual knowledge, the execution, delivery and performance by Galewood of this Agreement does not constitute, and will not, upon giving of notice or lapse of time, or both, constitute a breach or default or "event of default" under any other agreement to which Galewood is a party to or by which it may be bound;

(d) The parties executing this Agreement on behalf of Galewood have been duly authorized by all appropriate action to enter into, execute, and deliver this Agreement and perform the terms and obligations contained herein;

(e) Galewood agrees to participate fully with the requirements of the Village Registry, including compliance with the reporting requirements thereof and the payment of fees associated therewith that are described hereafter;

(f) The above representations and warranties are made in addition to all other representations and warranties made throughout this Agreement.

**Section 3.** *Representations, Warranties and Obligations of Summerfield.* To induce the Village to execute this Agreement and perform the obligations of the Village hereunder, Galewood hereby represents and warrants to the Village, and agrees to perform as follows:

(a) Summerfield is an Illinois partnership which holds title to the Property;

(b) No litigation or proceedings are pending, or to Summerfield's actual knowledge, are threatened against Summerfield, which could prevent Summerfield from its terms in this Agreement;

(c) To Summerfield's actual knowledge, the execution, delivery and performance by Summerfield of this Agreement does not constitute, and will not, upon giving of notice or lapse of time, or both, constitute a breach or default or "event of default" under any other agreement to which Summerfield is a party to or by which it may be bound;

(d) The parties executing this Agreement on behalf of Summerfield have been duly authorized by all appropriate action to enter into, execute, and deliver this Agreement and perform the terms and obligations contained herein;

(e) Summerfield agrees to participate fully with the requirements of the Village Registry, including the requirement of compliance with the reporting requirements thereof and the

payment of fees associated therewith by any tenant or operator of the columbarium upon the Property;

(f) The above representations and warranties are made in addition to all other representations and warranties made throughout this Agreement.

**Section 4.** *Representations, Warranties and Obligations of the Village.* To induce Galewood and Summerfield to execute this Agreement, the Village hereby represents, warrants and covenants to Galewood, and agrees to perform as follows:

(a) The Village is an Illinois municipal corporation duly incorporated and existing under the laws of the State of Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform this Agreement;

(b) The Village agrees that the Galewood Project, as represented by Galewood, is in furtherance of the objectives of the Village's promotion of the public health, welfare and safety of the community as well as enhancing economic development in support of the same;

(c) The Village agrees to maintain the Village Registry that establishes a public tracking and authentication system for inurnments occurring at the columbarium;

(d) The Village will make the Village Registry available at the Village Clerk's office for inspection by the public during normal business hours;

(e) The Village Registry shall run with the Property.

(f) No Village zoning approvals are required for the construction of a Crematory on the Property.

**Section 5.** *Fees.* To maintain the Inurnment Registry, the operator of the Property shall cause a fee of \$200 to be paid ("Registry Fee") to the Village for each sale of an inurnment niche.

(a) The operator of the Property shall collect the Registry Fee from the buyer of each niche at the point of sale for each niche and tender payment of the Registry Fee to the Village prior to the end of the calendar month following the month which the sale took place. Payment will be accompanied with the name of the individual(s) who purchased the niche(s) and other reasonable information necessary to identify the niche(s) sold. Prior to each inurnment, the operator of the Property shall provide the Village with all information reasonably required by the Village from time-to-time for tracking and authentication of the decedent placed in each niche.

(b) If the purchaser of any niche(s) returns ownership of any sold niche(s) to the operator of the Columbarium for which a Registry Fee was tendered to the Village, the Village will refund seventy-five (75%) of the Registry Fee which had been paid to Salerno who will refund the full 75% to the person returning said niches. The Village will be entitled to the payment of a new Registry Fee due at the time said niche(s) is/are resold.

(c) Beginning on January 1, 2030, the Village Registry fee shall be adjusted by the average of the increase in the Consumer Price Index ("CPI") over the previous ten-year period, or 5%, whichever is lower. If the CPI is negative, the increase will be zero (\$0). CPI shall be determined by the United States Department of Labor, Bureau of Labor Statistics, All Urban

Consumers Midwest Region, or other such measurement as may replace this measurement or be selected by the Village Board of Trustees. Thereafter at the expiration of each five (5) year period, the Village Registry Fee shall again be adjusted as set forth in this section.

(d) This Agreement does not create an affirmative obligation to commence the Project and if the Project is commenced, it may be developed in phases as determined in the sole discretion of Galewood, or if Galewood is not a tenant of the Property, then the Summerfield. While the Property may have as many as 130,000 inurnments located upon the Property, Galewood, or if Galewood is not a tenant of the Property, then the Summerfield may elect to implement a plan with any lesser number of inurnments.

**Section 6.** *Survival of Representations and Warranties.* The Parties agree that, to the best of their respective knowledge, all of their representations and warranties set forth in this Agreement are true as of the execution date of this Agreement and shall survive for the term of this Agreement.

**Section 7.** *Compliance with Law.* Neither Summerfield nor Galewood nor any of their contractors, subcontractors or material suppliers shall discriminate based upon race, color, religion, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military status, parental status or source of income in the construction of the Project and shall comply with any and all federal, state and local laws, statutes, ordinances or regulations with regard to non-discrimination in the construction of the Project.

**Section 8.** *Defaults/Remedies:* If any Party defaults under this Agreement or fails to perform or keep any term or condition required to be performed or kept by such Party, the defaulting Party shall, upon written notice from the other non-defaulting Party, proceed to cure or remedy such default or breach within sixty (60) days after receipt of such notice; provided, that in the event such default is non-monetary and cannot with due diligence be wholly cured within said sixty (60) day period, then the defaulting Party shall not be in default so long as the defaulting Party shall commence the curing thereof and thereafter proceed diligently to cure the same. In the case of an uncured Village default, Galewood and Summerfield shall have as their sole and exclusive remedy the right of specific performance. In the case of an uncured Galewood or Summerfield default, the Village shall have all remedies available in law and equity.

**Section 9.** *Events of Default.* For purposes of the Agreement, the occurrence of any one or more of the following (or any other events identified elsewhere in this agreement as an Event of Default), shall constitute an “**Event of Default**”:

(a) If, at any time, any material term, warranty, representation or statement made or furnished by the Village, Summerfield or Galewood is not true and correct in any material respect because of which either party is unable to fulfill its obligations hereunder; or

(b) Failure by Galewood or Summerfield to meet any of the conditions, obligations or covenants contained in this Agreement; or

(c) If any lender forecloses on any of the Property or accepts a deed in lieu of foreclosure for the Property or if any portions of the Property are in any other manner surrendered to a lender; or

(d) If Village fails to maintain the Village Registry as set forth here above or takes action to interfere with or prohibit the use of the Property as a columbarium; or

(e) If the real estate tax is not paid when due or during any applicable redemption period allowed by law; or

(f) If the Village is not paid the Village Registry Fee pursuant to the terms of this Agreement.

**Section 10.** *Waiver and Estoppel.* Any delay by any Party to this Agreement in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or operate to deprive any Party hereto of or limit such rights in any way. No waiver made by the made with respect to any specific default shall be construed, considered or treated as a waiver with respect to any other defaults.

**Section 11.** *Time of the Essence.* Time is of the essence of the Agreement.

**Section 12.** *Permitted Delays.* No Party shall be considered in breach of its obligations with respect to the commencement and completion of the Project because of the impossibility of performance or the limitations of Illinois law, or in the event of delay in the performance of such obligations is due to unforeseeable causes beyond such Party's control and without such Party's fault or negligence, including any delays or due to court order, acts of God, acts of the public enemy, acts of the United States, acts of the other Party, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, embargoes, economic exigencies, shortages of labor or materials and severe weather or delays of subcontractors due to such causes or any other situation recognized as a force majeure ("Permitted Delays"). Subject to the limitations and restrictions of the Act, the time for the performance of the obligations shall be extended for the period of the enforced delay if the Party in default, as the case may be, seeking the extension shall notify in writing the other within twenty (20) days after becoming actually aware of any such delay and shall use diligence in attempting to complete performance of its obligations.

**Section 13.** *Drafter Bias.* The parties acknowledge and agree that the terms of this Agreement are the result of on-going and extensive negotiations between the parties, both of whom are represented by independent counsel, and that this Agreement is a result of said negotiations. As a result, in the event that a court is asked to interpret any portion of this contract, neither of the parties shall be deemed the drafter hereof and neither shall be given benefit of such presumption that may be set out by law.

**Section 14.** *Partnership not intended nor Created.* Nothing in this Agreement is intended to, nor shall be deemed to, constitute a partnership or joint venture between the parties.

**Section 15.** *Third-Person Beneficiaries.* There are no third-person beneficiaries of this Agreement, and nothing in this Agreement shall be interpreted to waive, release or compromise the Village's statutory or common law immunities.

**Section 16.** *Entirety and Binding Effect.* This document represents the entirety of the agreement between the parties and shall be binding upon them and inure to the benefit of and be enforceable by and against their respective successors, personal representatives, heirs, legatees, and assigns.

**Section 17.** *Survival of Provisions.* If any of the provisions of this agreement are found to be invalid pursuant to any statute or rule of law of the State of Illinois or of any court of competent jurisdiction in which it may be so brought to be enforced, then such provisions shall be deemed null and void to the extent that they may conflict herewith, however the remainder of this instrument and any other application of such provision shall not be affected thereby.

**Section 18.** *Covenants to Run with The Land.* This Agreement and terms thereof are to run with the land and shall be binding on all parties acquiring any interest in such Property and on their successors and assigns. This Agreement shall be recorded by the Village Clerk at Salerno's sole expense.

**Section 19.** *Use of Headings.* The headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the clauses to which they pertain.

**Section 20.** *Amendments and Modifications.* Except as otherwise provided for herein, this Agreement may not be amended, modified, or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination, or waiver shall be effective for any purpose unless it is in writing, and bears the signatures of all of the parties hereto.

**Section 21.** *Defaults.* In the event of a default and/or litigation arising out of enforcement of this Agreement, the parties hereto acknowledge and agree that each party shall be responsible for their own costs, charges, expenses, and their reasonable attorney's fees arising as a result thereof.

**Section 22.** *Notices.* All Notices and requests pursuant to this Agreement shall be sent as follows:

To Galewood:

1857 North Harlem-Galewood Inc.  
Attn: George Salerno  
450 W. Lake Street  
Roselle, Illinois, 60172

With Copy to its registered agent of record with the Illinois Secretary of State.

To Summerfield:

Summerfield Joint Ventures, a General Partnership  
Attn: George Salerno  
450 W. Lake Street  
Roselle, Illinois, 60172

To the Village:

Village of Roselle  
Attn: Mayor  
31 Prospect Street  
Roselle, Illinois, 60172

With Copy To:

Village of Roselle  
Attn: Clerk  
31 Prospect Street  
Roselle, Illinois, 60172

Or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, nationally recognized delivery service (i.e. Fed Ex) or by certified mail, return receipt requested, with proof of delivery thereof. Mailed Notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

**Section 23.** *Counterparts.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the main effect as if the signatures thereto and hereto were upon the same instrument.

**Section 24.** *Previous Agreements.* The foregoing is the agreement between the Parties hereto as it now exists at the execution hereof and it is expressly understood, agreed and distinctly acknowledged that all previous communications and negotiation between the Parties, either written or oral, that are not contained herein are hereby withdrawn, nullified, and void.

**Section 25.** *Construction.* This Agreement shall be subject to and construed under the laws of the State of Illinois

**Section 26.** *Venue.* The exclusive venue of any action involving this Agreement between the parties shall be the Circuit Court for the 18<sup>th</sup> Judicial Circuit, DuPage County, Illinois.

**Section 27.** *Jury Trial Waiver.* EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL CONSIDERATION AND INDUCEMENT TO THE EXECUTION OF THIS AGREEMENT AND CONSTITUTES A KNOWING AND VOLUNTARY WAIVER.

**Section 28.** *Special Service Area.* The owner of the Property shall not object to the creation of a special service area which is limited to the purpose and terms set forth in this Agreement.

**Section 29.** *Registry Database.* Summerfield will provide to the Village, at Summerfield's initial expense, customary and market available software for the creation, operation and management of the registry. The Village Finance Director shall determine the acceptability of the software within his reasonable discretion. The software license for the registry shall be exclusively held by the Village as Licensee. Maintenance of the registry software and any costs associated with the same following the initial installation shall be the responsibility of the Village.

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**SIGNATURE PAGE**

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE VOLUNTARILY SET THEIR HANDS AND SEALS ON THIS AGREEMENT, AND BY DOING SO HAVE ACKNOWLEDGED THAT THEY HAVE READ THE FOREGOING INSTRUMENT IN ITS ENTIRETY AND ACKNOWLEDGE THAT THE SAME IS A LEGALLY BINDING AGREEMENT, AND THAT THEY HAVE CONSCIOUSLY EXECUTED THE SAME AS THEIR OWN FREE AND VOLUNTARY ACT AND DO HEREBY SUBMIT TO AND ACKNOWLEDGE THE TERMS AND CONDITIONS HEREIN.

**Galewood:**  
1857 North Harlem-Galewood Inc.  
an Illinois Corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Summerfield:**  
Summerfield Joint Venture Partnership  
an Illinois General Partnership

By: \_\_\_\_\_  
Its: General Partner

**Village:**  
Village of Roselle,  
an Illinois Municipal Corporation

By: \_\_\_\_\_  
Its Mayor

ATTEST

By: \_\_\_\_\_  
Its: Village Clerk

**Exhibit A**  
Legal Description

LOT 2 IN THE SUMMERFIELD ASSOCIATES SUBDIVISION, BEING PART OF A RESUBDIVISION OF LOT 375 IN THE SEASONS UNIT FOUR, BEING A SUBDIVISION OF PARTS OF THE SOUTHEAST QUARTER OF SECTION 9 AND PART OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID SUMMERFIELD ASSOCIATES SUBDIVISION RECORDED JULY 20, 1998 AS DOCUMENT R98-144028, IN DUPAGE COUNTY, ILLINOIS.

PIN: 02-09-413-019