

REAL ESTATE SALE CONTRACT

94268895

THIS CONTRACT is made and entered into by and between MR. and MRS. HARRY HELLER, (herein referred to as "Seller"), and HSM DEVELOPMENT CORP., a Missouri corporation, or its assignee (herein referred to as "Buyer").

WITNESSETH, for and in consideration of the agreements and covenants herein contained, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, the Premises (as hereinafter described) upon the terms and conditions hereinafter set forth:

1. DESCRIPTION OF THE PREMISES:

1.1 The Premises consists of the following:

(a) That tract or parcel of land containing approximately 4.35 acres situated in the Town of Northbrook, Northfield Township, Cook County, Illinois. Said parcel of land is hereinafter referred to as the "Real Property." The Real Property is further described in Exhibit "A" which is attached hereto and by this reference made a part hereof. The exact legal description of the Real Property shall be determined by a registered land surveyor employed by and paid for by Seller, and such legal description shall be subject to the reasonable approval of Buyer.

(b) All structures, buildings, fixtures and improvements located on the Real Property, all of which are hereinafter referred to as "Improvements". Seller shall have the right to remove any fixtures at Seller's expense from the existing structure within thirty days after Closing.

(c) All rights, easements and privileges appurtenant to the Real Property and Improvements, including, without limitation, all rights, reversionary or otherwise, in the abutting street, alleys and highways, all of which are hereinafter referred to as the "Appurtenances".

1.2 The Real Property, Improvements and Appurtenances are hereinafter collectively referred to as the "Premises".

2. PURCHASE PRICE, EARNEST MONEY, AND PRORATIONS:

2.1 The Purchase Price for the Premises is One Million Three Hundred Thousand Dollars (\$1,300,000.00).

2.2 The Purchase Price shall be payable as follows:

(a) Upon execution of this Agreement, Buyer shall deposit with Chicago Title Agency of Arlington Heights, Illinois ("Escrow Agent"), the sum of \$10,000.00 as an Earnest Money Deposit which Earnest Money shall be applied to the Purchase Price at Closing.

DEPT-01 RECORDING 611.50  
18666 TRAM 6061 03/24/79 14:01:00  
#1221 + RP #1-94-268895  
COOK COUNTY RECORDER

03220000

41.50  
JH

(b) Upon the expiration of the period specified in Section 3.1, Buyer shall deposit as additional Earnest Money the sum of \$20,000.00 that will become nonrefundable compensation given to the Seller if this contract is not consummated. Should this contract be consummated then the Buyer will be given credit at Closing for all Earnest Money off the Purchase Price.

(c) The balance of the Purchase Price, subject to prorations and adjustments, shall be paid by cash or cashiers check at Closing.

(d) All interest on Earnest Money that is accrued shall be given to the Seller if this contract is not consummated. Should this contract be consummated the interest accrued on the Earnest Money shall be credited to the Buyer at Closing.

2.3 The Earnest Money Deposit shall be held in escrow by Escrow Agent and disbursed as follows:

(a) If Buyer cancels this Contract as provided in Sections 3.1, 4.1 or 4.3 hereof, then all Earnest Money shall be paid to Buyer, and neither party shall have any further liability to the other.

(b) If the purchase and sale contemplated under this Contract is not consummated due to the default of Buyer, then all Earnest Money and interest thereon shall be forfeited to Seller as liquidated damages and in full settlement of all damages sustained, and this Contract shall thereupon be canceled, and neither party shall have any further liability to the other.

(c) If the purchase and sale contemplated under this Contract is not consummated due to the default of Seller, then all Earnest Money, Carrying Charges as defined in 4.2 hereof, and interest thereon shall be returned to Buyer, but this shall not prohibit Buyer from specifically enforcing Seller's obligations hereunder.

(d) Upon the closing of the purchase and sale contemplated hereunder, all Earnest Money, Carrying Charges, and interest thereon shall be paid to Seller and credited to the Purchase Price.

2.4 The following prorations and adjustments shall be made to the Purchase Price at Closing:

(a) Real estate taxes payable in respect of the Real Property for the calendar year in which the Closing occurs shall be prorated, on a calendar year basis, Seller to pay up to the date of Closing and Buyer to pay on and after the date of Closing.

(b) On or before Closing, Seller shall cause any and all liens and encumbrances affecting the Premises, including without limitation, mechanics liens, security interests, mortgages or deeds of trust, to be satisfied and released.

17087297236

**UNOFFICIAL COPY**

(c) Proceeds due at Closing may be used by Buyer or Seller, as the case may be, to satisfy or pay any assessments, liens, encumbrances or other charges affecting the Premises which are to be paid, satisfied or released pursuant to this Contract.

2.5 In addition to any other expenses referred to herein, Seller and Buyer shall be responsible for the following:

(a) Seller shall be responsible to pay for all expenses in connection with curing any defects in title to the Premises, payment of any liens and filing of curative documents in connection therewith, payment of any surveyor charges, the charge for Buyer's title insurance premium, and payment of any transfer tax in connection with the transfer of the title of the Premises to Buyer.

(b) Buyer shall be responsible to pay for recording of the warranty deed conveying the Premises to Buyer.

### 3. INSPECTION AND USE OF THE PREMISES:

3.1 For a period of ninety (90) days after the date of this Contract, Seller hereby grants to Buyer the full right of access to the Premises and Buyer may, through its agents and representatives, inspect the Premises, cause surveys to be prepared, and conduct environmental studies, soil borings and other investigations and inspections as Buyer may reasonably require to determine the suitability of the Premises for Buyer's intended use thereof. If Buyer, in its sole opinion, determines that the Premises is not suitable for Buyer's intended use, this Contract may be canceled by Buyer on or before the expiration of said 90 day period.

3.2 The intent of the parties with respect to the sale of the Premises to Buyer is to provide Buyer with a site of approximately 4.35 acres, more or less, which site will be of such size and shape to provide for the location of a nursing home and other housing for the elderly.

### 4. CONDITIONS OF CLOSING:

4.1 This Contract and Buyer's obligations hereunder are contingent upon Buyer obtaining zoning necessary to construct a skilled nursing facility and other housing for the elderly on the Premises. In addition, this Contract is contingent upon Buyer obtaining a Certificate of Need from the Illinois Health Facilities Planning Board within six (6) months of the expiration of the period referred to in Section 3.1 hereof. If the Illinois Health Facilities Planning Board initially denies Buyer's application for a Certificate of Need, or if the Board fails to act upon Buyer's application despite Buyer's diligent efforts within the six (6) month period, then Seller shall grant Buyer an additional three (3) months to obtain the Certificate of Need, or such other time as is reasonably necessary.

**UNOFFICIAL COPY**

4.2 Furthermore, in addition to the time periods described in Paragraph 4.1, Seller shall grant Buyer up to twelve (12) one (1) month extensions for Closing. During the twelve month period, Buyer shall provide Seller with a written notice of Buyer's intention to extend the closing date through the successive month. This notice shall be furnished at least ten (10) days prior to the expiration of the original term and each succeeding monthly period thereafter. The first notice shall be furnished within 15 days of Seller's receipt of zoning approval and a Certificate of Need mentioned in Section 4.1 hereof. Buyer shall include with this notice a payment of interest on the Purchase Price at the rate of six percent (6%) per annum (referred to herein as "Carrying Charges").

4.3 Upon execution of this Contract, Buyer will order, as its expense, a modified ALTA survey of the Real Property from a registered land surveyor to be delivered to Buyer within thirty (30) days. At Closing, Seller shall credit the Purchase Price for the cost of preparing this survey. Upon receipt of the survey, Buyer will promptly order a commitment for a policy of title insurance with extended coverage from Chicago Title Agency of Arlington Heights, Illinois in the amount of the Purchase Price on ALTA Form B (1970), to be in form and substance satisfactory to Buyer (the "Commitment").

Buyer shall have thirty (30) days from receipt of the Commitment to deliver written notice to Seller of any objections that Buyer may have to the state of title of the Premises. If Seller is unable, for any reason whatsoever, to satisfy said objectionable matters to the complete satisfaction of Buyer prior to the expiration of the period referred to in Section 3.1, then Buyer may either: (i) accept the state of title in which event said conditions and exceptions shall be deemed Permitted Exceptions, or (ii) reject the state of title, in which event this Contract shall become null and void and of no further force and effect.

5. UTILITIES, EASEMENTS AND OTHER COOPERATIVE EFFORTS:

5.1 (deleted)

5.2 Seller shall cooperate with Buyer in order to obtain any approvals by governmental agencies or third parties that may be necessary to enter into and obtain the agreements, easements and matters set forth in this Contract.

UNOFFICIAL COPY

6. ENVIRONMENTAL RESPONSIBILITIES:

6.1 Seller warrants and represents, to the best of its knowledge: (i) that the Premises is not a landfill and the soil is not chemically contaminated; (ii) that the Premises is not listed or proposed for listing or threatened to be listed on the National Priorities List by the Environmental Protection Agency or any registry of abandoned or uncontrolled hazardous waste sites, and that there have been no discussions between Seller or its agents and state or federal officials concerning the possibility of such listings; (iii) that there is no asbestos in or under the Premises; (iv) that there has been no disposal, discharge, deposit, injection, dumping, leaking, spilling, placing or escape of any hazardous substance, hazardous materials, pollutant or contaminant on, in, under or from the Premises; (v) that there is no facility in or on the Premises which is used for the treatment, storage or disposal of hazardous wastes; (vi) that there are no underground tanks on the Premises; and (vii) that the Seller is not aware of any other conditions, situations or events concerning the Premises which constitute environmental risks, hazards, wastes or contaminants.

7. CONVEYANCE, STATUS OF TITLE AND POSSESSION:

7.1 At Closing, Seller shall convey the Premises to Buyer, or Buyer's assignee, by good and sufficient general warranty deed, free and clear of all liens and encumbrances, except applicable zoning ordinances and other governmental restrictions or limitations affecting or restricting said property, Permitted Exceptions, and taxes and assessments, both general and special, for 1993 and thereafter. Title to the Premises shall be marketable in fact.

7.2 At Closing, Seller shall deliver the following to Buyer:

(a) Duly executed general warranty deed conveying fee simple title in the Premises to Buyer.

(b) Any document or instrument necessary to release any lien, security interest, mortgage or deed of trust affecting the Premises or any portion thereof.

(c) Such affidavits, statements or other documents as may be necessary to permit Buyer to obtain title insurance without reference to the standard title insurance exceptions and in conformance with the provisions of this Contract.

(d) Non-foreign certification required pursuant to the Internal Revenue Code.

RECORDED

**UNOFFICIAL COPY**

(e) Resolutions or other documents as Buyer shall reasonably require to evidence Seller's authority to enter into this Contract.

(f) To the extent required, Seller agrees that Seller shall report the within transaction on Form 1099-S to the Internal Revenue Service, and Seller shall indemnify, defend and hold harmless Buyer from and against any penalties or claims made by the Internal Revenue Service for the failure to timely report the within transaction.

7.3 At Closing, Buyer shall deliver the following to Seller:

(a) The balance of the Purchase Price.

(b) Resolutions or other documents as Seller shall reasonably require to evidence Buyer's authority to enter into this Contract.

#### 8. CLOSING:

8.1 The Closing for the sale of the Premises shall occur no later than thirty (30) days following Buyer's receipt of zoning approval and a Certificate of Need mentioned in Section 4.1 hereof, or allowed extensions, at the offices of Chicago Title Agency of Arlington Heights, and Seller shall be given notice at least five (5) days prior thereto of said place, date and time.

#### 9. MISCELLANEOUS:

9.1 Seller agrees to indemnify, defend and hold harmless Buyer from and against any claims made by any real estate broker or salesman for commissions incurred in this transaction and resulting from any conversations or dealings that Seller has had with any such broker or salesman.

9.2 All notices which may be or are required to be given pursuant to this Contract shall be deemed given when deposited in the U.S. Mail, postage prepaid, and marked registered or certified mail, return receipt requested, and addressed to the parties and/or the Escrow Agent at the addresses hereinafter set forth:

If to Buyer:

HSM DEVELOPMENT CORP.  
1810 Craig Road, Suite 113  
St. Louis, Missouri 63146  
Attn: Larry Vander Maten

00000000

UNOFFICIAL COPY

and a duplicate thereof sent to:

Stephen L. Ukman, Esq.  
Summers, Compton, Wells & Hamburg  
8909 Ladue Road  
St. Louis, Missouri 63124

If to Seller:

MR. and MRS. HARRY HELLER  
3709 Bernay Dr.  
Northbrook, IL 60062

To Escrow Agent:

Chicago Title Agency of Arlington Heights  
145 East Algonquin Road  
Arlington Heights, Illinois 60005  
Attn: Mr. Phil Barragate

The date of notice, in the case of notice given by any means other than certified or registered mail, return receipt requested, shall be the date of receipt by the party receiving such notice, and the date of notice in the case of notice sent by registered mail or certified mail, return receipt requested, shall be the date of depositing same in the mail as evidenced by the postmark thereon. The addresses of the parties hereto for purposes of notice may be changed by giving notice of such change thereof to the other change.

9.3 This Contract is binding upon and inures to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors and assigns.

9.4 This Contract constitutes the entire agreement between Seller and Buyer, and there are no other covenants, agreements, promises, terms and provisions, conditions, undertakings or understanding either oral or written, between them concerning the Premises other than those herein set forth. No subsequent alterations, amendment, change, deletion or addition to this Contract shall be binding upon Seller or Buyer unless in writing and signed by both Seller and Buyer.

9.5 No waiver of any term, provision or condition of this Contract in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Contract. Buyer may at Buyer's sole election waive any one or more of the conditions provided in this Contract.

10  
21  
22  
23  
24

UNOFFICIAL COPY

9.6 In the event either party hereto brings an action or proceeding for a declaration of the rights of the parties under this Contract or for any alleged breach or default of, or any other action arising out of this Contract or the transactions contemplated hereby, the prevailing party in any such action shall be entitled to an award of reasonable attorney's fees and any court costs incurred in such action or proceeding, in addition to any other damages or relief awarded.

9.7 In the event any clause, section or paragraph of this Contract is declared by a court of competent jurisdiction to be unconstitutional, illegal and unenforceable, the remainder of this Contract shall not be affected and shall remain in full force and effect.

9.8 This Contract shall be construed under and in accordance with the laws of the State of Illinois.

9.9 Seller agrees that during the period this Contract is in force and effect, Seller will not do any of the following as to the Premises:

- (a) Enter into any other option or sale agreement;
- (b) Place any liens, encumbrances, easements or building restrictions on said Premises, which cannot be cleared at Closing;
- (c) Construct any building or other structure on said Premises;
- (d) Change the zoning applicable to the Premises; or
- (e) Use said Premises as a waste or disposal site.

9.10 Buyer has executed this Contract as of the date set forth above Buyer's signature hereto. Seller shall have until 3:00 p.m., October 25, 1993 to accept this Contract. If this Contract is not accepted by executing a copy hereof and returning an executed copy to Buyer on or before the expiration of such time period, this Contract shall be void and without recourse for the parties hereto and all Earnest Money shall be refunded to Buyer. When used in this Contract the phrase "date of this Contract" or other similar phrase shall mean the date upon which this Contract has been accepted by Seller.



UNOFFICIAL COPY

IN WITNESS WHEREOF, this Contract has been executed by Buyer and Seller this 22<sup>nd</sup> day of October, 1993.

BUYER:

HSH DEVELOPMENT CORP.

By:

[Signature]  
Larry Vander Maten,  
President

This Contract has been accepted by Seller this 22 day of October, 1993, which date is referred to as the "date of this Contract" or "Contract date".

SELLER:

MR. HARRY HELLER

[Signature]

MRS. HARRY HELLER

[Signature]

Property of Cook County Clerk's Office

91006605

UNOFFICIAL COPY

EXHIBIT A

DESCRIPTION OF REAL PROPERTY

The Real Property is an approximate 4.35 acre parcel located in the Town of Northbrook, Northfield Township, Illinois. The Property Identification Number (PIN) is 04-06-101-007, and the street address is 4065 Lake Cook Road.

Property of Cook County Clerk's Office

91208895

# UNOFFICIAL COPY

## LEGAL DESCRIPTION

Real Estate Sales Contract dated October 22, 1993, as amended between MR. AND MRS. HARRY HELLER, as Seller and HSM DEVELOPMENT CORPORATION, a Missouri corporation, as Buyer.

### Legal Description:

THE EAST 313 FEET OF THE WEST 473 FEET OF THE NORTHEAST 1/4 OF THE EAST 1/2 OF GOVERNMENT LOT 2 IN THE NORTHWEST 1/4 OF SECTION 6, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING FROM SAID TRACT THE SOUTH 17 FEET OF THE NORTH 50 FEET OF SAID EAST 313 FEET OF THE WEST 473 FEET OF THE NORTHEAST 1/4 OF THE EAST 1/2 OF LOT 2 AFORESAID CONVEYED TO THE COUNTY OF COOK BY DEED RECORDED JANUARY 7, 1974 AS DOCUMENT 22587485), IN COOK COUNTY, ILLINOIS.

P.I.N.: 04-06-101-007

This instrument was prepared by:  
Norman P. Jeddloh, Esq.  
Siegan Barbakoff Gomberg & Kane, Ltd.  
20 N. Clark Street, Suite 1000  
Chicago, Illinois 60602

RETURN TO PREPARER



94288895