

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION
OF AN INCENTIVE AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE AND DEVRY UNIVERSITY**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois,
as follows:

1. That the form and substance of a certain Agreement (the “Agreement”) between the Village of Downers Grove (the “Village”) and Devry, Inc. d/b/a Devry University (“DeVry”), for the construction, completion and operation of DeVry University in Downers Grove, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

**INCENTIVE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
AND DEVRY UNIVERSITY**

THIS INCENTIVE AGREEMENT (this "Agreement"), is made and entered into as of the ____ day of _____ ("Agreement Date") by and between the **VILLAGE OF DOWNERS GROVE, ILLINOIS**, an Illinois municipal home rule corporation, located in DuPage County, Illinois (the "Village"), and DeVry, Inc., **d/b/a**_____, **an Illinois Corporation** (hereinafter referred to as "DeVry"). (The Village and DeVry are sometimes referred to individually as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, the Village is a home rule unit of government in accordance with Article VII, Section 6, of the Constitution of the State of Illinois, 1970; and

WHEREAS, the Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base, to increase additional tax revenues realized by the Village, foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise in the best interests of the Village;

WHEREAS, DeVry has entered into or will enter into a lease agreement for the property located at _____, Downers Grove ("Property"); and

WHEREAS, DeVry is planning on operating its corporate headquarters and university services on the Property;

WHEREAS, the Village has determined that it is desirable and in the Village's best interests to offer certain economic incentives to DeVry in the manner set forth herein and as this Agreement may be supplemented and amended; and

WHEREAS, this Agreement has been submitted to the Corporate Authorities of the Village for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Village according to the terms hereof, and any and all actions of the Corporate Authorities of the Village precedent to the execution of this Agreement have been undertaken and performed in the manner required by law; and

WHEREAS, this Agreement has been submitted to the Principals of DeVry for consideration and review, which Principals have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon DeVry according to the terms hereof, and any and all action of DeVry precedent to the execution of this Agreement has been undertaken and performed in the manner required by law.

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 ONE
INCORPORATION OF RECITALS

The findings, representations and agreements set forth in the above Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set out in this Article One, and constitute findings, representations and agreements of the Village and of DeVry according to the tenor and import of the statements in such Recitals.

ARTICLE TWO
DEFINITIONS

For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, including above in the recitals hereto and as follows:

“Agreement” means this Incentive Agreement and all of the exhibits and attachments referenced herein and made a part hereof.

“Change in Law” means the occurrence, after the Effective Date, of an event described below, provided (a) such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and (b) such event is not caused by the Party relying thereon: Change in Law includes any of the following: (i) the enactment, adoption, promulgation or modification of any federal, state or local law, ordinance, code, rule or regulation (other than by the Village); (ii) the order or judgment of any federal or state court, administrative agency or other governmental body; (iii) the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the services to be performed under this Agreement; or (iv) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the Village or with respect to those made by the Village, only if they violate the terms of this Agreement).

“Corporate Authorities” means the Mayor and Village Council of the Village of Downers Grove, Illinois.

“Property” means the approximately _____square feet of office space utilized and leased for the existing operation of DeVry located at _____.

“Day” means a calendar day.

“Party” means the Village and/or DeVry and its successors and/or assigns as permitted herein, as the context requires.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

“Project” means the construction, completion, and operation of the DeVry facility.

“State” means the State of Illinois.

“Uncontrollable Circumstance” means any event which:

- (a) is beyond the reasonable control of and without the fault of the Party relying thereon; and
- (b) is one or more of the following events:
 - (i) a Change in Law;
 - (ii) insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, nuclear incident, war or naval blockade;
 - (iii) epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary weather conditions or other similar Act of God;
 - (iv) governmental condemnation or taking other than by the Village;
 - (v) strikes or labor disputes, other than those caused by the acts of Developer;

Uncontrollable Circumstance shall not include: (1) economic hardship or impracticability of performance, (2) commercial or economic frustration of purpose, (3)

unavailability of materials, strikes or labor disputes caused by the acts of Developer, or (4) a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

"Village" means the Village of Downers Grove, Illinois, an Illinois municipal corporation.

ARTICLE THREE CONSTRUCTION

This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- (a) Definitions include both singular and plural.
- (b) Pronouns include both singular and plural and cover all genders.
- (c) The word "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".
- (d) Headings of Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- (e) All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the terms of this Agreement shall control.
- (f) Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.

(g) The Village Manager, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Village and with the effect of binding the Village as limited by and provided for in this Agreement. DeVry is entitled to rely on the full power and authority of the persons executing this Agreement on behalf of the Village as having been properly and legally given by the Village.

(h) In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by DeVry in a different manner, DeVry hereby designates _____ as its authorized representatives who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of DeVry and with the effect of binding DeVry in that connection (each such individual being an "Authorized Representative"). DeVry shall have the right to change its Authorized Representative by providing the Village with written notice of such change which notice shall be sent in accordance with Article 12, paragraph 4.

ARTICLE FOUR
IMPLEMENTATION OF PROJECT

The Village and DeVry agree to cooperate in implementing the Project in accordance with the Parties respective obligations set forth in this Agreement.

ARTICLE FIVE
VILLAGE'S OBLIGATIONS

A. Incentive Payments. The Village shall pay to DeVry Incentive Payments based on the following criteria:

1. **General Rebate:** If DeVry continues to operate the Its corporate headquarters and university facility on the Property, then for a period of fifteen years commencing on _____, 2009 (“Rebate Period”), the Village agrees to rebate to DeVry Fifty Percent (50%) of Downers Grove Municipal Electricity Tax as set forth in Section 21-1001 *et seq.* of the Downers Grove Municipal Code, as amended from time to time, and Fifty Percent (50%) of Downers Grove Simplified Municipal Telecommunications Tax as set forth in Section 21-800 *et seq.* of the Downers Grove Municipal Code, as amended from time to time, which the Village receives from DeVry’s payments to the State (collectively referred to as “Downers Grove Utility Tax”) The Village shall also rebate Fifty Percent 50% of the State Retailers’ Occupation Tax which the Village receives from DeVry’s payments to the State (“Downers Grove Sales Tax”) The Downers Grove Utility Tax rebate and the Downers Grove Sales Tax rebate shall hereinafter be collectively referred to as the “General Rebate”.

2. **Payment of General Rebate:** The amount of the General Rebate shall be paid quarterly. The General Rebates shall be remitted quarterly by the Village as provided herein. For the duration of this Agreement, DeVry shall authorize the Illinois Department of Revenue to release monthly Utility Tax and Sales Tax payments to the Village from which rebate calculations will be made DeVry shall submit its monthly Utility Tax statements to the Village from which rebate calculations will be made. DeVry agrees to cooperate and provide such additional documents as may be reasonably needed to verify the General Rebate.

3. **Compliance with Village Ordinances:** No General Rebate Payments shall be made until and unless DeVry is in compliance with all terms and conditions of any and all Village Ordinances and all other terms and conditions of this Agreement. The Village shall only be obligated to make General Rebate Payments to DeVry if DeVry has no outstanding Village

ordinance violations. The Village shall not unreasonably withhold the issuance of any permits or rebate payments.

4. ***Village Cooperation:*** The Village agrees to cooperate with DeVry in its attempts to obtain all necessary approvals from any governmental or quasi-governmental entity other than the Village. The Village shall duly review and consider any application for permits filed by DeVry in conjunction with this Agreement. Additionally, the Village agrees to waive Seventy Five (75%) percent of permit and plan review fees associated with the initial buildout of the Project. The Village shall cooperate with DeVry in implementing the terms and conditions of this Agreement.

ARTICLE SIX **DEVRY'S OBLIGATIONS**

1. ***Commitment to Continue Operation:*** The parties agree that the General Rebate is based in part upon 1) a commitment by DeVry to continue operations on the Property. To that end, DeVry agrees to operate the corporate headquarters and university services on the Property during the Rebate Period. If at any time during the term of this Agreement, DeVry, or a successor, fails to operate its corporate headquarters and university services, then the Village shall be released and discharged from any further obligation to make payments under this Agreement.

2. ***Reimbursement in Lieu of Required Commitment Period:*** In the event DeVry, or any approved successor, fails to continue its headquarters and university services as provided in Article 6, Section 1 of this Agreement, DeVry, or such approved successor, shall reimburse a percentage of the total aggregate amount of General Rebates paid hereunder and a percentage

of the total aggregate amount of permit/plan review fees waived hereunder to the Village within sixty (60) days of receipt of a written demand from the Village according to the following schedule:

Agreement Year	General Rebate Reimbursement	Permit Fee/Plan Review Fee Reimbursement
1	75%	75%
2	70%	70%
3	65%	65%
4	60%	60%
5	55%	55%
6	50%	50%
7	45%	45%
8	40%	40%
9	35%	35%
10	30%	30%
11	25%	25%
12	20%	20%
13	15%	15%
14	10%	10%
15	5%	5%

After the expiration of a 60 day written demand by the Village to DeVry, or its successors, specifying the amount due, the Village may, in its sole discretion, pursue any and all available legal remedies to recover said monies, including, without limitation:

Proceed with an action in law or in equity to recover the amounts owed.

3. ***Construction of Project:*** DeVry and its agents shall diligently pursue obtaining all required permits and shall cause construction of the Project on the Property to be prosecuted and completed with due diligence, in good faith and without delay, subject to Uncontrollable Circumstances and the other provisions of this Agreement.

4. ***Compliance with Applicable Laws:*** DeVry and its agents shall at all times acquire, install, construct, operate and maintain the Project in conformance with all applicable laws, rules, ordinances and regulations. All work with respect to the Project shall conform to all applicable federal, State and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental codes, life safety codes, property maintenance codes and any other applicable codes and ordinances of the Village.

5. ***Copies of Agreements:*** Upon request of the Village, DeVry shall submit copies of any and all leases, contracts to purchase and property title documents for land subject to the terms of the Agreement.

ARTICLE SEVEN
BREACH

In the event of breach of any of the terms and conditions of the Agreement, the non-breaching party shall have the right to terminate this Agreement, which will not relieve the breaching party from performance.

ARTICLE EIGHT
TERM OF REBATES

Notwithstanding anything herein contained to the contrary, the General Rebate Payments payable above shall be applicable to the Downers Grove Utility Tax received by the Village on account of operations of the corporate headquarters and university services on the Property commencing on date of this Agreement (the "Commencement Date") and continuing for the required commitment period.

ARTICLE NINE
TRANSFER OF INTEREST

If DeVry transfers or sells, in whole or in part, its operations o, the rights and obligations under this Agreement will transfer to successive owners upon written consent of the Village, which consent shall not unreasonably be withheld. In the event of such transfer, DeVry, its principals, officers, agents, shareholders and associated entities shall be released from all obligations of this Agreement, including all letters of credit and/or other securities given, if any.

ARTICLE TEN
LIMITATION OF ACTIONS

No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the Village, its

officers, agents and employees, in any amount or in excess of any specific sum agreed by the Village to be paid to DeVry hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to, or shall be incurred by the Village, its officers, agents and employees in excess of such amounts, and all and any such rights or claims of DeVry against the Village, its officers, directors, agents and employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village. No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against DeVry, its officers, directors, agents and employees, in excess of its obligations to the Village hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by DeVry, its officers, directors, agents and employees, in excess of its obligations hereunder.

ARTICLE ELEVEN
MISCELLANEOUS PROVISIONS

1. ***Additional Documentation:*** Each party agrees to execute any additional documents which may be required to carry out the provisions of this Agreement; and DeVry particularly agrees to execute such other documents which may be necessary to enable the Village to verify the amount of Utility Tax it has received from time to time from the Utility taxes paid by DeVry.
2. ***Jurisdiction:*** This Agreement shall be governed by the laws of the State of Illinois, and the sole and exclusive venue for any disputes arising out of this Agreement shall be the appropriate State or federal court located within the State of Illinois.
3. ***Waiver:*** A waiver of any part of this Agreement shall be limited to that specific event and shall not be a waiver of the entire Agreement.

4. **Notice:** Any notices required in this Agreement shall be effective when in writing and three (3) days after mailing by certified mail return receipt requested, or by delivering the same in person or to an officer of such party or by prepaid telegram or private overnight courier, when appropriate, addressed to the party to be notified.

All notices to Downers Grove shall be sent to:

Village Manager
Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515

With copy to:
Village Attorney
Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515

All notices to DeVry shall be sent to:

4. **Successors & Assigns:** This Agreement and the covenants, rights, benefits and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, to the extent and as applied hereunder.

5. **Further Assistance and Corrective Instruments:** The Village and DeVry agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or facilitating the performance of this Agreement to the extent legally permitted and within the Village's sound legal discretion.

6. **Time of the Essence:** Time is of the essence of this Agreement.

7. **Integration:** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

8. **Counterparts:** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

9. **Severability:** If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

10. **Choice of Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

11. **Entire Contract and Amendments:** This Agreement (together with the exhibits attached hereto) is the entire contract between the Village and DeVry relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Village and DeVry, and may not be modified or amended except by a written instrument executed by the Parties hereto.

12. **Third Parties:** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the Village and DeVry, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the Village or DeVry, nor shall any provision give any third parties any rights of subrogation or action over or against either the Village or DeVry. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

13. ***Successors in Interest:*** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective authorized successors and assigns; provided, however, that, except as provided in Article 9 hereof, DeVry may not assign its rights under this Agreement without the express written approval of the Village. Notwithstanding anything herein to the contrary, the Village may not delegate its obligation hereunder or transfer any interest in the Property without the express written approval of DeVry.

14. ***No Personal Liability of Officials of Village:*** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the Mayor, Village Council member, Village Manager, any official, officer, partner, member, director, agent, employee or attorney of the Village or DeVry, in his or her individual capacity, and no official, officer, partner, member, director, agent, employee or attorney of the Village or DeVry shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.

15. ***Repealer:*** To the extent that any ordinance, resolution, rule, order or provision of the Village's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.

16. ***Term:*** This Agreement shall remain in full force and effect for fifteen years from the date of this Agreement.

17. ***Municipal Limitations:*** All municipal commitments are limited to the extent required by law.

18. ***Effectiveness:*** The Effective Date for this Agreement shall be the day on which this Agreement is fully executed pursuant to a duly enacted Village ordinance authorizing the execution and adoption of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

VILLAGE OF DOWNERS GROVE, an Illinois municipal corporation

DEVRY INCORPORATED, an Illinois corporation

By: Mayor

By: President

ATTEST:

ATTEST:

By: Village Clerk

By:

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