

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
NOVEMBER 5, 2013 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Ordinances and Resolutions Regarding Sheltered Care Facility at 4200-4240 Lacey Road	✓ Resolution ✓ Ordinance Motion Discussion Only	Tom Dabareiner, AICP Community Development Director

SYNOPSIS

- An ordinance has been prepared to approve a zoning ordinance map amendment to rezone a portion of the subject property from M-1 Light Manufacturing to R-2 Single Family Residence.
- A resolution has been prepared to permit a final plat of subdivision to consolidate three lots into one lot of record for the subject properties at 4200 – 4240 Lacey Road.
- A special use ordinance has been prepared for a sheltered care facility at 4200 – 4240 Lacey Road.
- A resolution has been prepared authorizing execution of an agreement between the Village of Downers Grove, Delta Development Downers Grove LLC and Downers Grove SLF, LLC.

STRATEGIC PLAN ALIGNMENT

The goals for 2011-2018 identified *Strong, Diverse Local Economy*.

FISCAL IMPACT

N/A

UPDATE & RECOMMENDATION

This item was discussed at the October 15, 2013 Village Council meeting. Staff recommends approval on the November 5, 2013 Active Agenda.

BACKGROUND

The petitioner is proposing to construct a 97,244 square foot, three-story, 120 unit sheltered care facility (Supportive Living Facility) for senior citizens located at 4200 – 4240 Lacey Road, on the west side of Lacey Road, approximately 330 feet north of Ogden Avenue.

This petition requires several actions:

- A zoning ordinance map amendment to rezone a portion of the property from M-1, Light Manufacturing to R-2, Single Family Residential,
- A plat of subdivision to consolidate three parcels into a single lot of record and
- A special use to permit a sheltered care facility for senior citizens in the R-2, Single Family Residence district.
- A resolution authorizing execution of an agreement between the Village of Downers Grove, Delta Development Downers Grove LLC and Downers Grove SLF, LLC.

The property currently consists of three lots of record: a northern lot with a single family home, a vacant wooded lot and a residentially zoned lot occupied by an excavation contractor. A court order (93 MR 0242) permits the excavation contractor's office to be located on this site. Should the proposed development be approved, the Village and petitioner will together pursue a petition for agreed order to rescind the court order for the portion of the proposed development that is bound by the court order.

Agreement to Rescind Consent Decree

The Village will enter into an agreement with Delta Development, LLC and Downer Grove SLF, LLC to provide for timely construction of the supportive living facility and rescind the 1993 Consent Decree that currently encumbers the land upon which the proposed supportive living facility is to be built. The agreement also provides that the Village will waive any permit and plan review fees associated with the construction of the facility, provided that the fees are not out-of-pocket costs to the Village. Additionally, the Village will be waiving its portion of the recapture fees owed to the Village pursuant to a 1998 recapture agreement with the Sanitary District in connection with the construction of the sanitary sewer at Lacey Road and Ogden Avenue.

Site and Subdivision

The building would be oriented north-south within the center of the site and will be alarmed and sprinkled in conformance with Village code requirements. The building will be primarily clad with a fiber cement cladding system with stone accents. The building will be three stories on the east, south and west elevations while a walk-out basement on the north will create a four-story north façade. The primary building entrance will be on the east façade facing Lacey Road. All service entries will be on the west façade.

Access to the site from Lacey Road will be through two entrances, the southern one of which lines up with Janet Street. A drive aisle extends around the east, south and west sides of the building and ends in a hammerhead at the northwest corner of the building. The hammerhead provides emergency vehicle access to the north façade of the building.

Site improvements include a stormwater detention basin and vegetative swales to capture on-site stormwater. All off-site stormwater that currently flows through the site will be bypassed around the facility. The petitioner will be responsible for public improvements, including the installation of a sidewalk adjacent to the property, a fee-in-lieu for 17 parkway trees and improving Lacey Road to a 24-foot wide edge-to-edge pavement along the entire length of the subject property. The proposed development meets all bulk requirements of the R-2 zoning district and those requirements specifically noted in Section 28.1013 of the Zoning Ordinance for sheltered care facilities.

The proposed Lacey Road improvements, sidewalk installation and parkway tree donations are consistent with the public improvement requirements of the Subdivision Ordinance. The plat of subdivision to consolidate the three lots of record into a single lot of record is consistent with the lot width, depth and area requirements of both the Subdivision and Zoning Ordinances as shown in the table below:

4200 - 4240 Lacey Road	Lot Width		Lot Depth		Lot Area	
	Required	Proposed	Required	Proposed	Required	Proposed
Lot 1	85 feet	651 feet (No change)	140 feet	270 feet (No change)	5 ac	5.77 ac (251,341 sq. ft.) (No change)

The petitioner undertook a traffic study and found that the proposed use will not significantly impact future traffic conditions along Lacey Road. It is anticipated that due to the close proximity of the site to Ogden Avenue the majority of traffic will use Lacey Road and avoid the adjacent street network which does not lend itself to cut-through traffic. Additionally, the expected increase in traffic at the intersection of Lacey Road and Ogden Avenue did not warrant improvements to this intersection.

Comprehensive Plan

The Comprehensive Plan designates the entire property as Corridor Commercial and calls for the creation of additional senior housing facilities. The proposed sheltered care facility is consistent with the Corridor Commercial designation as the use would serve a dual role by serving the needs of local residents while providing services to the larger region as noted in the Corridor Commercial description. Additionally, the sheltered care facility will provide housing opportunities for senior citizens.

The Comprehensive Plan also identifies the center parcel of the project and adjacent properties to the west as a catalyst site that could be developed in an automobile context. However, the Comprehensive Plan recommendation does not take into account the significant grade changes which would make a comprehensive redevelopment of the entire site difficult. The proposed sheltered care facility could be considered a catalytic type improvement to the neighborhood as it brings stability and may lead to additional investment in the neighborhood. The proposed development meets the goals and intent of the Comprehensive Plan.

The Plan Commission considered the petition at their August 5, 2013 meeting. At the Plan Commission meeting, supportive comments were offered along with other concerns, as noted below:

- The size of the building. As shown above, the building meets all Zoning Ordinance bulk requirements for the R-2, Single Family Residential zoning district and those additional bulk requirements for a sheltered care facility.
- A preference to see single family homes on the subject site. Section 28.504 of the Zoning Ordinance notes a sheltered care facility is a permitted Special Use in the R-2 zoning district.
- An increase in traffic along Lacey Road and at the intersection of Lacey Road and Ogden Avenue. The traffic study noted that the increase of traffic due to the development will not significantly impact Lacey Road or the adjacent street network. Additionally, the level of service currently experienced at the Lacey Road and Ogden Avenue intersection will remain in an acceptable level of service where a local street intersects with an arterial street.
- The loss of an open wooded space. The petitioner has included a landscape plan which provides for parkway trees and interior and perimeter site landscaping.

The Plan Commission found that the proposed sheltered care facility:

- Is compatible with the Comprehensive Plan.
- Meets the standards for approval of a Zoning Ordinance Map Amendment in Section 28.1702 of the Zoning Ordinance.
- Meets and exceeds the minimum lot dimension standards for a Plat of Subdivision in Sections 28.1103(b) and 28.1104(b) of the Zoning Ordinance and Sections 20.101 and 20.301(b) of the Subdivision Ordinance.
- Meets the standards of approval for a Special Use in Section 28.1902 of the Zoning Ordinance.

Based on its findings, the Plan Commission unanimously recommended approval of the Zoning Ordinance Map Amendment, Plat of Subdivision and Special Use request. Staff concurs with the Plan Commission recommendations.

ATTACHMENTS

Aerial Map

Ordinances

Resolution Authorizing Final Plat of Subdivision

Staff Report with attachments dated August 5, 2013

Draft Minutes of the Plan Commission Hearing dated August 5, 2013

State of Illinois site approval letter

Resolution Authorizing Agreement with Delta Development and Downers Grove SLF Agreement

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney **DATE:** November 5, 2013
(Name)

RECOMMENDATION FROM: _____ **FILE REF:** PC-17-13
(Board or Department)

NATURE OF ACTION:

- ☐ Ordinance
- ☒ Resolution
- ☐ Motion
- ☐ Other

STEPS NEEDED TO IMPLEMENT ACTION:

Motion to Adopt "A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE, DELTA DEVELOPMENT OF DOWNERS GROVE, LLC AND DOWNERS GROVE SLF, LLC", as presented.

SUMMARY OF ITEM:

Adoption of this resolution shall authorize execution of an agreement between the Village, Delta Development and Downers Grove SLF.

RECORD OF ACTION TAKEN:

RESOLUTION NO.

**A RESOLUTION AUTHORIZING EXECUTION OF AN
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
DELTA DEVELOPMENT OF DOWNERS GROVE, LLC
AND DOWNERS GROVE SLF, LLC**

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”), Delta Development of Downers Grove, LLC (hereinafter referred to as “Delta”) and Downers Grove SLF, LLC (hereinafter referred to as “DG SLF”), for certain economic incentives for the construction of a senior living facility, 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

**AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
DELTA DEVELOPMENT OF DOWNERS GROVE, LLC AND DOWNERS GROVE SLF, LLC**

THIS AGREEMENT (this "Agreement"), is made and entered into as of the ____ day of November, 2013 ("Agreement Date") by and between the **VILLAGE OF DOWNERS GROVE, ILLINOIS**, an Illinois municipal home rule corporation, located in DuPage County, Illinois (the "Village"), **DELTA DEVELOPMENT OF DOWNERS GROVE, LLC**, an Illinois limited liability corporation (hereinafter referred to as "Delta") and **DOWNERS GROVE SLF, LLC** (hereinafter referred to as "DG SLF").

R E C I T A L S

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; and

WHEREAS, DG SLF is the contract purchaser for the property at 4200 Lacey Road, Downers Grove; and

WHEREAS, Delta and DG SLF are planning on constructing and operating a 120 unit support living facility (the "SLF") on the Property; and

WHEREAS, the Village has determined that it is desirable and in the Village's best interests to offer certain economic incentives to Delta and DG SLF 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 authorized representatives of Delta and DG SLF for consideration and review, which authorized representatives have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon Delta and DG SLF according to the terms hereof, and any and all action of Delta and DG SLF 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, it is hereby agreed 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 Delta and DG SLF 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:

"Affiliate" means any person or entity that, directly or indirectly, controls, is controlled by or is under common control with Delta and DG SLF. For purposes of this definition, "control" means possessing the power to direct or cause the direction of the management and policies of the entity ownership of a majority of the voting interests of the entity.

"Agreement" means this 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.

"Day" means a calendar day.

"Party" means the Village, Delta and/or DG SLF 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 SLF on the Property.

"Property" means the approximately 120 unit supportive living facility located within the Village at 4200 Lacey Road.

"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; and
 - (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.

"Village Council" means the Mayor and Commissioners elected by the residents of the Village, as it may exist from time to time.

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. Delta and DG SLF are 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 Delta or DG SLF in a different manner, Delta hereby designates Michael Fiandaca and DG SLF hereby designates Michael Fiandaca as the 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 Delta or DG SLF and with the effect of binding Delta or DG SLF in that connection (each such individual being an "Authorized Representative"). Delta and DG SLF shall have the right to change their Authorized Representatives by providing the Village with written notice of such change, which notice shall be sent in accordance with Article Eight, Paragraph 4.

ARTICLE FOUR **IMPLEMENTATION OF PROJECT**

The Village, Delta and DG SLF agree to cooperate in implementing the Project in accordance with the respective obligations set forth in this Agreement.

ARTICLE FIVE
VILLAGE'S OBLIGATIONS

1. ***Village Cooperation:*** The Village agrees to cooperate with Delta and DG SLF in its attempts to obtain all necessary approvals for the Project and its operations therein from any governmental or quasi-governmental entity other than the Village. The Village shall duly review and consider any application for permits filed by Delta and DG SLF in conjunction with this Agreement.

2. ***Waiver of Permit Fees:*** The Village agrees to waive One Hundred Percent (100%) of permit and plan review fees associated with the construction of the Project (the "Fee Waiver"). It is agreed that the Fee Waiver shall not include any fees for outside consultants, experts or any other out-of-pocket expenses incurred by the Village. Additionally, the Village shall cooperate with Delta and DG SLF in implementing the terms and conditions of this Agreement.

3. ***Waiver of Recapture Fees:*** The Village agrees to waive the Village's portion of the recapture fees due to the Village and Sanitary District in connection with the construction of the Project pursuant to the recapture agreement dated January 20, 1998 and recorded as Document Number R1998-119106.

ARTICLE SIX
DELTA AND DG SLF OBLIGATIONS

1. ***Compliance with Village Ordinances:*** Delta and DG SLF shall be in material compliance with all terms and conditions of any and all Village Ordinances and all other terms and conditions of this Agreement. The Village shall not unreasonably withhold the issuance of any permits or payments.

2. ***Commitment to Cooperate with Vacation of Consent Decree:*** Delta and DG SLF shall cooperate with the Village in securing an Agreed Order to Vacate the Consent Decree dated October 26, 1993 as it relates to the property at 4200 Lacey Road, Downers Grove. It is

agreed that prior to the issuance of any building permit(s) for the Project, the Agreed Order Vacating the Consent Decree shall be issued.

3. *Construction of Project:* Delta and DG SLF 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:* Delta and DG SLF and their 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, Delta and DG SLF 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 **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

2. ***Jurisdiction and Choice of Law:*** This Agreement shall be governed by and construed in accordance with 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.

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 Delta shall be sent to:

Michael Fiandaca
8 South Michigan Avenue
31st Floor
Chicago, Illinois 60603

All notices to DG SLF shall be sent to:

Theodore Stec
Downers Grove SLF, LLC
4200 Lacey Road
Downers Grove, IL 60515

4. *Successors & Assigns:* This Agreement and the covenants, rights, benefits and obligations hereunder shall be binding upon and inure to the benefit of the Village, Delta and DG SLF, and their respective successors and assigns, provided, however, that, Delta and DG SLF may not assign their rights under this Agreement without the express written approval of the Village.

5. *Further Assistance and Corrective Instruments:* The Village, Delta and DG SLF 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 Village, Delta and DG SLF.

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. *Entire Contract and Amendments:* This Agreement (together with the exhibits attached hereto) is the entire contract between the Village, Delta and DG SLF relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings

and agreements, written or oral, between the Village, Delta and DG SLF, and may not be modified or amended except by a written instrument executed by the Village, Delta or DG SLF.

11. **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, Delta and DG SLF, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the Village, Delta or DG SLF, nor shall any provision give any third parties any rights of subrogation or action over or against either the Village, Delta or DG SLF. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

12. **No Personal Liability of Officials of Village, Delta or DG SLF:** 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, Delta or DG SLF, in his or her individual capacity, and no official, officer, partner, member, director, agent, employee or attorney of the Village, Delta or DG SLF 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.

13. **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.

14. **Term:** This Agreement shall remain in full force and effect upon the effective date stated herein.

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

16. **Effectiveness:** The Effective Date for this Agreement shall be the day on which this Agreement is fully executed by the Village, Delta or DG SLF.

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

By: Mayor

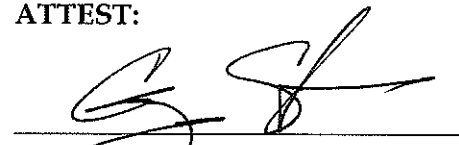
ATTEST:

By: Village Clerk

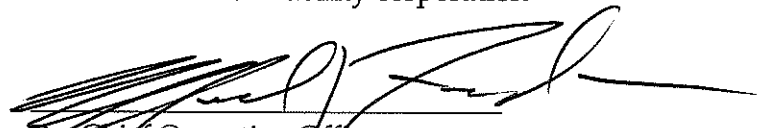
DELTA DEVELOPMENT OF DOWNERS
GROVE, LLC
an Illinois limited liability corporation


By: Chief Operating Officer


ATTEST:


By: Assistant Secretary

DOWNERS GROVE SLF, LLC
an Illinois limited liability corporation


By: Chief Operating Officer

ATTEST:


By: Assistant Secretary

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