

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
AUGUST 19, 2014 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Ordinance Authorizing Issuance of Multifamily Housing Bonds and Resolution authorizing an Agreement between the Village and Downers Grove Supportive Living Facility, LLC and Downers Grove SLF, JV, LLC	<ul style="list-style-type: none"> ✓ Resolution ✓ Ordinance Motion Discussion Only 	Enza Petrarca, Village Attorney

SYNOPSIS

An ordinance has been prepared authorizing issuance of multifamily housing revenue bonds in an amount not to exceed \$20,114,920 and a resolution has been prepared authorizing an agreement between the Village of Downers Grove and Downers Grove Supportive Living Facility, LLC and Downers Grove SLF, JV, 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 August 12, 2014 Village Council meeting. Staff recommends approval on the August 19, 2014 Active Agenda.

BACKGROUND

In December of 2013 the Village Council approved a petition authorizing the construction of a 120 unit sheltered care facility (Supportive Living Facility) for senior citizens located at 4200 – 4240 Lacey Road. Also in December of 2013, pursuant to the Tax Reform Act of 1986, the Village authorized the issuance of tax-exempt economic development revenue bonds, also known as private activity bonds for this project. The bonds were to be used by the developer for payment and reimbursement of the costs of acquiring, constructing and equipping the SLF.

While conducting the due diligence for issuance of said bonds, the financing team discovered an issue with one of the owners of the borrower that would have made the sale of public bonds difficult. Accordingly, a new entity, Downers Grove Supportive Living Facility, LLC, has been formed to act as the Borrower. Since there is a new entity acting as the borrower, Bond Counsel has recommended adopting a new ordinance and a new TEFRA hearing. The final structure of these new bonds will be simpler than the previous as it involves a direct purchase of the bonds by Heartland Bank, rather than a public offering.

The Bond Ordinance authorizes the Village to issue Multifamily Housing Revenue Bonds in an amount not to exceed \$20,114,920 (Downers Grove SLF Project), the proceeds of which will be loaned to Downers Grove Supportive Living Facility, LLC. The Bonds are special, limited obligations of the Village and the principal, redemption premiums, if any, and interest on the Bonds are payable **solely** from revenues and income derived from a Loan Agreement entered into with the Borrower. The Bonds and the obligation to pay the premium, if any, and interest are not considered indebtedness or an obligation of the Village and default will not affect the Village's credit rating.

Attached to the Ordinance are drafts of the following documents:

1. The Loan Agreement dated as of August 1, 2014, between the Village and the Borrower (the "Loan Agreement");
2. The Indenture of Trust dated as of August 1, 2014 (the "Indenture"), between the Village and the Trustee, setting forth terms, conditions and security requirements for the proposed bond issue and containing the form of the Bonds; and
3. The Regulatory Agreement dated as of August 1, 2014 (the "Regulatory Agreement") among the Village, the Borrower and the Trustee.

Pursuant to the Loan Agreement between the Village and the Borrower, the Borrower will agree to release the Village and indemnify, hold harmless and defend the Issuer Indemnified Parties from and against any and all losses, claims, damages, liabilities and expenses relating to the bonds and the project. The indemnification shall extend to and include, without limitation, all reasonable costs, counsel fees, expenses and liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except to the extent such damages are caused by the gross negligence or willful misconduct of the Village. The full language on the indemnification is found in Section 6.6 (Page 27) of the Loan Agreement.

Also, since a new entity has been formed a new development agreement between the Village and Downers Grove SLF, JV, LLC (the developer) and Downers Grove Supportive Living Facility, LLC (the borrower) must be executed. The terms of this agreement essentially remain the same as the previous agreement executed by the Village in December of 2013. The parties agree to 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.

ATTACHMENTS

Ordinance authorizing bonds
Bond Agreements
Resolution
Agreement

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney **DATE:** August 19, 2014
(Name)

RECOMMENDATION FROM: _____ **FILE REF:** _____
(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, DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC AND DOWNERS GROVE SLF, JV, LLC ", as presented.



SUMMARY OF ITEM:

Adoption of this resolution shall authorize execution of an agreement between the Village, Downers Grove Supportive Living Facility, LLC and Downers Grove SLF, JV, LLC.

RECORD OF ACTION TAKEN:

RESOLUTION NO.

**A RESOLUTION AUTHORIZING EXECUTION OF AN
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE,
DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC
AND DOWNERS GROVE SLF, JV, 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”), Downers Grove Supportive Living Facility, LLC (hereinafter referred to as “Supportive Living Facility”) and Downers Grove SLF, JV, 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
DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC AND DOWNERS GROVE
SLF, JV, LLC**

THIS AGREEMENT (this "Agreement"), is made and entered into as of the ____ day of August, 2014 ("Agreement Date") by and between the **VILLAGE OF DOWNERS GROVE, ILLINOIS**, an Illinois municipal home rule corporation, located in DuPage County, Illinois (the "Village"), **DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC**, an Illinois limited liability company (hereinafter referred to as "Supportive Living Facility") and **DOWNERS GROVE SLF, JV, LLC** (hereinafter referred to as "DG SLF"), an Illinois limited liability company.

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; and

WHEREAS, Supportive Living Facility is the contract purchaser for the property at 4200 Lacey Road, Downers Grove (the "Property"); and

WHEREAS, Supportive Living Facility 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 Supportive Living Facility 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 Supportive Living Facility 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 Supportive Living Facility and DG SLF according to the terms hereof, and any and all action of Supportive Living Facility 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 Supportive Living Facility 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 Supportive Living Facility 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, Supportive Living Facility 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. Supportive Living Facility 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 Supportive Living Facility or DG SLF in a different manner, Supportive Living Facility hereby designates James Martell and DG SLF hereby designates James Martell as the authorized representative 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 Supportive Living Facility or DG SLF and with the effect of binding Supportive Living Facility or DG SLF in that connection (each such individual being an "Authorized Representative"). Supportive Living Facility 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, Supportive Living Facility 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 Supportive Living Facility 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 Supportive Living Facility 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 Supportive Living Facility 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
SUPPORTIVE LIVING FACILITY AND DG SLF OBLIGATIONS

1. ***Compliance with Village Ordinances:*** Supportive Living Facility 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:*** Supportive Living Facility 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 and the current owner and/or occupant of the Property shall have completely vacated the property.

3. ***Construction of Project:*** Supportive Living Facility 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:*** Supportive Living Facility 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, Supportive Living Facility 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.

6. **Contingency:** All of the obligations of the Supportive Living Facility and DG SLF under the terms of this Agreement are contingent upon Supportive Living Facility consummating the purchase of the real estate commonly known as 4200 Lacey Road, Downers Grove, Illinois.

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 Supportive Living Facility shall be sent to:

James Martell
Downers Grove Supportive Living Facility, LLC
225 W. Washington Street, Suite. 1550
Chicago, IL 60606

All notices to DG SLF shall be sent to:

James Martell
Downers Grove SLF, LLC
225 W. Washington Street, Suite. 1550
Chicago, IL 60606

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, Supportive Living Facility and DG SLF, and their respective successors and assigns, provided, however, that, Supportive Living Facility 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, Supportive Living Facility 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, Supportive Living Facility 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, Supportive Living Facility and DG SLF relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Village, Supportive Living Facility and DG SLF, and may not be modified or amended except by a written instrument executed by the Village, Supportive Living Facility 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, Supportive Living Facility 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, Supportive Living Facility or DG SLF, nor shall any provision give any third parties any rights of subrogation or action over or against either the Village, Supportive Living Facility 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, Supportive Living Facility 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, Supportive Living Facility or DG SLF, in his or her individual capacity, and no official, officer, partner, member, director, agent, employee or attorney of the Village, Supportive Living Facility 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. This Agreement shall render null and void the Agreement between the Village of Downers Grove, Downers Grove SLF, LLC and Delta Development of Downers Grove, LLC dated November 5, 2013.

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, Supportive Living Facility 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

DOWNERS GROVE SUPPORTIVE LIVING FACILITY, LLC
an Illinois limited liability company

By: _____


ATTEST:

By: _____


DOWNERS GROVE SLF, JV, LLC
an Illinois limited liability company

By: _____


ATTEST:

By: _____


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