

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
NOVEMBER 4, 2014 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Resolution Authorizing Economic Incentive Agreement with American Access Casualty Co.	✓ Resolution Ordinance Motion Discussion Only	Dave Fieldman Village Manager

SYNOPSIS

A resolution has been prepared authorizing an Economic Development Incentive Agreement between the Village of Downers Grove and American Access Casualty Co. for the property at 2211 Butterfield Road.

STRATEGIC PLAN ALIGNMENT

The goals for 2011-2018 include *Strong, Diverse Local Economy* and *Steward of Financial and Environmental Sustainability*.

FISCAL IMPACT

American Access Casualty Co. will be relocating their corporate headquarters, including their 200 employees to Downers Grove. The company and its employees will buy goods and services from businesses in Downers Grove, including local hotels and restaurants. The Village will provide an incentive to American Access Casualty Co. in the form of a 50% reduction in building permit fees, estimated to be approximately \$20,000.

RECOMMENDATION

Approval on the November 11, 2014 consent agenda.

BACKGROUND

American Access Casualty Co. will be moving its corporate headquarters to Downers Grove. The company will purchase and renovate the building at 2211 Butterfield Road. The building is currently vacant. Since 1999, American Access Casualty Co. has been a leader in providing automobile insurance products. American Access Casualty Co. is a privately held company that does business in five states.

The economic incentive agreement includes the following key terms:

- American Access Casualty Co. shall move their corporate headquarters to 2211 Butterfield Road in Downers Grove.
- American Access Casualty Co. shall comply with all Village ordinances and applicable laws.
- American Access Casualty Co. shall diligently pursue obtaining all required permits for the construction of the subject property.
- American Access Casualty Co. shall begin its corporate operations on the property by September 1, 2015.
- American Access Casualty Co. shall continue operations at the property for a minimum of five years. If American Access Casualty Co. fails to do so, it agrees to pay the Village the total amount of the fee waiver.

- The Village of Downers Grove agrees to waive fifty percent of permit fees associated with the initial build out of the project.

The attraction of corporate headquarters projects to Downers Grove is an important part of our local economy. The Downers Grove Economic Development Corporation strongly supports this economic development agreement.

ATTACHMENTS

Resolution

Economic Incentive Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION
OF AN INCENTIVE AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE AND
AMERICAN ACCESS CASUALTY COMPANY**

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 American Access Casualty Company (“American Access”), for the construction and operation of corporate headquarters 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 AMERICAN ACCESS CASUALTY COMPANY**

This Incentive Agreement (this "Agreement"), is made and entered into as of the ____ day of November, 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"), and **AMERICAN ACCESS CASUALTY COMPANY**, an Illinois corporation (hereinafter referred to as "American Access"). (The Village and American Access 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; and

WHEREAS, American Access has entered into or will enter into a purchase agreement for the property located at 2211 Butterfield Road, Downers Grove; and

WHEREAS, American Access is planning on operating its corporate headquarters (the "Corporate Operations") 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 American Access 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 American Access 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 American Access according to the terms hereof, and any and all action of American Access 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 American Access 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 American Access. 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 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.

“Day” means a calendar day.

“Party” means the Village and/or American Access 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 American Access facility in the Property.

“Property” means the approximately 53,000 square feet of office space purchased and utilized for the existing operation of American Access located within the Village at 2211 Butterfield Road, Downers Grove, Illinois.

“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. American Access 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 American Access in a different manner, American Access hereby designates Chuck LaMantia as its 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 American Access and with the effect of binding American Access in that connection. American Access 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 Eight, Paragraph 4.

ARTICLE FOUR **IMPLEMENTATION OF PROJECT**

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

ARTICLE FIVE **VILLAGE'S OBLIGATIONS**

1. ***Village Cooperation:*** The Village agrees to cooperate with American Access 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 American Access in conjunction with this Agreement.

2. ***Waiver of Permit Fees:*** The Village agrees to waive Fifty Percent (50%) of permit fees associated with the initial buildout of the Project (the "Fee Waiver"). Additionally, the Village shall cooperate with American Access in implementing the terms and conditions of this Agreement.

ARTICLE SIX **AMERICAN ACCESS OBLIGATIONS**

1. ***Compliance with Village Ordinances:*** No payments or waiver shall be made until and unless American Access is 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.

2. ***Commitment to Continue Operation:*** The parties agree that the payment is based in part upon a commitment by American Access to continue its Corporate Operations on the Property. To that end, American Access agrees to operate its Corporate Operations on the Property for a minimum period of five (5) years. If at any time during the term of this Agreement, American Access, or a successor, fails to operate its Corporate Operations at the Property in accordance with this Section, then the Village shall be released and discharged from any further obligation to make payments under this Agreement and American Access hereby agrees to pay to the Village the total amount of the Fee Waiver.

3. ***Construction of Project:*** American Access 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. American Access agrees to begin its Corporate Operations on the Property no later than September 1, 2015.

4. ***Compliance with Applicable Laws:*** American Access 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, American Access 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 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 American Access shall be sent to:

American Access Casualty Company
Attn: Chuck LaMantia

1S 450 Summit Avenue, Suite 230
Oakbrook Terrace, IL 60181

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, provided, however, that, American Access may not assign its rights under this Agreement without the express written approval of the Village.

5. ***Further Assistance and Corrective Instruments:*** The Village and American Access 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. ***Entire Contract and Amendments:*** This Agreement (together with the exhibits attached hereto) is the entire contract between the Village and American Access relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written

or oral, between the Village and American Access, and may not be modified or amended except by a written instrument executed by the Parties hereto.

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

12. **No Personal Liability of Officials of Village or American Access:** 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 American Access, in his or her individual capacity, and no official, officer, partner, member, director, agent, employee or attorney of the Village or American Access 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 for five (5) years after the date upon which American Access begins to operate its Corporate Operation from the Property.

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 both the Village and American Access.

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

AMERICAN ACCESS CASUALTY COMPANY,
an Illinois corporation

By: Mayor

By: *Charles A. Lallanston*
Chief Operating Officer

ATTEST:

ATTEST:

By: Village Clerk

By: *Brian Terrell*
Administrative Assistant