

**PROPOSED SUBSTITUTE FILE 19-3122**

**(Finance Committee Meeting May 22, 2019)**

**BOARD TRANSMITTAL**

**Bureau of Finance and the Bureau of Economic Development**

**Joint Ordinance**

**April 25, 2019**

Transmitting a Communication, dated April 25, 2019

AMMAR M. RIZKI, CHIEF FINANCIAL OFFICER of the BUREAU OF FINANCE and

JAY STEWART, BUREAU CHIEF of the BUREAU OF ECONOMIC DEVELOPMENT

The Bureaus of Finance and Economic Development respectfully submit this joint ordinance to authorize the County to issue tax-exempt private activity bonds for the purpose of financing costs of the construction and equipping of Plum Creek of Markham SLF (“Plum Creek”), which will serve low-income seniors in the County, including capitalized interest on such bonds, a debt service reserve fund and costs of issuing such bonds, and reimbursing certain costs already incurred. The County Board of Commissioners previously declared an intent to reimburse costs already incurred with respect to Plum Creek pursuant to Ordinance 18-5016, adopted July 25, 2018. Such bonds are limited obligation bonds that do not constitute debt or an obligation of the County for constitutional or statutory purposes.

Markham Supportive Care, L.P., (“Borrower”), an affiliate of Plum Creek Communities, LLC has proposed to undertake the construction and equipping of the 100-unit affordable senior housing development known as Plum Creek of Markham SLF, in Markham, Illinois. The bonds will be sold in a public offering underwritten by Dougherty & Company LLC ~~and Estrada Hinojosa & Company, Inc.~~

The ordinance authorizes the issuance of bonds and grants authority to either the President, the Chief Financial Officer, or both, to negotiate the terms of the bonds, subject to financial parameters specified in the ordinance to negotiate and execute a trust indenture, a loan agreement, a bond purchase agreement and a land use restriction agreement, forms of which are also being presented to the board, and to prepare and distribute a preliminary and a final limited offering memorandum or official statement, each in the form similar to that previously used by the County in similar transactions, and to negotiate and execute other agreements and instruments necessary to issue the bonds.

The Bureaus respectfully request approval of this ordinance to allow the issuance of bonds to finance the Plum Creek project, and to reimburse the Borrower, or an affiliated entity, for any costs incurred on Plum Creek up to 60 days prior to the adoption of Ordinance 18-5016, as is

permitted by federal tax law. The approval of this request by the Honorable Body will give the Borrower the federally required authority to secure additional financing for the project.

Fiscal Impact: None

(account ##)

### **PROPOSED JOINT ORDINANCE**

**An Ordinance authorizing the County to issue its tax-exempt limited obligation revenue bonds in an amount not to exceed \$14,000,000 to finance the Plum Creek of Markham SLF Project, to execute and deliver certain agreements in connection therewith, and certain other matters.**

**WHEREAS**, pursuant to Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois (the “State”), The County of Cook, Illinois (the “County”) is a home rule unit of local government and as such may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, as pertains to County government and affairs, and as in the interests of the public health, safety, and welfare of the inhabitants of the County, it is necessary, prudent, or advisable that the County promote affordable housing initiatives for the benefit of the County and its residents, especially with respect to seniors and other persons of low and moderate income, by the issuance of limited obligation revenue bonds to finance such initiatives; and

**WHEREAS** the Board of Commissioners of the County (the “Board”) has not adopted any ordinance, resolution, order or motion which restricts or limits the exercise of the home rule powers of the County in the issuance of limited obligation revenue bonds for the purposes described above or which provides any special rules or procedures for the exercise of such powers; and

**WHEREAS**, pursuant to the law of the United States and the State, the County may, by securing certain volume cap allocated to the State by the United States government, issue limited obligation revenue bonds to finance the construction and rehabilitation of affordable housing, including rental housing, for persons of low and moderate income within the County; and

**WHEREAS**, revenue bonds associated with volume cap are limited obligation bonds that do not constitute a debt or obligation of the County for constitutional or statutory purposes; and

**WHEREAS**, on March 8, 2017, the Board authorized the President of the County Board (the “President”), through Resolution 17-1901, to secure from the State the County’s full portion of volume cap for calendar year 2017, on May 16, 2018, the Board authorized the President, through Resolution 18-3220, to secure from the State the County’s full portion of volume cap for calendar year 2018, and the County has taken the necessary action to carry forward the unused portions of its volume cap for such years; and

**WHEREAS**, Markham Supportive Care, L.P., an Illinois limited partnership (the “Borrower”) has proposed to undertake and complete the construction and equipping of a senior citizen low-income housing development, entailing the construction and equipping of approximately one hundred (100) residential dwelling units and certain common areas, including, but not limited to a kitchen and dining facilities, multipurpose rooms, a library, parking, sidewalks and landscaping, all located at the corner of 155<sup>th</sup> Street and Turner Avenue in Markham, Illinois in the County and currently known as the Plum Creek of Markham SLF Project (the “Project”); and

**WHEREAS**, the Borrower has requested that the County issue, from its available volume cap, multi-family housing revenue bonds, notes or other indebtedness payable solely by the Borrower, for the purpose of financing all or a portion of the Project costs, including but not limited to a debt service reserve fund for the Bonds, the costs incurred in connection with the issuance of the Bonds and capitalized interest; and

**WHEREAS**, in furtherance of the purposes of promoting affordable rental housing initiatives for the benefit of the County and its residents, especially with respect to seniors and other persons of low and moderate income, the County wishes to finance all or a portion of the costs of the Project, and to pay the costs of issuance of such revenue bonds of the County, by the sale and issuance of its revenue bonds, and by authorizing such actions as might be required to implement such stated intentions; and

**WHEREAS**, pursuant to and in accordance with its powers as a home rule unit of local government the County intends and is prepared to issue and sell its Multifamily Housing Revenue Bonds, Series 2019 (Plum Creek of Markham SLF Project), in an aggregate principal amount not to exceed \$14,000,000 (the “Bonds”) to obtain funds to finance a portion of the cost of the Project, by making a loan (the “Loan”) to the Borrower, all under and in accordance with the Constitution and the laws of the State of Illinois; and

**WHEREAS**, it is intended that the interest on the Bonds will be excluded from gross income for federal income tax purposes; and

**WHEREAS**, pursuant to Ordinance 18-5016, approved July 25, 2018, the County declared its intent to reimburse certain eligible expenditures for the Project made prior to the issuance of the Bonds from the proceeds of the Bonds within the meaning of Section 1.150-2 of the Regulations of the United States Department of Treasury, 26 C.F.R. 1.150-2 (the “Treasury Regulations”);

**WHEREAS**, it is intended that the Bonds will be sold in a public offering by Dougherty & Company LLC ~~and Estrada Hinojosa & Company, Inc.~~ (the “Underwriter~~Underwriters~~”); and

**WHEREAS**, it is desirable and in the best interests of the County to authorize the execution and delivery of a Trust Indenture (the “Indenture”), by and between the County and US Bank National Association (the “Trustee”); and

**WHEREAS**, it is desirable and in the best interests of the County to authorize the execution and delivery of a Loan Agreement, by and between the County and the Borrower (the “Loan Agreement”); and

**WHEREAS**, it is desirable and in the best interests of the County to authorize the execution and delivery of a Land Use Restriction Agreement, by and among the County, the Trustee, and the Borrower (the “Land Use Agreement”); and

**WHEREAS**, it is desirable and in the best interests of the County to authorize the execution and delivery of a Tax Exemption Certificate and Agreement, by and among the County, the Trustee, and the Borrower (the “Tax Agreement”); and

**WHEREAS**, it is desirable and in the best interests of the County to authorize the execution and delivery of a Bond Purchase Agreement, by and among the County, the Underwriters, and the Borrower (the “Bond Purchase Agreement”); and

**WHEREAS**, it is desirable and in the best interests of the County to authorize the preparation and distribution of a preliminary limited offering memorandum or official statement (the “Preliminary Offering Document”) and a final limited offering memorandum or official statement (the “Offering Document”) in connection with the sale of the Bonds;

**WHEREAS**, the County has caused to be prepared for and presented (collectively, the “County Documents”) forms of the following documents which the County proposes to approve the terms of and enter into:

1. the Indenture (including therein the form of the Bonds); and
2. the Loan Agreement; and
3. the Land Use Agreement; and
4. the Bond Purchase Agreement.

**NOW, THEREFORE, BE IT ORDAINED, by the Board of Commissioners of the County of Cook, Illinois:**

**SECTION 1.** The above recitals are expressly incorporated in and made a part of this Ordinance as though fully set forth herein.

**SECTION 2.** The County hereby authorizes and approves the financing of the costs of the construction and equipping of the Project through the issuance of the Bonds in accordance with the terms of the Indenture, and hereby determines that the financing of the construction and equipping of the Project are in furtherance of the County’s public purposes.

**SECTION 3.** The County hereby authorizes the issuance of the Bonds and the sale thereof and the President or the Chief Financial Officer of the County (the “Chief Financial Officer”), or both, are hereby authorized to negotiate the final terms of the Bonds with the Borrower, such final terms to be incorporated into the Indenture; *provided*, however, that the aggregate principal

amount of the Bonds shall not exceed \$14,000,000, the interest rate or rates to be borne by the Bonds shall not exceed the interest rate of 6% per annum, the final maturity date of the Bonds shall not exceed the date which is 40 years after the date of issuance thereof and the Bonds shall be subject to redemption under the conditions specified in the Indenture at a redemption price not to exceed ~~105%~~100% of the principal amount thereof.

**SECTION 4.** The President or the Chief Financial Officer, or both, are hereby authorized to enter into the Indenture with the Trustee in substantially the same form now before the Board and attached hereto as Attachment A, and the form, terms and provisions of the Indenture are in all respects approved. The President or the Chief Financial Officer, or both, are each authorized, empowered and directed to execute, and, if required, the County Clerk is authorized, empowered and directed to attest and to affix the official seal of the County to, the Indenture in the name, for and on behalf of the County, and thereupon to cause the Indenture to be delivered to the Purchaser and the Borrower, such Indenture (as executed) to provide for the issuance of the Bonds and the use of such proceeds of the Bonds for the construction and equipping of the Project and to pay a portion of the costs of issuance of the Bonds, in the manner and with the effect therein provided, and such Indenture shall constitute an assignment and pledge for the security of the Bonds issued thereunder of the revenues and receipts to be received by the County thereunder and an assignment and pledge of the other right, title and interest of the County in and to the Loan Agreement, as described therein (with the exception of certain rights to receive certain payments, to indemnity and other rights as specified therein), such Indenture to be in substantially the same form now before the Board or with such changes and revisions therein as the officer executing the Indenture on behalf of the County shall approve, his or her execution thereof to constitute conclusive evidence of such approval of any and all changes or revisions therein from the form of the Indenture now before the Board. From and after the execution and delivery of the Indenture, the officers, employees and agents of the County are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Indenture as executed. The Indenture shall constitute, and hereby is made, a part of this Ordinance, and copies of the Indenture shall be placed in the official records of the County and shall be available for public inspection at the office of the County.

**SECTION 5.** The President or the Chief Financial Officer, or both, are hereby authorized to enter into the Loan Agreement with the Borrower in substantially the same form now before the Board and attached hereto as Attachment B, and the form, terms and provisions of the Loan Agreement are in all respects approved. The President or the Chief Financial Officer, or both, are each authorized, empowered and directed to execute, and, if required, the County Clerk is authorized, empowered and directed to attest and to affix the official seal of the County to, the Loan Agreement in the name, for and on behalf of the County, and thereupon to cause the Loan Agreement to be delivered to the Purchaser and the Borrower, such Loan Agreement (as executed) to provide for the loan of the proceeds of the Bonds to the Borrower and the use of such proceeds of the Bonds for the construction and equipping of the Project through the origination of the Loan and to pay a portion of the costs of issuance the Bonds, in the manner and with the effect therein provided, such Loan Agreement to be in substantially the same form now before the Board or with such changes and revisions therein as the officer executing the Loan

Agreement on behalf of the County shall approve, his or her execution thereof to constitute conclusive evidence of such approval of any and all changes or revisions therein from the form of the Loan Agreement now before the Board. From and after the execution and delivery of the Loan Agreement, the officers, employees and agents of the County are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Loan Agreement as executed. The Loan Agreement shall constitute, and hereby is made, a part of this Ordinance, and copies of the Loan Agreement shall be placed in the official records of the County and shall be available for public inspection at the office of the County.

**SECTION 6.** The President or the Chief Financial Officer, or both, are hereby authorized to enter into the Land Use Agreement with the Trustee and the Borrower in substantially the same form now before the Board and attached hereto as Attachment C. The form, terms and provisions of the Land Use Agreement are, in all respects approved. The President or the Chief Financial Officer, or both, are each authorized, empowered and directed to execute, and, if required, the County Clerk is authorized, empowered and directed to attest and to affix the official seal of the County to, the Land Use Agreement in the name, for and on behalf of the County, and thereupon to cause the Land Use Agreement to be delivered to the Purchaser and the Borrower, in substantially the same form as now before the Board or with such changes or revisions therein as the officer executing the Land Use Agreement on behalf of the County shall approve, his or her execution thereof to constitute conclusive evidence of his approval of any and all changes or revisions therein from the form of the Land Use Agreement now before the Board. From and after the execution and delivery of the Land Use Agreement, the officers, employees and agents of the County are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Land Use Agreement as executed. The Land Use Agreement shall constitute, and hereby is made, a part of this Ordinance, and a copy of the Land Use Agreement shall be placed in the official records of the County, and shall be available for public inspection at the office of the County.

**SECTION 7.** The President or the Chief Financial Officer, or both, are hereby authorized to enter into the Tax Agreement with the Trustee and the Borrower in substantially the form and content typically executed by the County for transactions of a nature similar to the financing of the Project. The form, terms and provisions of the Tax Agreement are, in all respects approved. The President or the Chief Financial Officer, or both, are each authorized, empowered and directed to execute, and, if required, the County Clerk is authorized, empowered and directed to attest and to affix the official seal of the County to, the Tax Agreement in the name, for and on behalf of the County, and thereupon to cause the Tax Agreement to be delivered to the Purchaser and the Borrower, his or her execution thereof to constitute conclusive evidence of his approval of the terms of the Tax Agreement. From and after the execution and delivery of the Tax Agreement, the officers, employees and agents of the County are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Tax Agreement as executed. The Tax Agreement shall constitute, and hereby is made, a part of this Ordinance, and a copy of the

Tax Agreement shall be placed in the official records of the County, and shall be available for public inspection at the office of the County.

**SECTION 8.** The President or the Chief Financial Officer, or both, are hereby authorized to enter into the Bond Purchase Agreement with the Underwriters and the Borrower in substantially the form and content now before the Board and attached hereto as Attachment D. The form, terms and provisions of the Bond Purchase Agreement are, in all respects approved. The President or the Chief Financial Officer, or both, are each authorized, empowered and directed to execute, and, if required, the County Clerk is authorized, empowered and directed to attest and to affix the official seal of the County to, the Bond Purchase Agreement in the name, for and on behalf of the County, and thereupon to cause the Bond Purchase Agreement to be delivered to the Purchaser and the Borrower, his or her execution thereof to constitute conclusive evidence of his approval of the terms of the Bond Purchase Agreement. From and after the execution and delivery of the Bond Purchase Agreement, the officers, employees and agents of the County are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Bond Purchase Agreement as executed. The Bond Purchase Agreement shall constitute, and hereby is made, a part of this Ordinance, and a copy of the Bond Purchase Agreement shall be placed in the official records of the County, and shall be available for public inspection at the office of the County.

**SECTION 9.** The preparation, use and distribution of the Preliminary Offering Document and the Offering Document relating to the sale and issuance of the Bonds are hereby authorized and approved in substantially the form previously used by the County for transactions of this type with such revisions as the President or the Chief Financial Officer shall determine are necessary or required in connection with the sale of the Bonds.

**SECTION 10.** The form of the Bonds contained in the Indenture now before the Board, subject to appropriate insertions and revisions in order to comply with the provisions of the Indenture (as executed and delivered) is hereby approved. The Bonds shall be executed in the name, for and on behalf of the County with the manual or facsimile signature of the President and attested with the manual or facsimile signature of the County Clerk and the official seal of the County shall be impressed or imprinted thereon.

**SECTION 11.** The President or the Chief Financial Officer, or both, are authorized and directed to assign up to \$14,000,000 in volume cap to the Bonds, representing unused and carried forward volume cap of the County from calendar years 2017 and 2018.

**SECTION 12.** The President, the Chief Financial Officer or any other officer, employee or agent of the County are authorized and directed to execute, attest, seal and deliver any and all documents and certificates, and to do any and all things deemed necessary to effect the issuance and sale of the Bonds and the execution and delivery of the Indenture, the Loan Agreement, the Land Use Agreement, the Tax Agreement, the Bond Purchase Agreement and such other instruments, and to perform the obligations and duties of the County hereunder and thereunder,

all as shall be necessary and desirable to carry out the intent and purposes of this Ordinance, including the preambles to this Ordinance.

**SECTION 13.** This Ordinance is consistent with the budgetary and financial circumstances of the County. No funds from sources other than the Bonds are or are reasonably expected to be, reserved, allocated on a long-term basis or otherwise set aside by the County for the Project costs to be paid from the proceeds of the Bonds.

**SECTION 14.** The President, or such person designated by him or her in writing (a “Public Hearing Officer”), is hereby authorized, empowered and directed to cause notice to the public of a public hearing on the plan of financing for the Project to be published, such notice to be published at a time and in a manner determined by the Public Hearing Officer to be appropriate and at least 7 days prior to the date on which such public hearing is to be held; and the Public Hearing Officer, or any officer, employee or agent of the County designated by the Public Hearing Officer, is further authorized, empowered and directed to hold the public hearing referred to in said notice.

**SECTION 15.** All acts of the County and the members, officers, agents and employees of the County that are in conformity with the intent and purposes of this Ordinance, whether heretofore or hereafter taken or done, be, and the same are hereby, in all respects, ratified, confirmed and approved.

**SECTION 16.** The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions of this Ordinance.

**SECTION 17.** All ordinances, resolutions, motions or orders, or parts thereof, in conflict with the provisions of this Ordinance, are to the extent of such conflict hereby repealed. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

[Execution Page Follows]



**SECTION 18.** This Ordinance shall be effective as of the date of its passage and approval.

Approved and adopted this \_\_\_\_ day of \_\_\_\_\_, 2019.

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TONI PRECKWINKLE, President  
Cook County Board of Commissioners

(SEAL)

Attest: \_\_\_\_\_  
KAREN A. YARBROUGH, County Clerk

**ATTACHMENT A  
FORM OF INDENTURE**

(see attached)

**ATTACHMENT B**  
**FORM OF LOAN AGREEMENT**

(see attached)

**ATTACHMENT C  
FORM OF LAND USE AGREEMENT**

(see attached)

**ATTACHMENT D**  
**FORM OF BOND PURCHASE AGREEMENT**

(see attached)