

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
MARCH 16, 2010 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Real Estate Contract For the Property Located at 5237 Benton Avenue	✓ Resolution Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

SYNOPSIS

Staff has prepared a resolution to authorize execution of a Real Estate Contract for the Property Located at 5237 Benton Avenue.

STRATEGIC PLAN ALIGNMENT

Five Year Plan and Goals identified *Top Quality Village Infrastructure and Facilities and Vibrant Major Commercial Corridors*.

FISCAL IMPACT

The FY2010 budget includes \$700,000 in the Stormwater Improvement Fund for the purchase of property within St. Joseph’s Creek North, Subwatershed J. The purchase price of the property is \$463,000.

RECOMMENDATION

Approval on the March 16, 2010 Agenda.

BACKGROUND

The proposed land acquisition is located within the St. Joseph’s Creek North, Subwatershed J (SJN-J), which was identified in the Watershed Improvement Plan as a high priority subwatershed. The subwatershed is generally located east of Carpenter Road, north of Summit Street, west of Blodgett Avenue and south of Curtiss Street.

Flooding of houses, yards and streets has occurred repetitively along Benton Avenue between Randall Street and Summit Street within this subwatershed. Drainage problems in this area are due to a depressional area in the street that has an undersized outlet. The solution to this drainage problem was determined to be the creation of a new stormwater storage basin on land designated for a voluntary buy-out program. In 2008 the Village contracted with GC Engineering to prepare plans and specifications for the design of the construction of a below-grade storage system at this location, as well as for the replacement of the existing storm systems with larger pipes. The below grade stormwater storage system will be constructed on property that is proposed to be acquired.

ATTACHMENTS

- Resolution
- Agreement

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney **DATE:** March 16, 2010
(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 A REAL ESTATE CONTRACT FOR THE PROPERTY LOCATED AT 5237 BENTON AVENUE, DOWNERS GROVE, IL", as presented.

SUMMARY OF ITEM:

Adoption of the attached resolution authorizing execution of a real estate contract for the property located at 5237 Benton Avenue in relation to the 8th Street stormwater improvement project.

RECORD OF ACTION TAKEN:

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING
EXECUTION OF A REAL ESTATE CONTRACT
FOR THE PROPERTY LOCATED AT 5237 BENTON AVENUE, DOWNERS GROVE, IL**

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 Real Estate Contract (the “Agreement”), between the Village of Downers Grove (the “Purchaser”) and Adam and Christine Walsh (hereinafter collectively “Seller”), for the purchase of certain property located at 5237 Benton Avenue, Downers Grove, Illinois, 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 Mayor 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 Mayor 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

REAL ESTATE CONTRACT

1. **PURCHASER, SELLER AND PROPERTY:** VILLAGE OF DOWNERS GROVE, 801 Burlington Avenue, Downers Grove, DuPage County, Illinois, (hereinafter "Purchaser") agrees to purchase and ADAM & CHRISTINE WALSH (hereinafter collectively "Seller") agree to sell the property commonly referred to as 5237 Benton Avenue, Downers Grove, IL 60515, Downers Grove, Illinois (hereinafter the "Property") and legally described as follows:

(LOT 35 IN BLOCK 8 (EXCEPT THAT PART OF LOT 35 IN BLOCK 8, IF ANY, FALLING WITHIN LOT 34 IN BLOCK 8 IN STRAUB'S ADDITION TO DOWNERS GROVE, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF SUMMIT STREET AND THE EAST LINE OF BENTON AVENUE AND PROCEEDING THENCE NORTH ALONG THE EAST LINE OF BENTON AVENUE 550 FEET TO AN IRON PIPE AT THE CORNER OF SAID LOT 34 FOR A POINT OF BEGINNING; THENCE EAST PARALLEL WITH THE NORTH LINE OF SUMMIT STREET, 131.4 FEET TO AN IRON PIPE AT THE SOUTHEAST CORNER OF SAID LOT 34; THENCE NORTH PARALLEL WITH THE EAST LINE OF BENTON AVENUE 50 FEET TO AN IRON PIPE AT THE NORTHEAST CORNER OF SAID LOT 34; THENCE WEST PARALLEL WITH THE NORTH LINE OF SUMMIT STREET, 131.4 FEET TO AN IRON PIPE AT THE NORTHWEST CORNER OF SAID LOT 34 ON THE EAST LINE OF BENTON AVENUE; THENCE SOUTH ALONG THE EAST LINE OF BENTON AVENUE TO THE POINT OF BEGINNING, BEING A RESUBDIVISION OF PART OF LOT 4 IN ASSESSOR'S DIVISION OF SECTIONS 7 AND 8, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 27, 1890 AS DOCUMENT 44124, IN DUPAGE COUNTY, ILLINOIS);

Commonly known as: 5237 Benton Avenue, Downers Grove, IL 60515 PIN: 09-08-409-008

ALSO (EXCEPT THAT PART OF LOT 35 IN BLOCK 8, IF ANY, FALLING WITHIN LOT 7 OF THE PLAT OF OWNERS SUBDIVISION OF ALL THAT PART OF THE WESTERLY HALF (IN WIDTH) OF BLOCK 8 IN STRAUBE'S ADDITION TO DOWNERS GROVE, IN THE SOUTH EAST 1/4 OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF A LINE DESCRIBED AS COMMENCING AT A POINT IN THE WEST LINE OF SAID BLOCK, 386.75 FEET SOUTHERLY FROM THE NORTHWESTERLY CORNER THEREOF, AS MEASURED ALONG SAID WEST LINE; THENCE EAST 131.7 FEET TO A POINT EQUIDISTANT BETWEEN THE EAST AND WEST LINES OF SAID BLOCK, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 21, 1937 AS DOCUMENT 384586, IN DUPAGE COUNTY, ILLINOIS) IN STRAUBE'S ADDITION TO DOWNERS GROVE, BEING A RESUBDIVISION OF PART OF LOT 4 IN ASSESSOR'S DIVISION OF SECTIONS 7 AND 8, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 27, 1890 AS DOCUMENT 44124, IN DUPAGE COUNTY, ILLINOIS)

Commonly known as: The vacant lot adjacent to 5237 Benton Avenue, Downers Grove, IL 60515
PIN: 09-08-409-007

2. **PURCHASE PRICE:** Purchaser shall pay Seller the sum of Four Hundred and Sixty Three Thousand Dollars (\$463,000.00) at closing for the Property, plus or minus prorations.

3. **DEED AND OTHER CLOSING DOCUMENTS:** Seller shall convey or cause to be conveyed by recordable warranty deed or trustees Deed good and merchantable title to Purchaser, with release of homestead rights subject only to the following permitted exceptions:

- a) general real estate taxes not yet due and payable;
- b) public utility easements; and
- c) covenants and conditions of record.

Seller shall furnish to Purchaser an Affidavit of Title, in customary form, at or prior to closing subject only to the permitted exceptions listed above. In the event that title is held in trust, the Affidavit of Title shall be executed by the Trustee and beneficiary or beneficiaries of the Trust. Seller shall also provide at closing a Bill of Sale and ALTA Statement as well as any other documents required by the title company and/or necessary to effectuate the terms of this Agreement.

4. **CLOSING:** The closing shall occur on or before March 31, 2010 (hereinafter "Closing Date"), unless otherwise extended as provided for in this Contract or by the mutual agreement of the parties. The closing shall take place at the offices of the title company at a location mutually acceptable to the parties. Purchaser shall be solely responsible for all closing costs, with the exception of Seller's attorney's fees.

5. **POSSESSION:** Seller shall deliver possession of the Property in accordance with the Lease Agreement attached hereto as Exhibit A and incorporated here in by reference.

6. **LEASEBACK:** Purchaser shall leaseback the Property to Seller pursuant to the Lease Agreement attached hereto as Exhibit A. Concurrently with the delivery of the Deed, and as an integral part of this transaction, Purchaser, as landlord, and Seller, as tenant, shall create and deliver a lease, substantially in the form of the lease attached hereto as Exhibit A.

7. **TITLE COMMITMENT:** Upon acceptance of this Contract, Purchaser shall procure a title commitment for an owner's title insurance policy covering the Property in the amount of the purchase price. The title commitment shall show title in the Seller subject only to (a) the permitted Exceptions listed in this Contract, and (b) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of closing and which the Seller may so remove at that time by using the funds to be paid upon the delivery of the deed. The title commitment shall be conclusive evidence of good title as therein shown as to all matters insured by the policy, subject only to the permitted exceptions. Purchaser shall be solely responsible for all costs associated with the commitment for title insurance and the title insurance policy.

8. **SURVEY:** Purchaser shall be solely responsible for procuring a survey of the Property and all costs associated therewith.

9. **REAL ESTATE TAXES:** Seller represents that the 2008 real estate taxes have been paid in full. Seller shall be solely responsible for the 2009 real estate taxes; a credit shall be given to Purchaser at closing for the 2009 real estate taxes, based upon 105% of the 2008 real estate taxes. Seller shall be solely responsible for the 2010 real estate taxes through the Closing Date; a credit shall be given to Purchaser at closing for the 2010 real estate taxes through the Closing Date, based upon 105% of the 2008 real estate taxes.

10. **TIME:** Time is of the essence of this contract.

11. **NOTICES:** All notices herein required shall be in writing and shall be served on the parties or the parties' attorney, by regular mail with a facsimile copy to the attorney as follows:

If to Seller: Adam & Christine Walsh
5237 Benton Avenue
Downers Grove, IL 60515

If to Purchaser: Village of Downers Grove
Attn: Village Attorney
801 Burlington Avenue
Downers Grove, IL 60515

(630)434.5541 Fax: (630)434.5493

12. **REPRESENTATIONS AND WARRANTIES:** The Seller represents and warrants to Purchaser as follows, and each such representation and warranty of Seller shall be true at closing, and shall be deemed remade as of the Closing Date and shall survive the closing of this transaction:

- a) The Seller has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by Seller pursuant hereto on behalf of Seller, and to bind Seller hereby, and all required action and approvals therefore have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Seller are and shall be duly authorized to sign the same and to bind Seller thereto.
- b) Except for Seller, there are no persons or entities in possession or occupancy of the property or any part thereof, nor are there any persons or entities who have possessory rights or leaseholds with respect to the Property or any part thereof which would extend beyond the Closing Date.
- c) There are no claims, suits, causes of action or other litigation or proceedings pending with respect to or affecting the ownership or operation of the Property.
- d) Seller represents that neither Seller, nor Seller's agents have received any notices from any city, village or other governmental authority of environmental, zoning, building, fire or health code violations in respect to the real estate.
- e) Seller has received no notice of any condemnation of any part of the Property, any special tax or assessment to be levied against the Property or any change in the tax assessment of the Property.
- f) There are not owing any delinquent taxes or assessments of any kind on the Property.
- g) No person, firm, corporation or other entity has any right or option to acquire the Property

or any part thereof from Seller except for Purchaser.

- h) Seller will not enter or extend any contracts or leases affecting the Property after the effective date hereof without Purchaser's express written consent.
- i) Seller represents that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is therefore exempt from the withholding requirements of said Section. Seller will furnish Purchaser at closing the Exception Certification set forth in said Section.
- j) Seller has not employed the services of a real estate broker.

13. **HAZARDOUS MATERIALS:** Seller represents to the best of Seller's knowledge that: (i) the Property and any improvements thereon or any part thereof have never been used as a sanitary landfill, waste dump site or for the treatment, storage or disposal of Hazardous Materials; (ii) no underground tanks (or piping) are or have been present on the Property or adjacent property; (iii) no Release of Hazardous Materials has occurred from or upon the Property; (iv) the Property and the improvements thereon do not contain any Hazardous Materials; and (v) Seller has delivered to Purchaser all reports, assessments and studies in Seller's possession which relate to the environmental condition of the Property. The term "Release" or "Released" shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, presence, dumping, migration on or from the Property or adjacent property, or disposing of Hazardous Materials into the environment, as "environment" is defined in CERCLA (See definition of "Hazardous Materials" below).

"Hazardous Material" means any hazardous substance, pollutant, or contaminant regulated under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et. Seq. ("CERCLA"); oil and petroleum products and by-products and natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel, urea, formaldehyde foam insulation, and chlorofluoro carbons; pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136 et seq; asbestos, polychlorinated biphenyl, and other substance regulated under the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601 et seq.; chemicals subject to the Occupational Safety

and Health Standards, Hazard Communication, 29 C.F.R. § 1900.1200, as amended; source material, special nuclear, by-product materials, and any other radioactive materials or radioactive wastes, however produced, regulated under the requirements with respect to the construction, use or occupancy of the Property or any part thereof.

14. **COUNTERPARTS:** This agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same agreement.

15. **ENTIRE AGREEMENT:** This Contract embodies the entire agreement and understanding between the Seller and Purchaser and there are no other agreements, representations or understandings, oral or written, between the parties with respect to the subject matter of this Contract. No alteration, modification, amendment or change of this Contract shall be valid, unless in writing, signed by all parties.

16. **SEVERABILITY:** The invalidity of any paragraph or subparagraph of this Contract shall not impair the validity of any other paragraph or subparagraph. If any provision of this Contract is determined to be unenforceable, such provision shall be determined severable and the Contract may be enforced with such provision severed or with such provision as modified.

17. **ENFORCEABILITY:** This Agreement shall not be binding upon Purchaser unless and until it has been duly approved and adopted by the Village Council.

18. **APPLICABLE LAW:** This contract shall be governed by the laws of the State of Illinois.

19. **DEFAULT:** In the event of default, both Purchase and Seller shall be entitled to any and all remedies at law or in equity.

20. **REMOVAL OF PERSONAL PROPERTY:** Seller shall be allowed to remove all personal property prior to the Closing date.


PURCHASER:

VILLAGE OF DOWNERS GROVE,
DUPAGE COUNTY, ILLINOIS

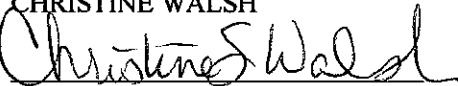
SELLER:

ADAM WALSH

Mayor



Adam Walsh

CHRISTINE WALSH


Christine Walsh

ATTEST:

Village Clerk

Date: _____

Date: MARCH 9, 2010

LEASE AGREEMENT

This Lease Agreement ("Lease") is made and entered into by and between the VILLAGE OF DOWNERS GROVE, 801 Burlington Avenue, Downers Grove, DuPage County, Illinois, (hereinafter referred to as "LESSOR"), and Adam & Christine Walsh, 5237 Benton Avenue, Downers Grove, IL 60515 (hereinafter referred to collectively as "LESSEE"). The date of this Lease shall be the later of the execution dates of LESSOR and LESSEE as set forth on the signature page.

WHEREAS, LESSOR is the owner of the property located at 5237 Benton Avenue, Downers Grove, IL 60515 ("Premises"); and

WHEREAS, LESSOR desires to lease the Premises to the LESSEE on the terms and conditions set forth herein; and

WHEREAS, LESSOR and LESSEE desire to enter into this Lease for the purpose of defining their rights, duties, and liabilities relating to the Premises; and

NOW, THEREFORE, in consideration of TEN DOLLARS (\$10.00) and the mutual covenants and conditions contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, LESSOR and LESSEE agree as follows:

Section 1-Incorporation

The foregoing recitals are incorporated herein by reference.

Section 2-Premises

LESSOR is the owner of the property commonly known as 5237 Benton Avenue, Downers Grove, IL 60515 ("Premises"). LESSOR desires to lease the Premises to LESSEE on the terms and conditions set forth herein.

Section 3-Term

This Lease shall run on a month to month basis beginning April 1, 2010, which term may be terminated by either party with sixty (60) days written notice.

Section 4-Rent

LESSEE shall pay LESSOR rent in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) per month payable to the Village of Downers Grove on the 1st of each month.

Section 5-Use

LESSEE shall be entitled to use the Premises for any and all lawful purposes.

Section 6-Sublet and Assignment

LESSEE shall not sublet the Premises of any part thereof, nor assign this Lease without prior written consent of the LESSOR.

Section 7-Indemnification

LESSOR shall not be liable for any damage or injury to LESSEE, LESSEE'S family, guests, invitees, agents, permittees or employees or any other person entering the Premises or the building or personal property and LESSEE hereby agrees to indemnify, defend and hold LESSOR harmless from any and all claims assertions, liabilities, damages, expenses and costs including reasonable attorneys' fees in connection herewith.

Section 8-Utilities

LESSEE shall pay for its own gas, electric, water, sewage, refuse pickup and any and all other costs associated with Lessee's use and occupancy of the Premises.

Section 9-Alterations and Additions

LESSEE shall make no alterations or additions to the Premises without prior written consent of the LESSOR.

Section 10-Insurance

LESSEE agrees to provide and maintain at its sole cost and expense, general liability insurance with coverage during the term of the Lease in an amount satisfactory to LESSOR.

Section 11-Maintenance

LESSEE shall be responsible for all damage done to the Premises attributable to LESSEE'S negligent, reckless, or willful conduct. Upon expiration of this Lease, LESSEE shall return the Premises to LESSOR in the same condition as when LESSEE took possession, normal wear and tear expected.

Section 12-Notices

Notices shall be in writing. They shall be effectively served by delivery to LESSOR and LESSEE by regular U.S. Mail at the addresses below:

LESSOR:

Village of Downers Grove
Attn: Village Attorney
801 Burlington Avenue
Downers Grove, IL 60515

LESSEE:

Adam & Christine Walsh
5237 Benton Avenue
Downers Grove, IL 60515

Section 13-Total Agreement

This Lease contains the entire agreement between the parties and cannot be modified except by a written instrument signed by all parties.

Section 14-Default

In the event of default by LESSOR and LESSEE shall be entitled to any and all remedies available at law or in equity.

Section 15-Repairs

During the Lease term, LESSEE shall make, at LESSEE'S sole expense, all necessary repairs to the Premises.

Section 16-Waiver

No waiver by LESSOR of any default of LESSEE hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time

and to the extent therein stated. One or more waivers by LESSOR or LESSEE shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

Section 17-Recording

Either party may record this Lease with the County Recorder.

Section 18-Headings

The headings used in this Lease are for convenience of the parties only and shall not be considered interpreting the meaning of any provision of this Lease.

Section 19-Compliance with Law

LESSEE shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to LESSEE'S use of the Premises.

Section 20-Successors

The provisions of this Lease shall extend to and be binding upon LESSOR and LESSEE and their respective legal representatives, successors, heirs and assigns.

Section 21-Right of Entry

LESSOR may enter and inspect the premises upon reasonable advance notice.


Section 22-Severability

If any provision of this Lease is held to be invalid or unenforceable, such invalidity or unenforceability finding shall not affect the validity or enforceability of any other provisions of this Agreement.

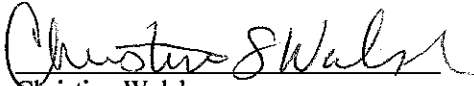
LESSOR:

LESSEE:

VILLAGE OF DOWNERS GROVE,
DuPage County, Illinois


Adam Walsh

Mayor


Christine Walsh

Attest:

Village Clerk

Date: _____

Date: March 9, 2010