

**VILLAGE OF DOWNERS GROVE  
REPORT FOR THE VILLAGE COUNCIL MEETING  
OCTOBER 7, 2014 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Real Estate Contract for Property located at 4411 Lee Avenue	✓ Resolution Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

**SYNOPSIS**

Staff has prepared a resolution authorizing execution of a Real Estate Contract for the property located at 4411 Lee Avenue in the amount of \$157,980.00.

**STRATEGIC PLAN ALIGNMENT**

Strategic Plan Goals for 2011 - 2018 identified *Top Quality Infrastructure* and *Steward of Financial and Environmental Sustainability*.

**FISCAL IMPACT**

This purchase is not budgeted; however, the FY14 budget includes \$9,548,000 for capital projects in the Stormwater Fund and sufficient funds are available for this acquisition.

**RECOMMENDATION**

Approval on the October 7, 2014 Consent Agenda.

**BACKGROUND**

The property proposed to be acquired is located at 4411 Lee Avenue. This acquisition is consistent with the Village's past practice to acquire properties that experience recurring flooding if it is more cost effective to acquire and demolish the structure than to construct additional flood prevention measures to protect the property. The structure on the property will be demolished.

This property experiences flooding on a regular basis and sustained substantial damage during the April 18, 2013 storm event. In addition to damage to the structure, the property is served by a private, septic system, which is not functional during large rain events.

**ATTACHMENTS**

- Resolution
- Real Estate Agreement

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING  
EXECUTION OF A REAL ESTATE CONTRACT  
FOR THE PROPERTY LOCATED AT 4411 LEE AVENUE, DOWNERS GROVE, ILLINOIS**

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 Grandview Capital, LLC (hereinafter "Seller"), for the purchase of certain property located at 4411 Lee Avenue, Downers Grove, Illinois 60515, 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 Village Attorney 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  
FOR PROPERTY LOCATED AT  
4411 LEE AVENUE, DOWNERS GROVE, ILLINOIS 60515**

1. **PURCHASER, SELLER AND PROPERTY:** **VILLAGE OF DOWNERS GROVE**, 801 Burlington Avenue, Downers Grove, DuPage County, Illinois, (hereinafter "Purchaser") agrees to purchase and **GRANDVIEW CAPITAL, LLC** (hereinafter collectively "Seller") agrees to sell the property commonly referred to as 4411 Lee Avenue, Downers Grove, Illinois 60515 (hereinafter the "Property") and legally described as follows:

LOT 7 IN HOCKLEUTNER'S RESUBDIVISION OF THE W. 185 FT. OF LOT 2 IN BRANIGAR BROTHERS OGDEN AVENUE FARMS, BEING A SUBDIVISION SITUATED IN THE SW 1/4 OF SECTION 6, TOWNSHIP 38 N., RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT OF SAID HOCKELUTNERS RESUBDIVISION RECORDED OCTOBER 21, 1953 AS DOCUMENT NO. 698677 AND CERTIFICATE OF CORRECTION RECORDED 10/8/59 AS DOCUMENT NO. 943056 IN DUPAGE COUNTY, ILLINOIS

**Commonly known as:** 4411 Lee Avenue, Downers Grove, Illinois 60515  
**PIN:** 09-06-305-009

2. **PURCHASE PRICE:** Purchaser shall pay Seller the sum of One Hundred Fifty Seven Thousand Nine Hundred and Eighty Dollars (\$157,980.00) 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 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 that do not interfere with Purchasers intended use of the property;
- c) covenants and conditions of record that do not interfere with Purchasers intended use of the property;

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 within thirty (30) days of execution of this Contract (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. Closing costs shall be split between the parties.

5. **CONDITION PRECEDENT:** Notwithstanding anything in this Agreement to the contrary, this Contract and Purchaser's obligations to perform hereunder are expressly contingent upon Seller delivering possession of Property at closing with no tenants. Purchaser shall have the absolute right to inspect the Property as many times as Purchaser deems necessary, prior to closing and on the day of closing, to ensure that there are no tenants on the Property. In the event that there are any tenants on the Property at any time within the week prior to closing, the Purchaser has the right to declare this Agreement to be null and void and Purchaser shall be excused from its obligations to perform.

6. **POSSESSION:** Seller shall deliver possession of the Property at closing.

7. **TITLE COMMITMENT:** Upon acceptance of this Contract, Seller, at Seller's expense, 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's name 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. Seller shall be solely responsible for all costs associated with the commitment for title insurance and the title insurance policy.

8. **SURVEY:** Seller shall be solely responsible for procuring a current dated boundary survey of the Property under certification by an Illinois licensed land surveyor showing the location of all improvements, easements and building lines. Said survey shall be delivered to Buyer five (5) days prior to closing.

9. **REAL ESTATE TAXES:** Seller represents that the 2013 real estate taxes have been paid in full. Seller shall be solely responsible for the 2014 real estate taxes through the Closing Date; a credit shall be given to Purchaser at closing for the 2014 real estate taxes through the Closing Date, based upon 105% of the 2013 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: Grandview Capital, LLC  
86W995 Red Gate Road  
St. Charles, IL 60175

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. **CONDITION OF PROPERTY:** Seller shall leave Premises in broom-clean condition. All personal property and all refuse shall be removed from the Property at Seller's expense by the possession date.

**PURCHASER:**

VILLAGE OF DOWNERS GROVE,  
DUPAGE COUNTY, ILLINOIS

\_\_\_\_\_  
Mayor

**SELLER:**

GRANDVIEW CAPITAL, LLC

BY:   
\_\_\_\_\_

Managing Partner  
Title

Date: 9-19-14

ATTEST:

\_\_\_\_\_  
Village Clerk

Date: \_\_\_\_\_