

ITEM RES 2015-6057

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
2/17/2015

SUBJECT:	SUBMITTED BY:
First Amendment to Annexation Agreement for 5850 Janes Avenue	Stanley J. Popovich, AICP Planning Manager

SYNOPSIS

A Resolution has been prepared authorizing the execution of First Amendment to Annexation Agreement for 5850 Janes Avenue.

STRATEGIC PLAN ALIGNMENT

The Goals for 2011-2018 identified *Exceptional Municipal Services*.

FISCAL IMPACT

The Village will receive a \$70,000 cash in-lieu deposit for the future connection of 59th Street to Janes Avenue.

RECOMMENDATION

Approval on the February 17, 2015 active agenda following a public hearing.

BACKGROUND

The Village granted approval of a plat of subdivision and an annexation agreement for the 5850 Janes Avenue property on May 20, 2014 (<http://www.downers.us/agendas/2014/2014/05/19/may-18-2014>). At that time, the proposed subdivision included the extension of 59th Street to connect to Janes Avenue. Subsequently, the petitioner pursued the acceptance of the plat of subdivision with DuPage County, but the Lisle Township Highway Commissioner declined to sign the Plat of Subdivision due to the 59th Street connection to Janes Avenue. The petitioner explored all available options to connect the two streets, including but not limited to the installation of barricades within 59th Street and annexation into Woodridge, while still obtaining the Commissioner's signature, but to no avail. The Commissioner continues to refuse to sign the plat unless the 59th Street connection is removed from the plat.

To facilitate the development, the Village has agreed to remove its requirement for the street connection in return for a \$70,000 cash-in-lieu payment. Upon recordation of the plat of subdivision, the petitioner will deposit \$70,000 with the Village. Upon annexation in the future, the deposit will guarantee that sufficient funds will be available at the time the Village elects to connect the roads.

The remaining sections of the revised annexation agreement will stay the same. The annexation agreement is necessary to permit the connection of the development to the Village's water distribution system. When the properties become contiguous to the Village, they will be annexed and all applicable fire protection

district taxes will be paid at that time. If the revised agreement is approved, the owners will be permitted to connect to the water system after paying permit and tap fees.

ATTACHMENTS

Resolution
Agreement
Aerial Map

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney DATE: February 17, 2015
(Name)

RECOMMENDATION FROM: _____ FILE REF: _____
(Board or Department)

NATURE OF ACTION:

STEPS NEEDED TO IMPLEMENT ACTION:

- Ordinance
- Resolution
- Motion
- Other

Motion to Adopt "A RESOLUTION AUTHORIZING EXECUTION OF A FIRST AMENDMENT TO ANNEXATION AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND GREENSCAPE HOMES, LLC", as presented.



SUMMARY OF ITEM:

Adoption of this resolution shall authorize execution of a first amendment to annexation agreement for the property located at 5850 Janes Avenue.

RECORD OF ACTION TAKEN:

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A FIRST AMENDMENT TO
ANNEXATION AGREEMENT BETWEEN THE
VILLAGE OF DOWNERS GROVE AND
GREENSCAPE HOMES, 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 First Amendment to Annexation Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and Greenscape Homes, LLC (the “Owner”), for a first amendment to the annexation agreement dated May 20, 2014, 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 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

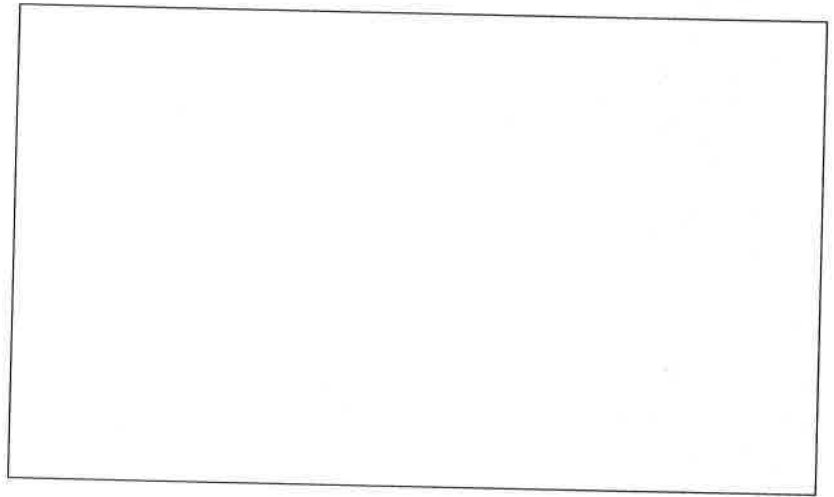
Passed:

Attest: _____

Village Clerk

**FIRST AMENDMENT TO
ANNEXATION AGREEMENT**

**GENERAL NONCONTIGUOUS
PROPERTY**



This First Amendment to the Annexation Agreement dated May 20, 2014 made and entered into this 17th day of February, 2015, by and between the Village of Downers Grove, an Illinois municipal corporation (hereinafter referred to as the "Village") and Greenscape Homes, LLC, an Illinois limited liability company (hereinafter referred to as the "Owner"), The Village and the Owner are sometimes referred to as "Parties".

WITNESSETH:

WHEREAS, the Owner is the owner of record of certain real estate, described as follows:

LOT 39 IN BELMONT PARK, A SUBDIVISION OF PART OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED APRIL 22, 1992 AS DOCUMENT 155367, IN DUPAGE COUNTY, ILLINOIS. (PIN 08-13-111-015 and commonly known as 5850 Janes Ave., Downers Grove, IL 60516) "Property"; and

WHEREAS, the parties hereto desire that the Property be annexed to the Village on the terms and under the conditions hereafter set forth; and

WHEREAS, the Property is not located within the corporate boundaries of any municipality, but is within the planning area of the Village, as established by boundary agreements with adjacent municipalities, and is not now, but someday may be, contiguous to the Village; and

WHEREAS, the parties wish to enter into a binding agreement with respect to the future annexation of the Property and to provide for various other matters related directly or indirectly to said future annexation, in accordance with the provisions of 65 ILCS 5/11-15.1-1; and

WHEREAS, the Village Council has determined that the future annexation of the Property would further the orderly growth of the Village and promote the general welfare of the Village.

WHEREAS, the Owner and the Village previously entered into an Annexation Agreement dated May 20, 2014 (“Agreement”) which anticipated that Janes Ave. and 59th Street would be connected as part of the development of the Property. Due to the Township’s refusal to allow that connection as part of the development of the Property in the County, the Owner and Village have agreed to delay the construction of that road connection until the annexation of the Property to the Village pursuant to the terms of this First Amendment and to provide for a cash payment to be delivered to the Village to insure that sufficient funds are available to construct the connection at the time the Village elects to do so; and

WHEREAS, it is the Parties intent that this First Amendment shall supersede in its entirety the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms and conditions herein set forth, the Owner and the Village agree as follows:

1. The provisions of the preamble herein above set forth are hereby restated and incorporated herein by reference.
2. The Owner has submitted to the Village together with the Agreement an executed Petition for Annexation. The Owner shall pay all fees associated with this First Amendment including publication fees and recording fees.

3. Upon annexation, the Owner agrees to submit to the Village a Plat of Annexation in the form provided by law.

4. This First Amendment shall be binding upon the Owner, as well as the Owner's successors, grantees, assigns and heirs. This First Amendment shall constitute a covenant running with the land and shall be binding upon all persons taking any interest or right in the Property after the date of this First Amendment is executed by the Village. Any person acquiring any rights or interest in the Property after the date of this First Amendment shall be bound by the terms hereof and shall be deemed to have accepted and approved this First Amendment in full.

5. If ownership of the Property or any portion thereof changes subsequent to the execution of this First Amendment and prior to annexation as provided in Paragraph 7 below, the purchasers shall submit to the Village a properly executed Petition for Annexation and an acknowledgment and acceptance of this First Amendment in the form attached hereto as **Exhibit 1** within thirty (30) days of acquiring such interest. It shall be the responsibility of the Owner and the purchaser to submit these items. Provided however the failure, refusal or neglect to submit these items shall in no way affect the continued validity of this First Amendment or the Petition for Annexation set forth in Paragraph 2.

6. The Village shall record the First Amendment in the office of the Recorder of Deeds of DuPage County. In addition, the Village shall record any petition executed by a subsequent or successor owner as provided in Paragraph 5 above.

7. The Property shall be automatically annexed into the Village once the Property becomes contiguous to the Village. The Owner or its grantees or successors in interest, and the Village respectively agree to do all things necessary or appropriate

to cause the Property to be duly and validly annexed to the Village after the Property becomes contiguous to the Village. Upon contiguity, the Village may, at any time prior to expiration of this First Amendment, annex the Property. The Owner, or its grantees or successors in interest, shall assist the Village and take all actions or steps necessary, including but not limited to, preparing and executing new petitions for annexation, waivers and plats, to accomplish said annexation. The Owner, or its grantees or successors in interest, shall participate in and be required to execute either a petition for voluntary annexation filed in accordance with 65 ILCS 5/7-1-8 or a petition for court-supervised annexation filed in accordance with 65 ILCS 5/7-1-2 or 7-1-11. The Owner, or its grantees or successors in interest, waive any objection rights and shall not object to either type of petition for annexation nor to an involuntary annexation commenced by the Village pursuant to 65 ILCS 5/7- 1-13.

8. Upon annexation the Owner(s), or their grantees or successors in interest, agree to reimburse the Village for their portion of the real estate taxes due and owing to the respective fire protection district in accordance with Section 705/20 of the Illinois Fire Protection Act (70 ILCS 705/20).

9. The Owner, or its grantees or successors in interest, shall connect to the Village water system, if such system is available to the Property upon payment of the water rates and connection fees in effect on the date of application for water service or submittal of this First Amendment to the Village, whichever is later. The fees and costs to be paid include, but are not necessarily limited to water system capacity charge, inspection fee, recapture fee, tap fee, connection charge, meter charge, cost of a street opening permit if connection is made after completion of construction of the water mains, and the cost of for a water service line from the main to the structure, property or any

private line.

10. The Owner, or its grantees or successors in interest, may elect to pay one-half of the water system connection charge in deferred payments, without interest, by means of a surcharge on metered water equivalent to the charge for water consumption. In the event the Owner, or its grantees or successors in interest, elect to pay the balance of the water system connection charge by means of a surcharge on water consumption, the Owner, or its grantees or successors in interest, shall submit a properly executed lien for unpaid service charges which shall be recorded in the office of the Recorder of Deeds of DuPage County.

11. The Owner, or its grantees or successors in interest, shall enjoy the same rights and abide by the same rules and regulations with respect to water service, availability, and usage as consumers and customers within the corporate limits of the Village. This provision includes, but is not limited to, any sprinkling bans or limitations which may be imposed by the Village.

12. The Parties agree that it is in the public welfare to provide a road connection between Janes Ave and 59th St and that such a connection inures to the benefit of the public welfare and is consistent with sound planning principles. Such a road connection requires the cooperation of the Township Road Commissioner which he has in the exercise of his discretion refused to grant. The Parties agree that in lieu of connecting these roads as part of the development of the Property, that the roads will be connected after the Property is annexed to the Village. To guarantee that sufficient funds will be available at the time the Village elects to connect the roads, Owner shall deliver to the Village a cash deposit in the amount of \$70,000.00 to construct the road connection consistent with the approved engineering plans and generally consistent with the road

connection improvements attached as **Exhibit 2**. In addition in order to put all subsequent purchasers on notice of this obligation, the Parties shall include on the Final Plat of Subdivision a note generally consistent with the following:

Until the Village annexes the Property, subject to this final plat, Janes Avenue and 59th Street shall not be connected by either the Village or the Owner.

13. The parties to this First Amendment or their grantees, successors or assigns, may, in either law or equity, by suit, action, mandamus, injunction, or other proceedings in court, enforce and compel the performance of this First Amendment, including suits for specific performance.

14. This First Amendment may only be amended by written instruments signed by both Parties.

15. The term of this First Amendment shall be twenty (20) years from the date of execution hereof.

16. If any portion of this First Amendment or ordinance enacted pursuant hereto shall be declared invalid, the same shall not affect the validity of this First Amendment as a whole, other than the part so declared invalid.

16. This First Amendment may be executed in multiple counterparts of duplicate originals or with multiple signature pages each of which shall constitute and be deemed one and the same document.

17. The undersigned Owner warrants that it constitutes all owners of the Property and that it has full authority and power to sign the First Amendment and the petition submitted herewith and that it has not and will not take any action to change ownership in the Property until after this First Amendment is recorded.

IN WITNESS WHEREOF this First Amendment has been duly executed by whose names are subscribed below or on the signature pages attached hereto from time to time, and which pages are specifically incorporated herein.

OWNER:

Greenscape Homes, LLC

By: *G M White President*
Gary M. White, its President

Village of Downers Grove

By: _____
Mayor

Attest:

By: _____
Village Clerk

Subscribed and sworn to before me
This 11th day of January, 2015

Carol L Kuchynka
Notary Public



Exhibit 1

ACKNOWLEDGMENT AND ACCEPTANCE OF ANNEXATION AGREEMENT

_____, Owner(s) of the property at _____, legally described as: (PIN: _____)

acknowledge that he/she/they has/have read and understand(s) the terms of the executed Annexation Agreement for the above described property signed by previous owner(s), _____ (insert the names show on the Annexation Agreement), and dated _____; such executed Annexation Agreement constituting a covenant running with the land and binding on all persons taking any subsequent interest in the property.

The Owner(s) agree(s) to and accept(s) the terms of the above described annexation agreement as if he/she/they was/were one of the original parties to the agreement.

OWNER(S)
By: _____

(print name)

OWNER(S) ADDRESS (if different from above)

Street

City State Zip

By: _____

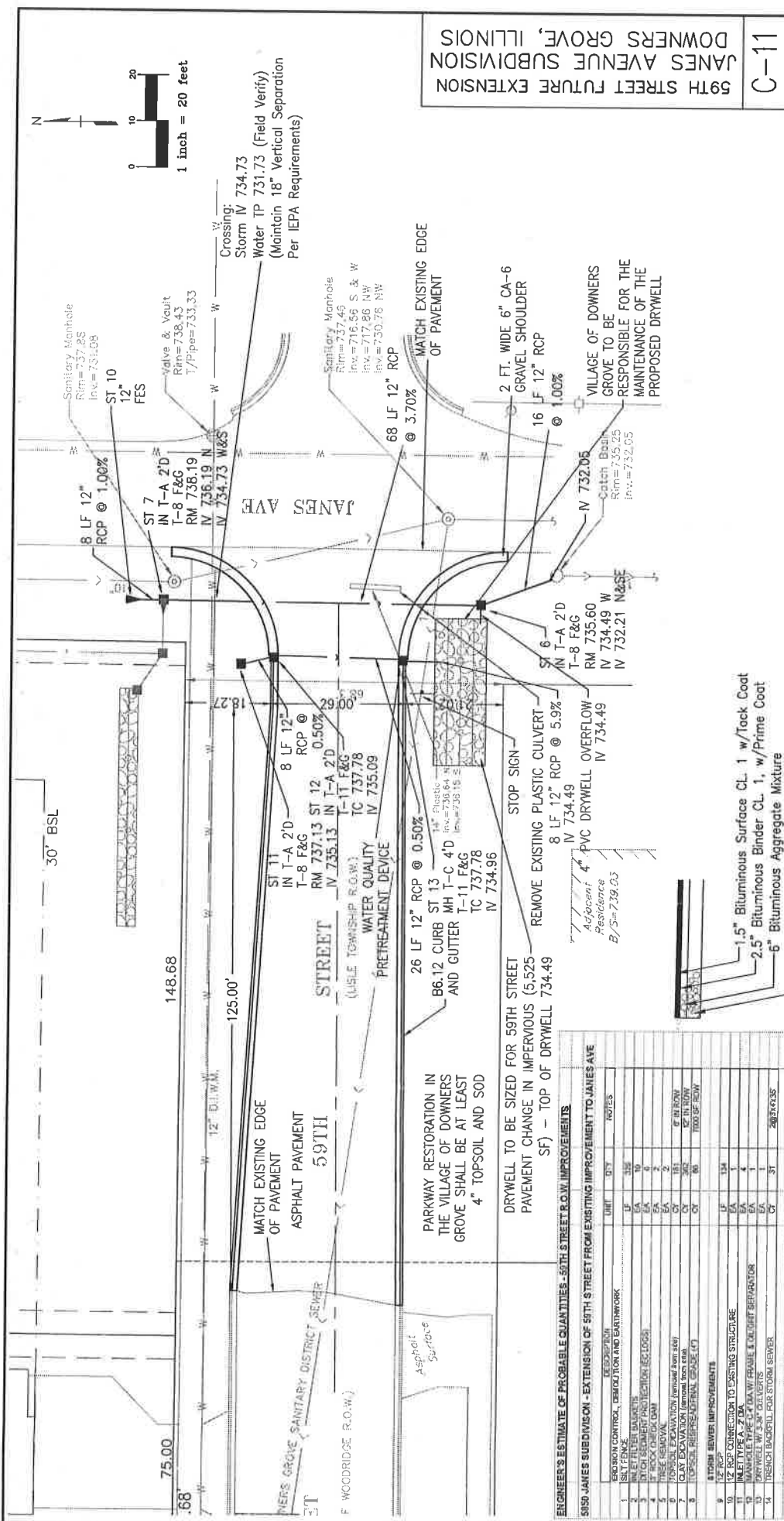
(print name)

Phone

This instrument prepared by:
Downers Grove Village Attorney
801 Burlington Avenue
Downers Grove, IL 60515
(630) 434-5540

Subscribed and sworn to before me
this ____ day of _____, 20____

Notary Public



59TH STREET FUTURE EXTENSION
 JAMES AVENUE SUBDIVISION
 DOWNERS GROVE, ILLINOIS

C-11

REVISED 1/22/2015
 PREPARED BY:
GREENSCAPE HOMES, LLC
 4355 WEAVER PARKWAY
 WARRENVILLE, IL 60555

EXHIBIT 2

ROADWAY SECTION

- 1.5" Bituminous Surface CL. 1 w/Tack Coat
- 2.5" Bituminous Binder CL. 1, w/Prime Coat
- 6" Bituminous Aggregate Mixture
- 6" Aggregate Base, CA 6

ENGINEER'S ESTIMATE OF PROBABLE QUANTITIES - 50TH STREET R.O.W. IMPROVEMENTS

5950 JAMES SUBDIVISION - EXTENSION OF 59TH STREET FROM EXISTING IMPROVEMENT TO JAMES AVE
 SF) - TOP OF DRYWELL 734.49

NO.	DESCRIPTION	UNIT	QTY	NOTES
1	EROSION CONTROL, EXCAVATION AND EARTHWORK	LF	134	
2	SNL FENCE	EA	10	
3	INLET FILTER BARRIERS	EA	0	
4	INLET SEDIMENT PROTECTION (E-LOGS)	EA	0	
5	INLET SEDIMENT TRAP	EA	2	
6	INLET SEDIMENT TRAP	EA	2	
7	INLET SEDIMENT TRAP	EA	181	
8	CLAY EXCAVATION (removal from site)	CY	302	8" IN ROW
9	CLAY EXCAVATION (removal from site)	CY	302	12" IN ROW
10	TRENCH REPAIR/REFURB GRASS (4')	LF	214	1000 SF ROW
11	STORM SEWER IMPROVEMENTS			
12	12" RCP	LF	134	
13	12" RCP CONNECTION TO EXISTING STRUCTURE	EA	1	
14	12" RCP CONNECTION TO EXISTING STRUCTURE	EA	1	
15	MANHOLE W/ 2.5' DIA. CURBS	EA	1	
16	MANHOLE W/ 2.5' DIA. CURBS	EA	1	
17	TRENCH BACKFILL FOR STORM SEWER	CY	31	28374325
18	AGGREGATE SHOULDER 2' (CA-1)	CY	7	357 LF
19	AGGREGATE BASE COURSE 4" (CA-1)	CY	540	
20	BITUMINOUS SURFACE CL. 1 (CA-1)	CY	540	
21	BITUMINOUS SURFACE CL. 1 (CA-1)	CY	540	
22	BITUMINOUS SURFACE CL. 1 (CA-1)	CY	540	
23	BITUMINOUS SURFACE CL. 1 (CA-1)	CY	540	
24	LANDSCAPE	LF	214	
25	LANDSCAPE	LF	214	
26	LANDSCAPE	LF	214	
27	LANDSCAPE	LF	214	
28	LANDSCAPE	LF	214	
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5850 Janes Avenue

