

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
12/1/2015

SUBJECT:	SUBMITTED BY:
Lacey Road Recapture Agreement	Enza Petrarca Village Attorney

SYNOPSIS

A resolution has been prepared authorizing the execution of an agreement for the recapture of fees for the construction of the sanitary sewer in Lacey Road from Virginia Street to Ogden Avenue.

STRATEGIC PLAN ALIGNMENT

The Strategic Goals for 2015-2017 identified *Steward of Financial, Environmental and Neighborhood Sustainability*.

FISCAL IMPACT

The collection of recapture fees in an amount up to \$439,181.94.

RECOMMENDATION

Approval on the December 1, 2015 consent agenda.

BACKGROUND

In 2007, the Village and the Sanitary District entered into an intergovernmental agreement providing for the construction of a sanitary sewer in Lacey Road from Virginia Street to Ogden Avenue. The Village paid \$439,181.94 for installation of this sanitary sewer. The intergovernmental agreement included a provision for the preparation of a separate agreement to establish recapture fees against the properties to be served by the sanitary sewer. The proposed agreement establishes the recapture fees and procedures.

ATTACHMENTS

Resolution
Agreement

RESOLUTION NO. ____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
AGREEMENT AMONG DOWNERS GROVE SANITARY DISTRICT, VILLAGE OF
DOWNERS GROVE, MARGOSIAN PROPERTIES LLC AND RATHJE
PROPERTIES LLC TO ESTABLISH RECAPTURE FEES FOR A SANITARY SEWER
LOCATED ALONG THE TOLLWAY AND LACEY ROAD**

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"), among the Village of Downers Grove (the "Village"), the Downers Grove Sanitary District (the "District"), Margosian Properties LLC ("Margosian") and Rathje Properties LLC ("Rathje"), for the recapture of fees for certain public improvements, 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

AN AGREEMENT AMONG DOWNERS GROVE SANITARY DISTRICT, VILLAGE OF
DOWNERS GROVE, MARGOSIAN PROPERTIES LLC AND RATHJE
PROPERTIES LLC TO ESTABLISH RECAPTURE FEES FOR A SANITARY SEWER
LOCATED ALONG THE TOLLWAY AND LACEY ROAD

THIS AGREEMENT is entered into by and between the DOWNERS GROVE SANITARY DISTRICT, ILLINOIS, a sanitary district created and existing under the laws of the State of Illinois, (hereinafter referred to as the "DISTRICT"), the VILLAGE OF DOWNERS GROVE, ILLINOIS, an Illinois municipal corporation, (hereinafter referred to as the "VILLAGE"), MARGOSIAN PROPERTIES LLC, a limited liability company formed under the laws of the State of Delaware (hereinafter referred to as "MARGOSIAN"); and RATHJE PROPERTIES LLC, a limited liability company formed under the laws of the State of Delaware (hereinafter referred to as "RATHJE"), concerning the establishment of recapture fees for certain public improvements as described herein.

WHEREAS, the 1970 Illinois Const. Art. VII, Sec. 10, and Illinois Revised Statutes 5 ICLS 220/1 et. seq. authorizes DISTRICT and VILLAGE to cooperate in the performance of their responsibilities by contract and other agreements; and

WHEREAS, DISTRICT entered into an agreement dated January 20, 1998 with American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated September 23, 1996 and known as Trust Number 500028-07 and Stonehill Development Corp. which provided for the construction of certain sanitary sewers; and

WHEREAS, American National Bank and Trust Company of Chicago Trust Agreement dated September 23, 1996 and Stonehill Development Corp. have since been dissolved and the successors in interest to American National Bank and Trust Company of Chicago Trust Agreement dated September 23, 1996 and known as Trust Number 500028-07 and Stonehill Development Corp. are MARGOSIAN (50% share) and RATHJE (50% share); and

WHEREAS, DISTRICT, MARGOSIAN and RATHJE paid the costs of a sanitary sewer located along the Tollway from 39th Street to the intersection of Lacey Road and Virginia Street; and

WHEREAS, DISTRICT and VILLAGE previously entered into an intergovernmental agreement in March, 2007 which provided for the construction of a sanitary sewer in Lacey Road from Virginia Street to Ogden Avenue in Downers Grove and VILLAGE paid the costs of said sanitary sewer; and

WHEREAS, DISTRICT has determined that said sanitary sewers will be used for the benefit of property whose owners did not contribute to the cost of the sewer construction; and

WHEREAS, all parties desire to provide for a ratable basis for recovering costs incurred for the benefit of other private parties.

NOW, THEREFORE, be it agreed by and among the parties for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is acknowledged as follows:

1. DISTRICT agrees to reimburse VILLAGE, MARGOSIAN AND RATHJE for these costs by establishing a recapture fee, over and above the standard sanitary sewer connection fees prescribed by DISTRICT ordinances, to be charged to those properties that may reasonably be expected to benefit from the sanitary sewer. The benefited properties and the applicable recapture fees are provided in the attached EXHIBIT A.
2. DISTRICT agrees to increase the above recapture fees by adding interest thereto at the rate of 3%, compounded annually, once each year during the month of August for 25 years, beginning in August 2016 until August 2040 at which point the

assessment of interest shall cease. The following example is intended to illustrate this interest clause:

Sample recapture fee as of August 2015	\$10,000.00
Sample recapture fee as of August 2016	\$10,300.00
Sample recapture fee as of August 2017	\$10,609.00
...	
...	
...	
Sample recapture fee as of August 2039	\$20,327.94
Sample recapture fee as of August 2040 and thereafter	\$20,937.78

3. All fees collected by DISTRICT pursuant to this Agreement shall be paid to DISTRICT, VILLAGE, MARGOSIAN and RATHJE in the following percentages: DISTRICT (18.43%), VILLAGE (65.05%), MARGOSIAN (8.26%) and RATHJE (8.26%). All such payments shall be made within 60 days of the date said fees are received by DISTRICT. DISTRICT shall provide written notice to all parties, as soon as reasonably possible, of the receipt of any recapture fees pursuant to this Agreement. It is understood that DISTRICT'S obligation to reimburse the above parties shall be limited to funds collected from such fees and payments made hereunder, shall be solely out of said funds and this Agreement shall not be construed as creating any obligation upon DISTRICT to make payments from its General Corporate Funds or Revenues.
4. MARGOSIAN and RATHJE do hereby certify that the successors in interest to American National Bank and Trust Company of Chicago Trust Agreement dated September 23, 1996 and known as Trust Number 500028-07 and Stonehill Development Corp. are Margosian Properties LLC (50% share) and Rathje Properties LLC (50% share).
5. DISTRICT shall use its best efforts to enforce the provisions hereof and to collect the additional fee referred to herein. However, VILLAGE, MARGOSIAN AND RATHJE recognize the possibility of clerical omission by DISTRICT, and it is

agreed that DISTRICT shall not be liable in any way in the event of any such error or for any reason whatsoever. DISTRICT'S sole obligation to pay hereunder shall be limited to funds actually received by it.

6. MARGOSIAN and RATHJE, jointly and severally, shall: (a) undertake the cost to prosecute or defend any action or proceeding, legal or otherwise, involving any third party, that may arise out of this Agreement; (b) indemnify and hold DISTRICT, its trustees, officers, employees or agents harmless from any costs, fees (including attorneys fees and expenses) or Judgments which DISTRICT, its trustees, officers, employees or agents may incur or become liable for pursuant to any such third party action or cause; and (c) pay DISTRICT'S reasonable attorneys fees and costs incurred therewith. The total liability for Judgments or damages under this paragraph shall be limited to \$110,575, as of the execution of this Agreement in 2015. The limit for Judgments or damages shall increase at the rate of 3%, compounded annually, once each year during the month of August for 25 years, beginning in August 2016 until August 2040 at which point the increases to the limit amount shall cease. There shall be no limit on the liability for costs of defense or attorneys fees. DISTRICT shall provide written notice to MARGOSIAN and RATHJE, as soon as reasonably possible, of any claims under this paragraph. In the event DISTRICT incurs any costs, including attorneys fees, not reimbursed or paid by MARGOSIAN and RATHJE, jointly or severally, in accordance with the terms of this paragraph, DISTRICT shall provide written notice to MARGOSIAN and RATHJE of the total amounts due to DISTRICT. If the amounts due to DISTRICT remain unpaid ninety days after the date of the written notice, MARGOSIAN and RATHJE agree to the retention by DISTRICT of their shares of any remaining recapture fees to be come due under this Agreement, in the total amount of the unpaid costs incurred by DISTRICT. DISTRICT shall provide

written notice to MARGOSIAN and RATHJE of such retention. The retention of future recapture fees by DISTRICT shall not be the sole remedy available to DISTRICT to enforce the provisions of this paragraph.

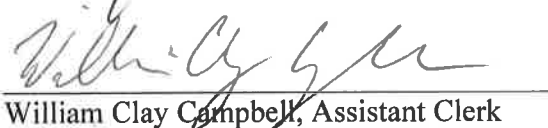
7. VILLAGE, MARGOSIAN AND RATHJE will each be responsible for notifying DISTRICT of their respective addresses to which the payments under this Agreement are to be forwarded.
8. This Agreement may be signed in counterparts.
9. This Agreement shall be recorded with the DuPage County Recorder of Deeds against the parcels referenced in EXHIBIT A to notify interested persons of the recapture fees for the connection to and use of the sanitary sewer described herein.
10. This document shall be a final embodiment of the Agreement by and among DISTRICT, VILLAGE, MARGOSIAN AND RATHJE. No oral changes or modifications of this Agreement shall be permitted or allowed. Changes or modifications to this Agreement shall be made only in writing and upon necessary and proper signature of all parties hereto. In the event that any provisions of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereto.
11. This agreement shall be binding upon and inure to the benefits of the parties hereto, their successors and assigns.

NOW, THEREFORE, in consideration of the above stated preambles and the mutual covenants and promises hereinafter contained, DISTRICT, VILLAGE, MARGOSIAN and RATHJE formally covenant, agree, and bind themselves as follows to wit:

Dated at Downers Grove, Illinois, this 19th day of November, 2015.

DOWNERS GROVE SANITARY DISTRICT

By: 
Nicholas J. Menninga, General Manager

Attest: 
William Clay Campbell, Assistant Clerk

Dated at Downers Grove, Illinois, this _____ day of _____, 2015.

VILLAGE OF DOWNERS GROVE

By: _____

Name and Title: _____

Attest: _____

Name and Title: _____

Dated at Lombard, Illinois, this 10th day of NOVEMBER, 2015.

MARGOSIAN PROPERTIES LLC

By: Charles S Margosian

Name and Title: CHARLES S. MARGOSIAN MANAGER

Attest: _____

Name and Title: _____

Dated at Lombard, Illinois, this 10th day of November, 2015.

RATHJE PROPERTIES LLC

By: J. Louis Rathje

Name and Title: J. Louis Rathje MANAGER

Attest: _____

Name and Title: _____

This instrument prepared by and mail to:

Downers Grove Sanitary District
2710 Curtiss Street
Downers Grove, Illinois 60515-0703
PH: (630) 969-0664

EXHIBIT A

<u>PIN</u>	<u>Address</u>	<u>Legal</u>	<u>Recapture Fee</u>
09-06-102-005	4200 Lacey Road	LLOYD A GODINGS SURVEY	\$22,977.09
09-06-102-016	4100 Lacey Road	LACEY-DAVENPORT PL SURVEY	\$16,773.57
09-06-105-013	vacant Lee Avenue	N 244.45 S 394.45 FT OF	\$34,658.34
09-06-107-010	1744 Virginia Street	BURLINGTON HIGHLANDS	\$14,407.08
09-06-107-009	4000 Lee Avenue	S 150 FT NW 1/4 LYG E	\$25,864.69
09-06-109-001	1751 Virginia Street	BURLINGTON HIGHLANDS	\$15,571.96
09-06-109-006	4201 Lacey Road	BURLINGTON HIGHLANDS	\$11,606.17
09-06-111-001	1751 Carol Street	BURLINGTON HIGHLANDS	\$14,943.62
09-06-111-006	4225 Lacey Road	BURLINGTON HIGHLANDS	\$12,624.58
09-06-114-001	1747 Janet Street	BURLINGTON HIGHLANDS	\$12,385.12
09-06-105-001 & 012	1701 Herbert Street	VENNING-VERCOE ASSMT PLAT	\$33,724.96
09-06-102-007 & 013	4250 Lacey Road	AND NORTH 90 FT SOUTH 115 FT	\$34,020.68
09-06-102-014	4240 Lacey Road	METES & BOUNDS	\$34,811.95
09-06-102-020	vacant Lacey Road	LLOYD A GODINGS A P & RUSSOS SUB	\$152,529.55
09-06-300-007	4330 Lacey Road	RUSSOS RESUBDIVISION	\$17,930.54
09-06-300-008	1804 Ogden Avenue	RUSSOS RESUBDIVISION	\$19,402.26
09-06-301-001	1740 Ogden Avenue	BURLINGTON HIGHLANDS	\$21,891.64
09-06-304-013 & 014	vacant Ogden Avenue	BRANIGAR BROS OGDEN AVE FARMS	\$179,056.41
			\$675,180.20