

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
10/18/2016

SUBJECT:	SUBMITTED BY:
Purchase Agreement for 5631 and 5635 Webster	Nan Newlon Director of Public Works

SYNOPSIS

A resolution has been prepared authorizing execution of a real estate contract for the purchase of 5631 and 5635 Webster for a purchase price of \$307,500.

STRATEGIC PLAN ALIGNMENT

The goals for 2015-2017 include *Top Quality Infrastructure* and *Steward of Financial, Environmental and Neighborhood Sustainability*.

FISCAL IMPACT

These purchases are funded by a CDBG-DR grant, which pays for 75% of the purchase price. The Village's share for the purchase is \$76,875. The FY16 budget includes \$390,000 in the Stormwater Fund for this purchase.

RECOMMENDATION

Approval on the October 18, 2016 consent agenda.

BACKGROUND

These properties are being purchased by the Village as part of the Community Development Block Grant - Disaster Recovery (CDBG-DR) Program awarded to the Village from DuPage County. The funding for this purchase comes from the U.S. Department of Housing and Urban Development (HUD), to assist disaster recovery efforts in response to a declared major flooding disaster which occurred in DuPage County in April 2013. This grant award allows the Village to purchase properties that were flooded as a result of the flooding event. The properties proposed to be acquired at this time are located at 5631 Webster (residence) and 5635 Webster (vacant lot) which are owned by the same individuals. These properties experience recurring structural flooding. In compliance with the program, the properties will have deed restrictions so that the properties can be used only for purposes compatible with open space, recreation, or wetlands management practices.

ATTACHMENTS

Resolution
Real Estate Contract

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING
EXECUTION OF A REAL ESTATE CONTRACT
FOR PROPERTY LOCATED AT
5631 & 5635 WEBSTER STREET, 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 Vernon L. Schultz and Cynthia L. Schultz (hereinafter collectively "Seller"), for the purchase of certain property located at 5631 & 5635 Webster Street, Downers Grove, Illinois 60516, 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
5631 & 5635 WEBSTER STREET, DOWNERS GROVE, ILLINOIS**

WHEREAS, The Village of Downers Grove is acting under a Community Development Block Grant – Disaster Recovery (CDBG-DR) grant from the County of DuPage, which is being funded by the U.S. Department of Housing and Urban Development (HUD) to assist disaster recovery efforts through the purchase of property in response to a declared major flooding disaster which occurred in DuPage County in April, 2013.

1. **PURCHASER, SELLER AND PROPERTY:** Village of Downers Grove, 801 Burlington Avenue, Downers Grove, DuPage County, Illinois, (hereinafter "Purchaser") agrees to purchase and Vernon L. Schultz and Cynthia L. Schultz (hereinafter collectively "Seller") agree to sell the property commonly referred to as 5631 and 5635 Webster Street, Downers Grove, Illinois (hereinafter the "Property") and legally described as follows:

Lot twenty four (24) in Block seven (7) in Linden Heights First Addition to the town of Downers Grove, being a Subdivision In Sections eight (8) and seventeen (17), Township 38 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof Recorded July 30, 1881 as Document 29217, in DuPage County, Illinois.

Commonly known as: 5631 Webster St., Downers Grove, IL 60516
PIN: 09-17-106-009

AND

Lot twenty-three (23) in Block seven (7) in Linden Heights First Addition to Downers Grove, a subdivision in Sections eight (8) and seventeen (17) Township thirty eight (38) North, Range eleven (11), East of the Third Principal Meridian, according to the plat thereof recorded July 30, 1881, in book 3 of plats, page 32 as document 29217, in DuPage County, Illinois.

Commonly known as: 5635 Webster St., Downers Grove, IL 60516
PIN: 09-17-106-010

2. **PURCHASE PRICE:** Purchaser shall pay Seller the sum of Three Hundred Seven Thousand Five Hundred Dollars and No Cents (\$307,500.00) at closing for the Property, plus or minus prorations. It is understood by all parties that the proceeds from the sale shall first be applied to all liens on the property. It is further understood that the CDBG-DR Funds being used for the purchase of the Property, cannot and will not, duplicate benefits received for the same from any other funds. Seller will return any disaster aid money received if it amounts to a duplication of benefits.

3. **DEED AND OTHER CLOSING DOCUMENTS:** Seller shall convey or cause to be conveyed by recordable warranty deed, which Purchaser shall prepare, good and merchantable title to Purchaser in accordance with all applicable state and Federal rules, regulations and procedures for flood plain buy-out programs, 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 Purchaser's intended use of the Property;
- c) covenants and conditions of record that do not interfere with Purchaser's intended use of the Property;

Seller shall sign an Affidavit of Title, which shall be prepared by Purchaser, 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 sign at closing a Bill of Sale and ALTA Statement, both of which shall be prepared by Purchaser, as well as any other documents required by the title company and/or necessary to effectuate the terms of this Contract.

Seller shall execute all necessary documents to transfer title to the Property to the Purchaser and shall execute now and in the future, any and all document requirements by the Purchaser, the

County and/or HUD to complete this transaction and to comply with Village, State or Federal regulations.

4. **CLOSING:** The closing shall occur within thirty (30) days of approval of this Contract by the Village Council (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 and any costs to record a release(s) for any mortgages or liens.

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

6. **TITLE COMMITMENT:** Upon acceptance of this Contract, Purchaser shall order and 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. Purchaser shall be solely responsible for all costs associated with the commitment for title insurance and the title insurance policy.

If the title commitment discloses unpermitted exceptions, Seller shall have 30 days from the date of delivery thereof to have the said exceptions waived, or to have the title insurer commit to insure against loss or damage that may be caused by such exceptions and the closing date shall be automatically delayed as necessary. If Seller fails to do so, Purchaser may elect, upon notice to Seller

after the expiration of the 30-day period, to (i) terminate this Contract; or (ii) take the title as it then is with the right to deduct from the purchase price, liens or encumbrances of a definite or ascertainable amount; or (iii) postpone the closing date until such time when the Seller has had said exceptions waived.

7. **REAL ESTATE TAXES:** Seller shall be solely responsible for the 2016 real estate taxes through the Closing Date; a credit shall be given to Purchaser at closing for the 2016 real estate taxes through the Closing Date, based upon 105% of the 2015 real estate taxes.

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

9. **UTILITIES:** At least ten (10) days prior to the scheduled closing date, Seller shall contact each utility service provider that provides utility services to the Property, including, but not limited to, electricity, natural gas, and sanitary sewer to advise of the sale of the Property and to request final billings and account terminations, including actual meter readings when applicable, effective on the closing date.

10. **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: Larry Oldfield
 Stock, Carlson, Oldfield & McGrath LLC
 124C S. County Farm Road
 Wheaton, IL 60187
 (630) 665-2500

If to Purchaser: Village of Downers Grove
 Attn: Assistant Village Attorney
 801 Burlington Avenue
 Downers Grove, IL 60515
 (630) 434.5504 Fax: (630) 434.5493

11. **USE OF PROCEEDS:** Seller and Purchaser agree that: (i) the CDBG-DR funds being used for the purchase of the Property cannot and will not duplicate benefits received by Seller for the same

flood event, regardless of the source of any other funds. Seller shall return any disaster aid money received by Seller to the extent that the retention of such aid results in a duplication of benefits received by Seller; and (ii) any disbursements of CDBG-DR funds being used for the purchase of the Property paid to the Seller cannot and will not be used to purchase or lease replacement housing located **IN ANY FLOOD ZONE** (100 year flood zone) as identified in the Flood Insurance Rate Maps of the applicable jurisdiction. For the purpose of enforcing this Contract, any funds disbursed to Seller at closing will be presumed to have been used for the purchase or lease of any replacement housing by Seller for a period of three (3) years following the closing date.

12. SELLER'S OBLIGATIONS, 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 Contract 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 Contract 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 Property.
 - 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.
 - k) Seller represents that the Property is located in the floodplain and qualify for the assistance being granted and are **UNDER NO OBLIGATION TO SELL THEIR PROPERTY UNDER THIS PROGRAM, BUT ARE DOING SO VOLUNTARILY.** Seller acknowledges that the Purchaser has not made any demand to acquire the Property under threat of condemnation and/or by exercise of Purchaser's eminent domain powers.

- l) Seller has been given the opportunity to review the appraisal prepared by County Appraisals, Inc., which established the fair market value prior to the flood of April 2013 as \$200,000.00 for 5631 Webster and \$107,500.00 for 5635 Webster.
- m) Seller agrees that they will, in writing, furnish to the Purchaser within five (5) days from the date of this contract, a list of all liens of any kind known to the Seller, including but not limited to mortgages, mechanics liens, judgement liens, and past due taxes.
- n) Seller acknowledges that the Purchaser has relied upon Seller's information, representations, submittals and disclosures in assessing and determining Seller's eligibility for acquisition under this buy-out program, and eligibility for use of Federal and/or State grant funds, including CDBG-DR monies, to apply towards Purchaser's acquisition expenses, and Seller reaffirms the accuracy and completeness of such information, representations, submittals and disclosures.
- o) Seller acknowledges that they have had an opportunity to review this Contract and they have had an opportunity, if they so choose, to contact an attorney of their choice to review this Contract and enter into the Contract fully understanding the nature thereof and saves and holds harmless the Village or any representative, of any liability or responsibility as a result of this Contract or anything incident to the sale.

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 Contract 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 contract.

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 Contract 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 PROPERTY:** Seller shall be allowed to remove all personal property prior to the Closing date. No fixtures, materials or improvements to the real estate shall be removed from the Property, and, because of legal liability reasons, the Village will not permit any materials to be salvaged at this time or at the time of demolition. Any violation of this agreement may result in changing the fair market value of the structure. The value of the property removed will be solely determined by the Village and will be deducted from the purchase price, if the purchase price has not yet been paid in full or to be repaid by the Seller within ten (10) days after removal if the purchase price has been paid to the Seller.

PURCHASER:

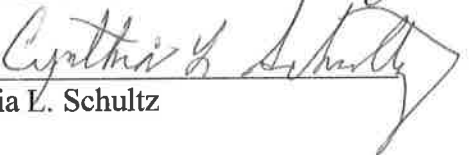
SELLER:

VILLAGE OF DOWNERS GROVE

Mayor



Vernon L. Schultz



Cynthia L. Schultz

ATTEST:

Date: 10/5/2016

Village Clerk

Date: _____