

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
FEBRUARY 8, 2011 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Real Estate Contracts for Properties located at 125 2 nd Street, 5129 Cumnor, 5132 Cumnor, 5135 Cumnor and 5136 Cumnor	✓ Resolution Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

SYNOPSIS

Staff has prepared resolutions authorizing execution of Real Estate Contracts for the properties located at 125 2nd Street, 5129 Cumnor, 5132 Cumnor, 5135 Cumnor and 5136 Cumnor in the amount of \$1,492,500.

STRATEGIC PLAN ALIGNMENT

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

FISCAL IMPACT

The FY11 budget includes \$3.0 million in the Stormwater Improvement Fund for this project. The budget includes \$1,350,000 for the purchase of property. While the cost these properties is \$142,500 over the budget for land acquisition, staff expects that the project will be completed within the total project budget.

RECOMMENDATION

Approval on the February 8, 2011 Consent Agenda

BACKGROUND

The proposed land acquisition is located at 2nd Street and Cumnor Road, which was identified in the Watershed Improvement Plan as a high priority subwatershed. The subwatershed is generally located East of Fairview Avenue, between Maple Avenue and 5th Street.

Flooding of houses, yards and streets has occurred repetitively at the intersection of 2nd Steet and Cumnor Road. Drainage problems in this area are due to a depressional area in the street that has an undersized outlet. In 2008, the Village contracted with Engineering Resource Associates (ERA) to investigate possible options for a solution in this subwatershed. Several options were analyzed, including a large diameter storm sewer pipe and an on-site, above ground detention storage facility. The storage facility was chosen, and will be constructed on the land purchased through these voluntary buy-outs. Utilizing the design information provided by ERA, the final design and construction documents will be prepared by staff.

ATTACHMENTS

- Resolutions
- Real Estate Agreements

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING
EXECUTION OF A REAL ESTATE CONTRACT
FOR THE PROPERTY LOCATED AT 5135 CUMNOR ROAD, 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 Kelvin & Dawn Keach (hereinafter collectively “Seller”), for the purchase of certain property located at 5135 Cumnor Road, 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 Kelvin & Dawn Keach (hereinafter collectively "Seller") agree to sell the real estate improved with a single family dwelling commonly referred to as 5135 Cumnor Road, Downers Grove, Illinois (hereinafter the "Property") and legally described as follows:

LOT 2 IN HAGGARDS RESUBDIVISION OF LOT 16 AND THE NORTH 8 FEET OF LOT 17 IN BROTHERS EAST GROVE HIGHLANDS, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 AND THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO SAID PLAT OF RESUBDIVISION RECORDED FEBRUARY 29, 1972 AS DOCUMENT R72-9769, IN DUPAGE COUNTY, ILLINOIS

Commonly known as: 5135 Cumnor Road, Downers Grove, Illinois PIN: 09-09-317-019

2. PURCHASE PRICE: Purchaser shall pay Seller the sum of Three Hundred Fifty Two Thousand Five Hundred Dollars (\$352,500.00) by wire transfer in immediately available funds or by certified or cashier's check or by a check drawn on the Seller's account which the title company negotiates at the closing table 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, private easements, building restrictions, setback lines and zoning restrictions ;

- c) any matters that would be disclosed by a survey; and
- d) covenants and conditions of record (the "Permitted Exceptions").

Seller shall furnish to Purchaser an Affidavit of Title, in customary form, at closing subject only to the permitted exceptions listed above and Seller's right to post-closing possession as provided in this Contract. 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 an ALTA Statement as well as any other documents required by the First American Title Insurance Company (the "title company") and/or necessary to effectuate the terms of this Contract.

4. CLOSING: The closing shall occur on or before 5:00 pm on February 16, 2011 on a date selected by the mutual agreement of Seller and Purchaser but in no event later than 5:00 pm on February 16, 2011 (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 its location closest to the Property or as otherwise mutually acceptable to the parties. Purchaser shall be solely responsible for all closing costs, including without limitation title insurance premiums, survey costs, escrow fees; however, the Seller shall be responsible for and pay their own attorney's fees.

5. INSPECTION FOR POST-CLOSING PURPOSES OF SELLER. After Closing and upon reasonable written notice to Seller from Purchaser, Purchaser may enter upon the real estate to inspect the physical condition of the Property. After such reasonable notice, Seller agrees to permit Purchaser to enter and make a reasonable inspection of the Property. The results of the

inspection shall not effect the terms or conditions of the transaction contemplated by this Contract nor provide a basis for Purchaser to rescind the transaction. Purchaser acknowledges and agrees as follows: (i) Purchaser's inspection shall not cause any injury to the Property which adversely effects Seller's possession of the Property which Purchaser fails to repair; (ii) Purchaser, at its sole cost and expense, shall promptly repair any damage to the Property caused by the foregoing which adversely effects Seller's possession of the Property; (iii) Purchaser shall pay all costs and expenses incurred in connection with the foregoing; and (iv) Purchaser does hereby agree to indemnify, defend and hold Seller harmless from and against any and all loss, cost, injury, damage, liability, claim or expense, including, without limitation, reasonable attorneys' fees and court costs, and liability of any kind arising out of or in connection with Purchaser's damage to the Property, which is caused, directly or indirectly, by the acts and omissions of Purchaser's agents, employees, architects, engineers and other personnel.

6. DELIVERY OF POSSESSION.

- a) Possession shall be delivered not later than April 1, 2011 on a date selected by Seller. Seller shall provide Purchaser with not less than five (5) days prior written notice of the intended date for delivery of possession.
- b) Possession shall be deemed to have been delivered when Seller has vacated the Property and delivered the keys to the Property to Purchaser's attorney or other agent designated in writing.
- c) In the event Seller has not delivered possession of the Property to Purchaser on or before April 1, 2011, Seller shall pay Purchaser the sum of \$200.00 per day for use

and occupancy of the Property for each day Seller retains possession of the Property after April 1, 2011.

d) Seller shall deposit in escrow with Attorney EnzaPetrarca ("Escrowee"), at closing, the sum of \$6,000.00 (the "Escrowed Funds") from the Purchase Price to guaranty the payment of any use and occupancy charges incurred after April 1, 2011. If possession is delivered on or prior to April 1, 2011, the Escrowed Funds shall be delivered to Seller and the escrow closed. If possession is not so delivered, Escrowee shall pay over to Purchaser from the Escrowed Funds the per diem amount for use and occupancy for each day possession is withheld from Purchaser after April 1, 2011 and, upon delivery of possession, shall pay the balance of the Escrowed Funds, if any, to Seller. In the event that Seller does not vacate and surrender possession on or before April 1, 2011, Purchaser shall not be restricted in its right to seek possession by any available means authorized in law or equity. In the event the Purchaser rightfully brings an action for forcible entry and detainer, the Seller shall pay all of Purchaser's reasonable attorney fees and costs of suit and costs of eviction. The Escrowed Funds shall not be the limit of Seller's liability pursuant to this Section 6.

e) During seller's possession of the Property, Seller hereby agrees to maintain the same insurance coverage presently maintained by Seller and shall name the Village as additional insured. Seller agrees to be solely responsible for any maintenance of the property during Seller's possession.

7. TITLE COMMITMENT: Upon acceptance of this Contract, Seller, at Purchaser's expense, shall procure from First American Title Insurance Company 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 and shall pay for the same at Closing. If the title commitment discloses unpermitted exceptions or if the Survey shows any encroachments or other matters which effect the intended use of the Property by Purchaser which the title company raises as unpermitted exceptions and the title company does not insure over such unpermitted exceptions, the Purchaser may elect to either close the transaction with such unpermitted exceptions or terminate this Contract.

8. SURVEY: If Purchaser desires to obtain a survey, Purchaser shall be solely responsible for procuring a survey of the Property and all costs associated therewith. If Purchaser procures a survey prior to Closing, Purchaser shall deliver a copy of the survey to Seller prior to Closing.

9. REAL ESTATE TAXES: Seller represents that the 2009 real estate taxes have been paid in full. Seller shall be solely responsible for the 2010 real estate taxes. A credit shall be given to Purchaser at closing for the unpaid portion of the 2010 real estate taxes based upon 105% of the 2009 real estate taxes. Seller shall be solely responsible for the 2011 real estate

taxes through the date of Closing. A credit shall be given to Purchaser at closing for Seller's share of the 2011 real estate taxes through the date of Closing based upon 105% of the 2009 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:

Kelvin & Dawn Keach

5135 Cumnor Road

Downers Grove, IL 60515

With a required copy to: Attorney Michael J. Polachek

Tressler LLP

2100 Manchester Road, Suite 950

Wheaton, IL 60187

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 Seiler 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 other than Seller pursuant to the terms of this Contract.
- 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; (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. ("CERLA"); 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, 1511.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 orally 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 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. Notwithstanding the foregoing, in the event Section 2 is determined to be unenforceable, this Contract shall be null and void.

17. ENFORCEABILITY: This Contract shall not be binding upon Purchaser or Seller unless and until it has been duly approved and adopted by the Village Council of the Village of Downers Grove, Illinois. In the event this Contract is not duly approved and adopted by the Village Council of the Village of Downers Grove, Illinois by February 8, 2011, at the option of the Seller exercised by notice to Purchase, this Contract shall be null and void.

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

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

20. REMOVAL OF PERSONAL PROPERTY: Whereas, the Purchaser intends to demolish the single family dwelling located upon the Property and use the then vacant Property as a water retention basin and has no use for the personal property located at the Property, Seller may remove any and all personal property located upon the Property, provided that the home remains secure and safe from trespassers and the elements .

In witness whereof the parties have executed and dated this instrument with the intent to be legally bound thereby.

PURCHASER:

VILLAGE OF DOWNERS GROVE
DUPAGE COUNTY, ILLINOIS

Mayor

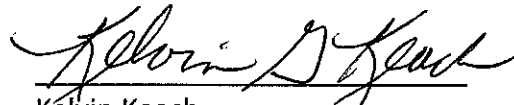
ATTEST:

Village Clerk

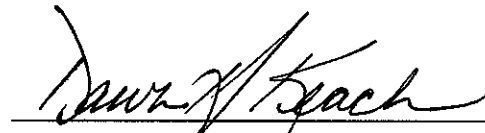
Date: _____

SELLER:

Kelvin & Dawn Keach



Kelvin Keach



Dawn Keach

Date: 1/26/11

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