

REAL ESTATE PURCHASE AND SALE AGREEMENT (“Agreement”)

1. PARTIES: Village of Downers Grove, an Illinois Municipal Corporation (“Seller”) agrees to sell and convey to _____, (“Purchaser”) and Purchaser agrees to purchase from Seller the Property (as defined in Section 2 below) for the consideration and upon and subject to the terms, provisions, and conditions hereinafter set forth.

2. PROPERTY: The real estate is located at 5237 Benton Avenue, Downers Grove, IL 60515 (“Property”) and is legally described as follows:

Lot 35 in Block 8 (except that part of Lot 35 in Block 8, if any, falling within Lot 34 in Block 8 in Straub’s Addition to Downers Grove, bounded and described as follows: commencing at the intersection of the north line of Summit Street and the east line of Benton Avenue and proceeding thence north along the east line of Benton Avenue 550 feet to an iron pipe at the corner of said Lot 34 for a point of beginning; thence east parallel with the north line of Summit Street, 131.4 feet to an iron pipe at the southeast corner of said Lot 34; thence north parallel with the east line of Benton Avenue 50 feet to an iron pipe at the northeast corner of said Lot 34; thence west parallel with the north line of Summit Street, 131.4 feet to an iron pipe at the northwest corner of said Lot 34 on the east line of Benton Avenue; thence south along the east line of Benton Avenue to the point of beginning, being a resubdivision of part of Lot 4 in Assessor’s division of Sections 7 and 8, Township 38 North, Range 11 east of the Third Principal Meridian, according to the Plat thereof recorded November 27, 1890 as Document 44124, In DuPage County, Illinois);

Also, (except that part of Lot 35 in Block 8, if any, falling within Lot 7 of the plat of Owner’s subdivision of all that part of the westerly half (in width) of Block 8 in Straube’s Addition to Downers Grove, in the southeast quarter of Section 8, Township 38 North, Range 11 east of the Third Principal Meridian, lying north of a line described as commencing at a point in the west line of said block, 386.75 feet southerly from the northwesterly corner thereof, as measured along said west line, thence east 131.7 feet to a point equidistant between the east and west lines of said block, according to the plat thereof recorded October 21, 1937 as Document 384586, in DuPage County, Illinois) in Straube’s addition to Downers Grove, being a resubdivision of part of Lot 4 in Assessor’s division of Sections 7 and 8, Township 38 North, Range 11 east of the Third Principal Meridian, according to the plat thereof recorded November 27, 1890 as Document 44124, in DuPage County, Illinois

3. PURCHASE PRICE:

A. **PURCHASE PRICE:** The purchase price is _____ **and No/100 Dollars (\$_____)** payable by Purchaser to Seller as follows:

1. **EARNEST MONEY:** Simultaneously with the submission of its proposal, Purchaser had deposited with Seller \$5,000.00 payable in the form of a cashier's check made payable to the Village of Downers Grove.

2. **BALANCE OF PURCHASE PRICE:** The balance of the Purchase Price plus or minus prorations and closing adjustments, if any, is due at the Closing of this transaction ("Closing").

B. **CASH, SALE AND PURCHASE NOT CONTINGENT ON LOAN:** This is an all-cash sale and purchase, and it is NOT contingent upon Purchaser obtaining financing even though Purchaser may apply to a lending institution of Purchaser's choice for a loan. Purchaser understands and agrees that neither receipt of a commitment from such a lending institution, acceptance of such a commitment, nor satisfaction or failure to satisfy any condition set forth in such a commitment shall in any way be conditions to or excuse the performance of Purchaser's obligations under this Agreement.

4. **TITLE INSURANCE:** Seller shall deliver to Purchaser within 30 days of the Effective Date of this Agreement a Preliminary Title Insurance Commitment ("Commitment") issued by a title insurance company licensed to do business in the State of Illinois in the full amount of the purchase price. Purchaser shall have fifteen (15) days after delivery of the Commitment, the recorded documents referred to therein and the Survey described in Paragraph 5 below to identify any items set forth in the Commitment which Purchaser deems objectionable. Any items not objected to by Purchaser shall be deemed to be "Permitted Exceptions" and Purchaser shall take subject to said Permitted Exceptions. If Seller fails to have the objectionable items removed or insured over, Purchaser may elect, to (i) terminate this Agreement, in which event the Earnest Money shall be returned to Purchaser or (ii) accept title as is. Notwithstanding anything in this Agreement to the contrary Purchaser shall be solely responsible for any and all costs associated with extended coverage and/or special endorsements

5. **SURVEY:** Seller shall provide Purchaser within thirty (30) days from the Effective Date of this Agreement with a current boundary survey showing the Property ("Survey").

6. **CLOSING:** The Closing of the sale shall be accomplished by means of a "New York" style closing and take place at Chicago Title, Wheaton, Illinois. Closing shall take place on _____, unless otherwise extended by mutual agreement of the parties.

A. At the Closing, Seller shall deliver to Purchaser, at Seller's sole cost and expense, the following:

1. Duly executed and acknowledged Quit-Claim Deed to Purchaser or its nominee;

2. Internal Revenue Code Affidavit pursuant to Section 1445 stating that Seller is not a foreign entity within the meaning of the Internal Revenue Code;
3. A Seller's "GAP" undertaking, ALTA Statement, 1099 form and Affidavit of Title;
4. A pro forma of the Title Policy, subject to the Permitted Exceptions and such other matters as may have been approved by Purchaser pursuant to Paragraph 4 hereof which shall be issued by the Title Company as the Owner's Policy after Closing;
5. State, county and local real estate transfer declarations, to the extent applicable;
6. A signed closing statement setting forth the total Purchase Price and all debits and credits to Purchaser and Seller in connection with this sale;
7. Such other proof of Seller's authority and authorization to enter into this Agreement and perform Seller's obligations under this Agreement as may be reasonably required by Seller and as is otherwise acceptable to the Title Company; and
8. All other documents customarily required to close this type of transaction as required by the Title Company.

B. At the Closing, Purchaser shall deliver to Seller, at Purchaser's sole cost and expense, the following:

1. The balance of the Purchase Price including prorations and adjustments;
2. Such proof of Purchaser's authority and authorization to enter into this Agreement and perform Purchaser's obligations under this Agreement as may be reasonably required by Seller and as is otherwise acceptable to the Title Company, including resolutions;
3. A signed counterpart of the closing statement; and
4. Such other and further documents necessary to close this transaction as required by the Title Company.

7. POSSESSION: Possession of the Property shall be delivered to Purchaser at Closing.

8. SALES AND EXPENSES TO BE PAID IN CASH AT OR PRIOR TO CLOSING:

A. **SELLER'S EXPENSES:** All costs of the Owner's Title Policy; one-half (1/2) of any closing, escrow or "New York" style closing fee; state and county transfer taxes; and other costs customarily paid by Sellers.

B. **PURCHASER'S EXPENSES:** All recording costs of the Deed and the collateral documents; one-half (1/2) of any closing, escrow or "New York" style closing fee; the cost of Extended Coverage or special endorsements, Purchaser's attorney's fees and other costs customarily paid by Purchasers.

9. DEFAULT:

A. If Purchaser defaults and such default is not cured by Purchaser within ten (10) days after written notice thereof from Seller to Purchaser, Seller may terminate this Agreement, in which event the Earnest Money, plus accrued interest, if any, shall be due and payable to Seller as liquidated damages and Seller's sole and exclusive remedy. The parties agree that actual damages in the event of default are difficult to ascertain and further agree that the amount set forth as liquidated damages is a reasonable estimate of the damages to Seller in the event of Purchaser's default. Such sum is intended to be liquidated damages, and not a penalty.

B. If Seller defaults and such default is not cured by Seller within ten (10) days after written notice thereof from Purchaser, Purchaser may obtain a return of the Earnest Money as its sole and exclusive remedy.

10. REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER:

A. Seller hereby represents to Purchaser that to the best of Seller's knowledge:

1. There are no parties other than those controlled by the Seller in possession of any portion of the Property;
2. Seller is duly authorized and empowered to sell the Property;
3. Seller has paid or will pay, all property taxes, charges, debts, and other assessments that are due and payable as of the Closing Date;
4. All obligations of Seller arising from the ownership and operation of the Property which accrue prior to the Closing Date, have been paid as they became due or will be paid at or prior to Closing. Except for obligations for which provisions are herein made for proration or other

adjustments at Closing, there will be no obligations of Seller with respect to the Property outstanding as of the Closing Date;

5. Seller is not aware of any unrecorded liens caused by Seller against the Property that will not be satisfied at Closing;

6. Seller has not received notice of the commencement of any legal action against Seller for the damaging, taking or acquiring of all or any part of the Property, either temporarily or permanently, by condemnation or by exercise of the right of eminent domain;

7. Seller has not received any written notice that alleges a violation of law or governmental ordinances, orders or requirements relating to the Property, that was issued prior to the date of this Agreement to Seller by any governmental department or agency having jurisdiction as to conditions affecting the Property, and with respect to which any corrective action was not completed prior to the date of the execution of this Agreement by Seller;

8. Seller has full power, authority and capacity to enter into and perform this Agreement and its obligations under this Agreement and this Agreement is binding on Seller and enforceable against Seller in accordance with its terms and Seller's consummation of this transaction will not violate any restriction, court order or agreement to which Seller or the Property are subject. That all individuals executing this Agreement and other documents necessary to consummate this transaction for and on behalf of Seller have the authority to do so and that Seller has taken all necessary actions, pursuant to Illinois law, authorizing execution of this Agreement and sale of the Property by Seller pursuant to the terms hereof; and

9. Seller has no knowledge and has received no notice of any special assessment or other impositions pending, contemplated or threatened with respect to the Property.

B. No other express or implied representations or warranties are made with regard to the property or matters relating thereto and, subject to and without limitation of the representations contained in subparagraph A above:

1. The property will be sold and conveyed to the Purchaser on an "AS IS" basis without any representations or warranties of any kind, express or implied, either oral or written, made by the Seller with respect to the physical, environmental, zoning or structural condition of the property or with respect to the existence or absence of underground fuel storage tanks, toxic or hazardous materials, substances or wastes in, on, under or affecting the property, including but not limited to, asbestos about or on

the property, and subject to existing zoning, flood plain and any other restrictions on the use or development of the property. **All warranties with respect to the property are hereby expressly disclaimed. Except as provided below regarding the scope of Purchaser's indemnity commitment, any risk and all responsibility relating to any condition of the property, including, but not limited to, any of the above-described conditions, are assumed by Purchaser and disclaimed by the Seller.**

2. Purchaser shall examine the property and conduct its own inspection and investigation of the property (including, without limitation, environmental inspections and investigations). The Purchaser shall take all necessary action and bear all expenses and liability associated with making the property suitable for the Purchaser's intended use and complying with all applicable law. Further, upon closing, as between Purchaser and Seller, Purchaser shall bear all responsibility, liability and obligation for the physical, environmental, zoning and structural condition of the property and the taxable, non-residential development, business or operations to be located on the property.

3. Purchaser waives, generally releases and covenants not to sue or make any claim whatsoever against the Seller regarding the foregoing matters and all matters within the scope of the following indemnity commitment, including, but not limited to, any claim by Purchaser against the Seller resulting from a third-party claim against Purchaser due to the negligent or unlawful acts or omissions of the Seller. Purchaser shall, at its sole cost and expense, unconditionally indemnify, defend and hold the Seller harmless from and against any loss, liability, damage (whether or not ultimately successful), penalties, fines, injunctions, suits, proceedings, disbursements and court costs) arising under any present or future local, state or federal law (and the amendments, regulations, orders or decrees promulgated thereunder) which may be incurred by or against the Seller directly or indirectly resulting from the condition of the property including, but not limited to, the presence and/or removal of asbestos, environmental hazards and/or the presence or removal of underground fuel storage tanks, except to the extent a claim is made directly against the Seller and is determined by a court of competent jurisdiction to arise directly from the unlawful acts or omissions of the Seller prior to closing. Purchaser's obligations, indemnifications and risk with respect to the condition of the property under this paragraph shall survive the closing of the sale of the property, and shall not merge in the deed.

11. REPRESENTATION, WARRANTIES AND COVENANTS OF PURCHASER:

A. Purchaser represents, warrants and covenants to Seller as follows:

1. Purchaser is purchasing the Property in its "AS IS" condition with no warranties by Seller as to merchantability, suitability or fitness for any particular use, it being understood and agreed that Purchaser is relying solely on its own inspections, engineering studies and reports, economic and feasibility studies and examinations of the Property and Purchaser's own determination of the condition of the Property;
 2. This Agreement is not contingent in any manner upon zoning.
 3. Purchaser has all requisite power and authority to consummate the transaction contemplated by this Agreement and has by proper proceedings duly authorized the execution and delivery of this Agreement and the consummation of the transaction contemplated hereby;
 4. This Agreement when executed and delivered by Purchaser and Seller will constitute a valid and binding agreement and shall be enforceable against Purchaser in accordance with its terms;
 5. To Purchaser's knowledge, neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated hereby will violate or be in conflict with; (i) any applicable provisions of law; (ii) any order of any court or government agency having jurisdiction over the Purchaser; or (iii) any agreement or instrument to which Purchaser is a party or by which Purchaser is bound;
 6. There are no actions, suits, claims or other proceedings pending or, to the best of Purchaser's knowledge, contemplated or threatened against Purchaser that could affect Purchaser's ability to perform its obligations under this Agreement;
 7. Purchaser has sufficient funds available to consummate the Closing of the transaction described in this Agreement.
- B. Purchaser shall deliver to Seller any refund of real estate taxes received with respect to the Property for any period prior to the Closing Date.

12. CONDITION OF AND DAMAGE TO PROPERTY: The Property shall be conveyed in its present condition, ordinary wear and tear and damage by casualty excepted.

13. NOTICES: All notices, elections, consents, demands and communications (collectively called "Notices" or individually called "Notice") shall be in writing and delivered personally or by registered or certified mail return receipt requested, postage prepaid, express mail or by commercial carrier and, if sent to Purchaser, addressed to Purchaser at Purchaser's address and, if sent to the Seller,

addressed to the Seller at Seller's address each stated on the signature page of this Agreement. Copies of Notices shall be sent to the attorneys for the respective parties. Either party may, by written notice to the other, change the address to which notices are to be sent. Unless otherwise provided herein, all notices shall be deemed given when personal delivery is effected or when deposited in any branch, station or depository maintained by the U.S. Postal Service or the express mail service within the United States of America, except that a Notice of a change of address shall be deemed given when actually received. Seller's or Purchaser's affidavit of the date and time of deposit in a mailbox or with the express mail service or the postmark, whichever is earlier, shall constitute evidence of the effective date when the notice has been given.

14. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all prior understandings and agreements. There are no representations, agreements, arrangements or understandings, oral or written between the parties, relating to the subject matter contained in this Agreement that are not fully expressed or referred to herein.

15. SUCCESSORS AND ASSIGNS: The provisions of this Agreement shall bind and inure to the benefit of Seller and Purchaser and their respective heirs, legal representatives, successors and assigns. Purchaser may not assign this Agreement without prior written consent of Seller, which consent shall not be unreasonably withheld, and provided, however, that Seller's consent shall not be required to any assignment of this Agreement by Purchaser to any affiliate of Purchaser or any I.R.C. Section 1031 qualified exchange intermediary.

16. FURTHER ASSURANCES: Either party shall execute, acknowledge and deliver to the other party such instruments and take such other actions, in addition to the instruments and actions specifically provided for herein, at any time and from time to time after execution of this Agreement whether before or after the Closing, as such other party may reasonably request in order to effectuate the provisions of this Agreement or the transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to this transaction, provided that neither party shall be required to incur any material expense in connection therewith.

17. SEVERABILITY: If any clause or provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction as against any person or under any circumstances, the remainder of this Agreement and the applicability of any such clause or provision to other persons or circumstances shall not be affected thereby.

All other clauses or provisions of this Agreement, not found invalid or unenforceable, shall be and remain valid and enforceable.

18. TIME: Time is of the essence of this Agreement.

19. STRICT COMPLIANCE/WAIVER: Any failure by either party to insist upon strict performance by the other party of any of the provisions of this

Agreement shall not be deemed a waiver of any of the provisions hereof, irrespective of the number of violations or breaches that may occur, and each party, notwithstanding any such failure, shall have the right thereafter to insist upon strict performance by the other of any and all of the provisions of this Agreement.

20. GOVERNING LAW: The provisions of this Agreement and all questions with respect to the construction and enforcement thereof and the rights and liabilities of the parties hereto shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois.

21. GENDER: A reference in this Agreement to any one gender, masculine, feminine or neuter, includes the other two, and the singular includes the plural, and vice versa, unless the context requires otherwise.

22. CERTAIN REFERENCES: The term “herein”, “hereof” or “hereunder” or similar terms used in this Agreement refer to this entire Agreement and not to the particular provision in which the term is used. Unless otherwise stated, all references herein to paragraphs, subparagraphs or other provisions are references to paragraphs, subparagraphs or other provisions of this Agreement.

23. CAPTIONS: The captions in this Agreement are for convenience and reference only and in no way define, limit or describe the scope of this Agreement or the intent of any provision hereof.

24. NO ORAL CHANGES: This Agreement cannot be changed or any provision waived orally. ANY CHANGES OR ADDITIONAL PROVISIONS OR WAIVERS MUST BE SET FORTH IN A RIDER ATTACHED HERETO OR IN A SEPARATE WRITTEN AGREEMENT SIGNED BY THE PARTIES.

25. BROKERAGE COMMISSION: Seller and Purchaser each represent and warrant to the other that no person or entity is entitled to a brokerage or other commission in connection with the transaction contemplated herein. Seller and Purchaser each agree to indemnify and hold the other harmless from any claim or demand resulting from a breach of the above representation and warranty.

26. DATE OF PERFORMANCE: If any date for performance hereunder falls on a Saturday, Sunday or other day which is a holiday under Federal law or under the State law where the Property is located, the date for such performance shall be the next succeeding business day.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Real Estate Purchase and Sale Agreement on the dates listed below, to be effective as of the date signed by the Seller. The date of Seller’s signature shall be the “Effective Date” of this Agreement.

SELLER:

PURCHASER:

VILLAGE OF DOWNERS GROVE

By: _____
Mayor

By: _____
A duly authorized signatory

Attest:

Village Clerk

Attest:

A duly authorized signatory

Date: _____
(Effective Date)

Date: _____

Address: Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515

Address:

SELLER’S ATTORNEY:

Enza I. Petrarca, Village Attorney
Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515
Phone: (630) 434-5541
Fax: (630) 434-5493
epetrarca@downers.us