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2019K014772

SANDY WEGMAN
RECORDER - KANE COUNTY, IL
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Recording Cover Page

ORDINANCE

ORDINANCE 02-2019

VILLAGE OF GILBERTS

AN ORDINANCE APPROVING A SECOND AMENDMENT TO THE ANNEXATION AND DEVELOPMENT AGREEMENT FOR THE CONSERVANCY DEVELOPMENT

WHEREAS, on October 31, 2005, the Village of Gilberts Board of Trustees approved an Annexation and Development Agreement between the Village of Gilberts and the owners of approximately 1,114 acres of land as described in the original Annexation Agreement (“*Annexation Agreement*”) for the development of 1,114 acres known as the Conservancy (“*Conservancy*”), which Agreement was recorded on January 9, 2006, with the Kane County Recorder’s Office, as Document No. 2006K002188; and

WHEREAS, Gilberts Development LLC (“*Gilberts Development*”) is the successor-in-interest to a portion of the Conservancy consisting of 914.02 acres (“*Gilberts Development Parcel*”); and

WHEREAS, on January 31, 2017, the Village of Gilberts Board of Trustees approved the First Amendment to the Annexation Agreement for the Gilberts Development Parcel, which Agreement was recorded on February 3, 2017, with the Kane County Recorder’s Office, as Document No. 2017K006674 (“*First Amendment*”); and

WHEREAS, pursuant to the First Amendment, Gilberts Development is required to construct certain public improvements as part of its development of the Conservancy, including an expansion to the Village’s water treatment plant, installation of two new wells, and improvements to Freeman Road; and

WHEREAS, the Annexation Agreement and the First Amendment established schedules for construction and completion of the public improvements; and

WHEREAS, in order to provide flexibility in the schedule for the public improvements, while still providing control to the Village Board in approving any schedule modifications, the parties desire to amend the Annexation Agreement to allow scheduling modifications to be approved by the Village Board by resolution; and

WHEREAS, the Village Board of Trustees conducted a public hearing on the proposed Second Amendment to the Annexation Agreement for the Gilberts Development Parcel on March 5, 2019, pursuant to notice as required by state statute; and

WHEREAS, the President and Board of Trustees find that amending the Annexation Agreement is in the best interests of the Village and its residents, as set forth in the Second Amendment attached to this Ordinance as Exhibit A.

THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF GILBERTS AS FOLLOWS:

Section 1. Recitals. The recitals set forth above are incorporated into and made a part of this Ordinance as though set forth in this Section 1.

Section 2. Approval; Authorization. The Second Amendment to the Agreement is hereby approved in substantially the form attached hereto as Exhibit A. The Village President and Village Clerk are hereby authorized and directed to execute and attest, respectively, the Second Amendment on behalf of the Village following the delivery of the executed Second Amendment by Gilberts Development. The Village Clerk is also authorized and directed to record this Ordinance and Second Amendment with the Office of the Kane County Recorder of Deeds.

Section 3. Continued Effect. Except as expressly modified by this Ordinance and the Second Amendment, the Annexation Agreement and First Amendment will remain in full force and effect to govern the development and use of the Conservancy and Gilberts Development Parcel.

Section 4. Severability. In the event a court of competent jurisdiction finds this ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the application thereof to the greatest extent permitted by law.


Section 5. Repeal and Saving Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or cause of action which shall have accrued to the Village of Gilberts prior to the effective date of this ordinances.

Section 6. Effective Date. This Ordinance shall be in full force and effect after its approval in the manner provided by law.

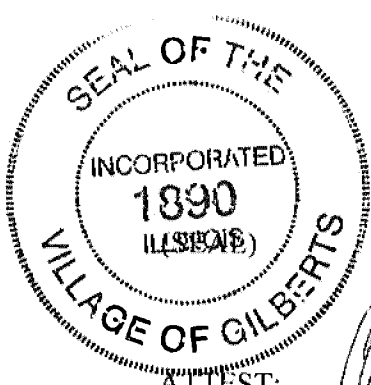
ADOPTED THIS 5 DAY OF March, 2019, pursuant to roll call vote as follows:

	Ayes	Nays	Absent	Abstain
Trustee Dan Corbett	✓	_____	_____	_____
Trustee Elissa Kojzarek	✓	_____	_____	_____
Trustee Nancy Farrell	✓	_____	_____	_____
Trustee Jeanne Allen	✓	_____	_____	_____
Trustee Lou Hacker	✓	_____	_____	_____
Trustee Guy Zambetti	✓	_____	_____	_____
President Rick Zirk	_____	_____	_____	_____

APPROVED THIS 5 DAY OF March, 2019.




Village President, Rick Zirk



Ordinance No. 02-2019

ATTEST:


Village Clerk, Courtney Nicholas

Published:

3-6-19

Exhibit A

**SECOND AMENDMENT TO THE ANNEXATION AGREEMENT AND
DEVELOPMENT AGREEMENT BETWEEN THE
VILLAGE OF GILBERTS AND GILBERTS DEVELOPMENT LLC
(914.02 ACRES OF CONSERVANCY DEVELOPMENT)**

THIS SECOND AMENDMENT TO THE ANNEXATION AND DEVELOPMENT AGREEMENT (“*Second Amendment*”) to that certain Annexation Agreement and Development Agreement (“*Agreement*”) dated October 31, 2005, and recorded on January 9, 2006 as Doc. No. 2006K002188, as amended by the First Amendment, is made and entered into as of the 5 day of March, 2019 by and between **THE VILLAGE OF GILBERTS**, an Illinois municipal corporation, Kane County, Illinois (“*Village*”) and **GILBERTS DEVELOPMENT, LLC** (“*Gilberts Development*” or “*Developer*”).

WITNESSETH:

WHEREAS, on October 31, 2005, the Village of Gilberts Board of Trustees approved an Annexation and Development Agreement between the Village of Gilberts and the owners of approximately 1,114 acres of land as described on **Exhibit A-1** and in the original Annexation Agreement (“*Annexation Agreement*”) for the development of 1,114 acres known as the Conservancy (“*Conservancy*”), which Agreement was recorded on January 9, 2006, with the Kane County Recorder’s Office, as Document No. 2006K002188; and

WHEREAS, Gilberts Development LLC (“*Gilberts Development*”), is the successor-in-interest to a portion of the Conservancy consisting of 914.02 acres, as described on **Exhibit A-2** (“*Gilberts Development Parcel*”); and

WHEREAS, on January 31, 2017, the Village of Gilberts Board of Trustees approved the First Amendment to the Annexation Agreement for the Gilberts Development Parcel, which Agreement was recorded on February 3, 2017, with the Kane County Recorder’s Office, as Document No. 2017K006674 (“*First Amendment*”); and

WHEREAS, pursuant to the First Amendment, Gilberts Development is required to construct certain public improvements as part of its development of the Conservancy, including an expansion to the Village’s water treatment plant, installation of two new wells, and improvements to Freeman Road; and

WHEREAS, the Annexation Agreement and the First Amendment established schedules for construction and completion of the public improvements; and

WHEREAS, in order to provide flexibility in the schedule for the public improvements, while still providing control to the Village Board in approving any schedule modifications, the parties desire to amend the Annexation Agreement and First Amendment to allow scheduling modifications to be approved by the Village Board by resolution; and

WHEREAS, all notices, publications, procedures, public hearings and other matters required for the consideration and approval of this Second Amendment have been made, given, held and performed by the Village as required by 65 ILCS 5/11-15.1-1 et seq., and all other applicable statutes, and all applicable ordinances, regulations and procedures of the Village; and

WHEREAS, a public hearing on the proposed Second Amendment was held on March 5, 2019, pursuant to proper notice as provided by statute; and

WHEREAS, the Corporate Authorities of the Village have considered this Second Amendment and determined that this Second Amendment is in the best interests of the Village and its residents; and

WHEREAS, the Parties, consistent with Illinois law, have agreed to the terms and conditions set forth in this Second Amendment as evidenced by the signatures affixed hereto.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

1. **Incorporation of Recitals.** The foregoing recitals are material to this Second Amendment and are incorporated into the Second Amendment and made a part of this Second Amendment as if fully stated herein.

2. **Prior Agreements/Conflicts.** In the event of any conflict or inconsistency between the terms and provisions of the Annexation Agreement and this First Amendment, this Second Amendment shall govern and apply, but solely as applicable to the Gilberts Development Parcel.

3. **Amendment to Section 18, Construction, Inspection, Acceptance and Dedication of Public Improvements, Easements and Streets.** The Annexation Agreement is hereby amended to add a new Subsection 18.O, entitled "Schedule for Public Improvements," to Section 18, as follows:

"O. **Schedule for Public Improvements.** The schedule for construction and completion of the public improvements required for the Gilberts Development Parcel, as established by the Annexation Agreement or any amendment thereto, may be modified or extended by the Village Board upon request of the Developer and by resolution approved by the Village Board, without a public hearing or amendment to the Annexation Agreement or any amendment thereto."

IN WITNESS WHEREOF, the Parties have executed this Second Amendment effective the date first above stated.

Village of Gilberts, an Illinois municipal corporation

By: [Signature]
Village President

Attest: [Signature: Christopher Nicholas]
Village Clerk

Gilberts Development LLC, an Illinois limited liability company

By: [Signature]
Its Owner

EXHIBIT A-1

Legal Description of the Conservancy

PARCEL 1:

THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 AND THAT PART OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EASTERLY OF THE RIGHT OF WAY LINE OF THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY, SAID PARALLEL LINE BEING ALSO THE WESTERLY RIGHT OF WAY LINE OF THE ELGIN AND BELVIDERE ELECTRIC COMPANY IN RUTLAND TOWNSHIP, KANE COUNTY, ILLINOIS.

ALSO,

THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS

ALSO,

THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 11, TOWNSHIP 42, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

ALSO,

THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

ALSO,

THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

AND ALSO,

THE SOUTH HALF OF THE SOUTH HALF OF SECTION 2 AND THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 11, ALL IN TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

ALSO,

THE NORTH HALF OF THE NORTHEAST QUARTER (EXCEPT THE SOUTH 4 RODS OF THE WEST 3 RODS THEREOF) OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

Parcel 2:

THE NORTHWEST FRACTIONAL QUARTER OF SECTION 2, (EXCEPT THE WEST 87 LINKS OF THE NORTHWEST QUARTER OF SAID NORTHWEST FRACTIONAL QUARTER AND ALSO EXCEPT THAT PART OF SAID NORTHWEST FRACTIONAL LYING NORTHEASTERLY OF THE CENTER LINE OF HUNTLEY ROAD), ALSO THE NORTH HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 2, ALL IN TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN IN RUTLAND TOWNSHIP, KANE COUNTY, ILLINOIS.

Parcel 3:

THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12 AND THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 42 NORTH, RANGE 7, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

EXHIBIT A-2

Legal Description of the Gilberts Development Parcel

PARCEL 1:

THE WEST 87 LINKS OF GOVERNMENT LOT 1 OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 2, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

PARCEL 2:

THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

PARCEL 3:

THE SOUTH 4 RODS OF THE EAST 3 RODS OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 11 TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN KANE COUNTY, ILLINOIS.

PARCEL 4:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THAT PART OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EASTERLY OF THE RIGHT OF WAY LINE OF THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY, SAID PARALLEL LINE BEING ALSO THE WESTERLY RIGHT OF WAY LINE OF THE ELGIN AND BELVIDERE ELECTRIC COMPANY IN RUTLAND TOWNSHIP, KANE COUNTY, ILLINOIS.

PARCEL 5:

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

PARCEL 6:

THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 42, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

PARCEL 7:

THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

PARCEL 8:

THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

PARCEL 9:

THE SOUTH HALF OF THE SOUTH HALF OF SECTION 2 AND THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 11, ALL IN TOWNSHIP 42 NORTH, RANGE 7 EAST OF

THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

PARCEL 10:

THE NORTH HALF OF THE NORTHEAST QUARTER (EXCEPT THE SOUTH 4 RODS OF THE WEST 3 RODS THEREOF) OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF RUTLAND, KANE COUNTY, ILLINOIS.

PARCEL 11:

THE NORTHWEST FRACTIONAL QUARTER OF SECTION 2, (EXCEPT THE WEST 87 LINKS OF THE NORTHWEST QUARTER OF SAID NORTHWEST FRACTIONAL QUARTER AND ALSO EXCEPT THAT PART OF SAID NORTHWEST FRACTIONAL LYING NORTHEASTERLY OF THE CENTER LINE OF HUNTLEY ROAD), ALSO THE NORTH HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 2, ALL IN TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN IN RUTLAND TOWNSHIP, KANE COUNTY, ILLINOIS.

Parcel Identification Numbers: 02-02-100-007; 02-02-100-008; 02-02-300-002; 02-02-300-003; 02-02-300-004; 02-02-400-002; 02-11-100-003; 02-11-100-010; 02-11-200-001; 02-11-200-003; 02-11-200-005; 02-11-200-007; 02-11-300-008; 02-11-400-003; 02-11-400-004; 02-11-400-005; 02-11-475-012; 02-11-425-001; 02-11-475-001; 02-11-425-010; 02-11-401-016; 02-11-296-001; 02-11-401-001; 02-11-401-008; 02-11-401-015; 02-11-350-007; 02-11-404-010; 02-11-475-013; 02-11-401-014; 02-11-401-013; 02-11-401-012; 02-11-401-011; 02-11-401-010; 02-11-401-009; 02-11-401-008; 02-11-401-007; 02-11-401-006; 02-11-401-005; 02-11-401-004; 02-11-401-003; 02-11-401-002; 02-11-296-002; 02-11-402-001; 02-11-402-002; 02-11-402-003; 02-11-348-001; 02-11-402-004; 02-11-348-002; 02-11-402-005; 02-11-348-003; 02-11-348-004; 02-11-350-006; 02-11-350-005; 02-11-350-004; 02-11-404-004; 02-11-350-003; 02-11-404-003; 02-11-350-002; 02-11-404-002; 02-11-350-001; 02-11-404-001; 02-11-404-006; 02-11-404-007; 02-11-404-008; 02-11-404-009; 02-11-451-001; 02-11-451-011; 02-11-451-002; 02-11-451-012; 02-11-451-003; 02-11-451-013; 02-11-451-004; 02-11-451-014; 02-11-451-005; 02-11-451-015; 02-11-451-006; 02-11-451-016; 02-11-451-007; 02-11-451-017; 02-11-451-008; 02-11-451-018; 02-11-451-009; 02-11-451-019; 02-11-451-010; 02-11-451-020; 02-11-349-001; 02-11-349-002; 02-11-349-003; 02-11-349-004; 02-11-349-005; 02-11-349-006; 02-11-349-007; 02-11-349-008; 02-11-349-009; 02-11-403-001; 02-11-403-002; 02-11-403-003; 02-11-403-004; 02-11-403-005; 02-11-403-006; 02-11-403-007; 02-11-403-008; 02-11-403-009; 02-11-405-001; 02-11-405-002; 02-11-405-003; 02-11-405-004; 02-11-405-005; 02-11-405-006; 02-11-405-007; 02-11-405-008; 02-11-405-009; 02-11-405-010; 02-11-405-011; 02-11-405-012; 02-11-405-013; 02-11-405-014; 02-11-405-015; 02-11-405-015; 02-11-405-016; 02-11-405-017; 02-11-405-018; 02-11-405-019; 02-11-425-002; 02-11-425-003; 02-11-425-004; 02-11-425-005; 02-11-425-006; 02-11-425-007; 02-11-425-008; 02-11-425-009; 02-11-425-010; 02-11-425-011; 02-11-425-012; 02-11-425-013; 02-11-425-014; 02-11-425-015; 02-11-425-016; 02-11-425-017; 02-11-425-018; 02-11-425-019; 02-11-425-020; 02-11-452-001; 02-11-452-002; 02-11-452-003; 02-11-452-004; 02-11-452-005; 02-11-452-006; 02-11-452-007; 02-11-452-008; 02-11-452-009; 02-11-452-010; 02-11-452-011; 02-11-452-012; 02-11-452-013; 02-11-452-014; 02-11-452-015; 02-11-452-016; 02-11-452-017; 02-11-452-018; 02-11-452-019; 02-11-475-002; 02-11-475-003; 02-11-475-004; 02-11-475-005; 02-11-475-006; 02-11-475-007; 02-11-475-008; 02-11-475-009; 02-11-475-010; 02-11-475-011