

ORDINANCE NO. 05-2023

AN ORDINANCE APPROVING A FOURTH AMENDMENT TO THE ANNEXATION AND DEVELOPMENT AGREEMENT FOR GILBERTS TOWN CENTER

WHEREAS, the Village of Gilberts Board of Trustees and certain other parties entered into that certain Annexation Agreement and Development Agreement dated April 27, 2005, and recorded on June 13, 2005, in the Office of the Recorder of Deeds of Kane County, Illinois as Doc. No. 2005K066197 ("**Original Annexation Agreement**"), for various parcels of land as described in the Original Annexation Agreement as Gilberts Town Center; and

WHEREAS, the Original Annexation Agreement was later amended by the First Amendment, dated December 13, 2011, and recorded on January 10, 2012, in the office of the Recorder of Deeds of Kane County, Illinois as Doc. No. 2012K001801 (the "**First Amendment**"); and

WHEREAS, the Original Annexation Agreement and the First Amendment were later amended by the Second Amendment, dated December 20, 2016, and recorded on January 3, 2017, in the Office of the Recorder of Deeds of Kane County, Illinois as Doc. No. 2017K000143 (the "**Second Amendment**"); and

WHEREAS, the Original Annexation Agreement, the First Amendment, and the Second Amendment were later amended by the Third Amendment, dated July 16, 2019, and recorded on July 23, 2019, in the Office of the Recorder of Deeds of Kane County, Illinois as Doc. No. 2019K032306 (the "**Third Amendment**") (the Original Annexation Agreement, the First Amendment, the Second Amendment, and the Third Amendment shall collectively be referred to as the "**Annexation Agreement**"); and

WHEREAS, Red Barn Holdings, LLC ("**Owner**"), is the legal title holder of the parcel of land referred to in the Annexation Agreement as Commercial Parcel A and commonly known as Unit 1A of Gilberts Town Center, as more specifically described on the attached **Exhibit A** (the "**Subject Property**"); and

WHEREAS, the development and use of the Subject Property is governed by the Annexation Agreement; and

WHEREAS, the Owner has proposed certain modifications to the Annexation Agreement relating to the height requirements for wall signs on the Subject Property (the "**Fourth Amendment**"), and has applied for variances from the Gilberts Unified Development Ordinance ("**UDO**") relating to the UDO's wall sign requirements for the Subject Property; and

WHEREAS, the Village Plan Commission held a public hearing on the Owner's requested variances from the UDO on April 12, 2023, and has recommended approval of the Owner's requested variances to the Corporate Authorities; and

WHEREAS, the Corporate Authorities of the Village will consider the adoption of a separate ordinance approving the Owner's requested variances from the UDO immediately after the consideration of the proposed Fourth Amendment to the Annexation Agreement; and

WHEREAS, the Fourth Amendment was submitted pursuant to applicable provisions of Illinois Municipal Code to the Corporate Authorities of the Village and a public hearing on the Fourth Amendment was held before the Corporate Authorities on April 18, 2023, pursuant to proper notice as provided by 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 Fourth Amendment attached to this Ordinance as **Exhibit B**.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES of the Village of Gilberts, Kane County, Illinois, as follows:

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

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

Section 3. Continued Effect. Except as expressly modified by the adoption of this Ordinance and the First, Second, and Third Amendments, the Annexation Agreement shall remain in full force and effect to govern the development and use of Gilberts Town Center and the Subject Property.

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.

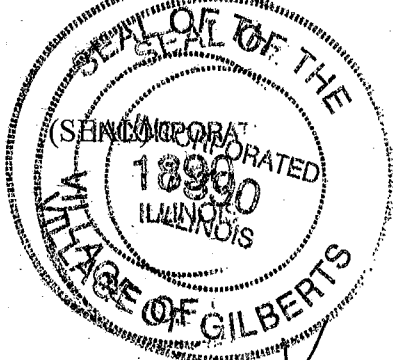
PASSED BY VOTE OF THE BOARD OF TRUSTEES of the Village of Gilberts, Kane County, Illinois, this 18th day of April, 2023.

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Jeanne Allen	✓	_____	_____	_____
Trustee Dan Corbett	✓	_____	_____	_____
Trustee Lou Hacker	✓	_____	_____	_____
Trustee Brandon Coats	✓	_____	_____	_____
Trustee Justin Redfield	✓	_____	_____	_____
Trustee David LeClercq Sr.	_____	_____	✓	_____
President Guy Zambetti	_____	_____	_____	_____


APPROVED this 18th day of April, 2023.



 Guy Zambetti, Village President



ATTEST:



 Kelly Mastera, Village Clerk

EXHIBIT A

Description of the Subject Property

LOT 290 IN GILBERT TOWN CENTER-UNIT 1A, BEING A PART OF THE NORTH HALF OF SECTION 24, AND PART OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN THEREOF RECORDED NOVEMBER 22, 2005 AS DOCUMENT 2005K140427, AND ANY AMENDMENTS SUBSEQUENT THERETO IN KANE COUNTY, ILLINOIS.

PIN: 02-24-155-003

EXHIBIT B

*Fourth Amendment to the Annexation and Development
Agreement for Gilberts Town Center*

THIS INSTRUMENT PREPARED
BY AND RETURN TO:

Kurt S. Asprooth
Ancel Glink, P.C.
140 S. Dearborn Street, 6th Floor
Chicago, IL 60603

**FOURTH AMENDMENT TO THE
ANNEXATION AND DEVELOPMENT AGREEMENT
FOR GILBERTS TOWN CENTER**

THIS FOURTH AMENDMENT TO THE ANNEXATION AND DEVELOPMENT AGREEMENT FOR GILBERTS TOWN CENTER (“*Fourth Amendment*”), dated April 18, 2023, by and among THE VILLAGE OF GILBERTS, an Illinois municipal corporation of Kane County, Illinois (the “*Village*”) and Red Barn Holdings, LLC (“*Owner*”).

RECITALS

WHEREAS, the Village and certain other parties entered into that certain Annexation Agreement and Development Agreement dated April 27, 2005, and recorded on June 13, 2005, in the Office of the Recorder of Deeds of Kane County, Illinois as Doc. No. 2005K066197 (“*Original Annexation Agreement*”), for various parcels of land as described in the Original Annexation Agreement as Gilberts Town Center; and

WHEREAS, pursuant to Section 31 of the Original Annexation Agreement, the Parties, and/or their respective successors and assigns, as the case may be, reserved the right, by mutual consent, to agree in writing to amend the terms and conditions of the Original Annexation Agreement, provided, however, that only the legal title holder of the property subject to the proposed amendment is required to execute an amendment to the Agreement; and

WHEREAS, the Original Annexation Agreement was later amended by the First Amendment, dated December 13, 2011, and recorded on January 10, 2012, in the office of the Recorder of Deeds of Kane County, Illinois as Doc. No. 2012K001801 (the “*First Amendment*”); and

WHEREAS, the Original Annexation Agreement and the First Amendment were later amended by the Second Amendment, dated December 20, 2016, and recorded on January 3, 2017, in the Office of the Recorder of Deeds of Kane County, Illinois as Doc. No. 2017K000143 (the “*Second Amendment*”); and

WHEREAS, the Original Annexation Agreement, the First Amendment, and the Second Amendment were later amended by the Third Amendment, dated July 16, 2019, and recorded on July 23, 2019, in the Office of the Recorder of Deeds of Kane County, Illinois as Doc. No.

2019K032306 (the “*Third Amendment*”) (the Original Annexation Agreement, the First Amendment, the Second Amendment, and the Third Amendment shall collectively be referred to as the “*Annexation Agreement*”); and

WHEREAS, the Owner is the legal title holder of the parcel of land referred to in the Annexation Agreement as Commercial Parcel A and commonly known as Unit 1A of Gilberts Town Center, as more specifically described on the attached **Exhibit A** (the “*Subject Property*”); and

WHEREAS, the development and use of the Subject Property is governed by the Annexation Agreement; and

WHEREAS, the Owner has proposed certain modifications to the Annexation Agreement relating to the height requirements for signage as applied to the Subject Property, and has applied for variances from the Gilberts Unified Development Ordinance (“UDO”) relating to sign height requirements for the Subject Property; and

WHEREAS, the Village Plan Commission held a public hearing on the Owner’s requested variances from the UDO on April 12, 2023, and has recommended approval of the owner’s requested variance to the Corporate Authorities; and

WHEREAS, upon the adoption of the Fourth Amendment, the Corporate Authorities of the Village will consider the adoption of a separate ordinance approving the Owner’s requested variance from the UDO; and

WHEREAS, all notices, publications, procedures, public hearings, and other matters required for the consideration and approval of this Fourth 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, this Fourth Amendment was submitted pursuant to the applicable provisions of the Illinois Municipal Code to the Corporate Authorities of the Village and a public hearing on this Fourth Amendment was held before the Corporate authorities on April 18, 2023, pursuant to proper notice as provided by statute; and

WHEREAS, the Corporate Authorities of the Village have considered this Fourth Amendment and determined that execution hereof is in the best interest of the Village and its residents; and

WHEREAS, by a favorable vote of at least two-thirds of the Corporate Authorities of the Village then holding office, the Village has adopted an ordinance approving the execution of this Fourth Amendment and authorizing its execution.

NOW, THEREFORE, in consideration of the observance by the Parties of their respective covenants and obligations as set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, it is agreed as follows:

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

2. **Capitalized Words and Terms.** Capitalized words and terms not otherwise defined in this Fourth Amendment shall have those meanings and definitions contained in the Annexation Agreement.

3. **Prior Agreements/Conflicts.** In the event of any conflict or inconsistency between the terms and provisions of the Annexation Agreement and this Fourth Amendment, this Fourth Amendment shall govern and apply, but solely as applicable to the Subject Property.

4. **Amendment to Exhibit G of the Annexation Agreement.** Exhibit G to the Annexation Agreement, entitled "Gilberts Town Center Commercial Parcel A (Burbulis Parcel – 16 acres at Higgins/Center)," is hereby amended as follows (additions in **bold and underline**; deletions in ~~**bold and strikethrough**~~):

EXHIBIT G

GILBERTS TOWN CENTER

Commercial Parcel A

(Burbulis Parcel – 16 acres at Higgins/Center)

DEVELOPMENT STANDARDS

Applicability: These development standards are predicated upon a preliminary plat of development concept that envisions smaller scale building improvements situated on lots of generally less than three (3) acres, some of which will be situated along Turner Street (extended and may relate to and/or be inviting to persons and activities that may be present with the contemplated Town Square.

Should another development pattern for Commercial Parcel A be proposed that envisions larger scale building improvements upon larger lots and/or that may change the relationship of Commercial Parcel A to Town Square, then development standards consistent with those contained in the Agreement for Commercial Parcels B & C shall be applied, with the Town Square area being construed as residential and abutting in applying those standards.

[...]

Sign Requirements

In addition to conforming to the applicable requirements for signs set forth in the Village of Gilberts Sign Ordinance, all uses in the development shall also conform to the following additional requirements for signs.

[. . .]

B. Wall, awning, marquee, canopy, and window signs

- a. Type permitted: Business
- b. Number and size limits
 - i. For the first building wall facing a public or private street or customer parking area, the total permitted wall sign area shall be calculated on the basis of one square foot of sign area per one lineal foot of building wall up to a maximum of 200 square feet. No individual wall sign shall exceed 120 square feet in area. No more than four individual signs shall be placed on the wall.
 - ii. For a second building wall sign facing a public or private street or customer parking area, additional signage with not more than one square foot of wall signage for every two lineal feet of applicable building wall to a maximum of 50 square feet of signage is permitted. No more than two individual signs shall be placed on the wall.
 - iii. Signs on awnings, marquees, and canopies shall be considered to be wall signs under the terms of this section and subject to the regulations therefore where applicable.
 - iv. Window promotional signs shall be permitted interior to a glass show window and shall be in addition to all other authorized signs provided that not more than 10% of the total window area facing a public or private street or customer parking area shall be covered by such signs and provided that no violations are created with the Village building code.
- c. Maximum height: ~~20~~ 29 feet, and in no case shall a sign project above the roofline in the case of a flat-roofed structure, or eave line in the case of a pitched roof structure.
- d. For any lettering on an awning, said lettering shall be uniform in size, style, elevation and color on all awnings located on a common building.

[. . .]

5. **Consideration of Variances from the UDO.** Following the adoption of this Fourth Amendment, the Village agrees to consider the adoption of a separate ordinance approving the Owner's requested variance from the UDO according to the applicable procedures set forth in State law and the UDO.

6. **Continued Effect of Annexation Agreement.** Except as expressly modified by this Fourth Amendment, the Annexation shall remain in full force and effect, and Owner shall comply with all requirements, conditions, and restrictions therein.

7. **Amendment to Notices.** All notices relating to this Fourth Amendment and the Subject Property shall be provided to Owner as follows:

Red Barn Holdings, LLC
Katie Stover
141 E. Higgins Rd..
Gilberts, IL 60140

With a copy to:
Scott G. Richmond
Ariano, Hardy, Ritt, Nyuli, Richmond, Lytle & Goettel, P.C.
2000 McDonald Road, Suite 200
South Elgin, IL 60177
sgr@attorneys-illinois.com


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

Village of Gilberts, an Illinois municipal corporation

By: 

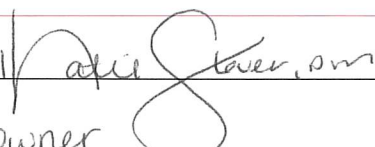
Village President

Attest:



Village Clerk

Red Barn Holdings, LLC

By: 

Its owner

EXHIBIT A

Legal Description of Unit 1A of Gilberts Town Center

LOT 290 IN GILBERT TOWN CENTER-UNIT 1A, BEING A PART OF THE NORTHERN HALF OF SECTION 24, AND PART OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN THEREOF RECORDED NOVEMBER 22, 2005 AS DOCUMENT 2005K140427, AND ANY AMENDMENTS SUBSEQUENT THERETO IN KANE COUNTY, ILLINOIS.

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