

VILLAGE OF DOWNERS GROVE
Report for the Village
6/12/2018

SUBJECT:	SUBMITTED BY:
Agreements with the Forest Preserve District of DuPage County for the Conveyance of Property and Easements	Nan Newlon Director of Public Works

SYNOPSIS

Ordinances have been prepared to authorize approval of the following:

- An Intergovernmental Agreement with the Forest Preserve District of DuPage County that would convey properties and easements to the Village to allow the Village to provide pedestrian and vehicular access;
- An Easement Agreement for a portion of sidewalk on the north side of Maple Avenue in the Maple Grove Forest Preserve;
- An Easement Agreement for Gilbert Avenue Improvements within the Maple Grove Forest Preserve.

A resolution has also been prepared to authorize approval of a License Agreement providing for grading work on a portion of Hidden Lake Forest Preserve.

STRATEGIC PLAN ALIGNMENT

The goals for 2017-2019 include *Top Quality Infrastructure*.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval on the June 19, 2018 active agenda.

BACKGROUND

The purpose of these agreements between the Village and the Forest Preserve District of DuPage County Forest Preserve District is to provide for the conveyance of certain property within Hidden Lake Forest Preserve and to grant easements within the Maple Grove Forest Preserve. The agreements include the following four components:

- Convey property within the Hidden Lake Forest Preserve for the purpose of right-of-way along Lacey Road adjacent to 3600 Lacey Road. This additional right-of-way will allow for the improvement of Lacey Road by the developer, including a four-lane cross section with a median and public sidewalk. The conveyance fee of \$4,500 will be paid by the developer.
- Provide a license for a temporary grading easement within the Hidden Lake Preserve adjacent to 3600 Lacey Road. This temporary grading easement will allow for the grading work needed to

construct a public sidewalk along Lacey Road. The license fee of \$1,444.69 will be paid by the developer.

- Provide an easement within the Maple Grove Forest Preserve for Gilbert Road for the existing public sidewalk and guardrail along Gilbert Road, which were constructed by the Village. There is no cost associated with this easement.
- Provide an easement within the Maple Grove Forest Preserve for the public sidewalk on the north side of Maple Avenue for the existing public sidewalk. There is no cost associated with this easement.

ATTACHMENTS

Ordinances

Resolution

Agreements

ORDINANCE NO. _____**AN ORDINANCE AUTHORIZING AN EASEMENT AGREEMENT FOR
GILBERT AVENUE IMPROVEMENTS
WITHIN THE MAPLE GROVE FOREST PRESERVE**

WHEREAS, the FOREST PRESERVE DISTRICT owns Maple Grove Forest Preserve (hereinafter referred to as "Maple Grove"); and

WHEREAS, a roadway commonly known as Gilbert Avenue has been in existence in the northern portion of Maple Grove (and south of the railroad tracks) for many years; and

WHEREAS, in 2005, DOWNERS GROVE constructed a sidewalk and guardrail south of Gilbert Avenue to provide for pedestrian access to Maple Grove and Gilbert Park; and

WHEREAS, in addition to the sidewalk and guardrail, DOWNERS GROVE also completed other improvements within Maple Grove at their sole cost and at the request of the FOREST PRESERVE DISTRICT; and

WHEREAS, DOWNERS GROVE requests the granting of a perpetual easement for the continued maintenance of the above listed improvements (hereinafter referred to as the "Gilbert Avenue Improvements"); and

WHEREAS, DOWNERS GROVE has determined that it is necessary to acquire this easement for the continued maintenance of the Gilbert Avenue improvements; and

WHEREAS, the FOREST PRESERVE DISTRICT and DOWNERS GROVE are municipalities as defined in Section 1(c) of the Local Government Property Transfer Act, 50 ILCS 605/1(c) (hereinafter "Transfer Act"); and

WHEREAS, Section 2 of the Transfer Act authorizes transfers of real estate, or interests therein, between municipalities for any public purpose upon such terms as are agreed to by the corporate authorities of the respective municipalities; and

NOW, THEREFORE, be it ORDAINED by the Village Council of the Village of Downers Grove;

SECTION 1. That the recitals set forth herein above are incorporated herein by reference as the factual basis for this transaction.

SECTION 2. That the Mayor is hereby authorized to execute and the Village Clerk attest the approval of the attached Easement Agreement relating to the Gilbert Avenue Improvements.

SECTION 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 Easement Agreement.

SECTION 4. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 5. This ordinance shall be in full force and effect from and after its passage and publication in pamphlet form as provided by law.

Mayor

Passed:

Published:

Attest: _____

Village Clerk

**Prepared by: Forest Preserve
District of DuPage County
Return to: Village of Downers Grove
C/O Village Manager
801 Burlington Ave
Downers Grove, IL 60515**

**VACANT LAND North side of Maple
Avenue and East of Lee Avenue
Downers Grove, Illinois
P.I.N.: 09-07-113-005 & 09-07-113-009**

**AN EASEMENT AGREEMENT FOR GILBERT AVENUE IMPROVEMENTS WITHIN
THE MAPLE GROVE FOREST PRESERVE**

THIS EASEMENT AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into by and between the Forest Preserve District of DuPage County, a body politic and corporate (hereinafter referred to as the "FOREST PRESERVE DISTRICT") and the Village of Downers Grove, a municipal corporation (hereinafter referred to as "DOWNERS GROVE"). The FOREST PRESERVE DISTRICT and DOWNERS GROVE are sometimes referred herein individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the FOREST PRESERVE DISTRICT owns Maple Grove Forest Preserve (hereinafter referred to as "Maple Grove"); and

WHEREAS, a roadway commonly known as Gilbert Avenue has been in existence in the northern portion of Maple Grove (and south of the railroad tracks) for many years; and

WHEREAS, in 2005, DOWNERS GROVE constructed a sidewalk and guardrail south of Gilbert Avenue to provide for pedestrian access to Maple Grove and Gilbert Park; and

WHEREAS, in addition to the sidewalk and guardrail, DOWNERS GROVE also completed other improvements within Maple Grove at their sole cost and at the request of the FOREST PRESERVE DISTRICT; and

WHEREAS, DOWNERS GROVE requests the granting of a perpetual easement for the continued maintenance of all of the above-mentioned improvement (hereinafter referred to as the "Gilbert Avenue Improvements"); and

WHEREAS, the FOREST PRESERVE DISTRICT and DOWNERS GROVE are municipalities as defined in Section 1(c) of the Local Government Property Transfer Act, 50 ILCS 605/1(c) (hereinafter "Transfer Act"); and

WHEREAS, Section 2 of the Transfer Act authorizes transfers of real estate, or interests therein, between municipalities for any public purpose upon such terms as are agreed to by the corporate authorities of the respective municipalities; and

WHEREAS, in accordance with Section 2 of the Transfer Act, DOWNERS GROVE, pursuant to a duly passed ordinance, has determined that it is necessary to acquire an easement for the continued maintenance of Gilbert Avenue Improvements within Maple Grove; and

WHEREAS, the FOREST PRESERVE DISTRICT has determined that it is reasonable, necessary and in the public interest and welfare to grant DOWNERS GROVE an easement for the continued maintenance of the Gilbert Avenue Improvements, subject to the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the foregoing preambles and the promises, terms and conditions set forth herein, the Parties agree as follows:

1.0 INCORPORATION OF RECITALS

1.1 The recitals set forth above are incorporated herein and made a part of this Agreement.

2.0 EASEMENT GRANTED

2.1 The FOREST PRESERVE DISTRICT hereby grants a non-exclusive, perpetual easement to DOWNERS GROVE for the maintenance of Gilbert Avenue Improvements within that portion of Maple Grove Forest Preserve legally described on **Exhibit "A"** and depicted on **Exhibit "B"** attached hereto and incorporated herein (hereinafter "Easement Premises") and on the terms and conditions as provided for in this Agreement.

2.2 DOWNERS GROVE shall notify the FOREST PRESERVE DISTRICT no less than six (6) weeks prior to any construction project within the Easement Premises in accordance with the notice provisions in paragraph 7.0 herein. DOWNERS GROVE shall make any independent contractor accessing the Easement Premises aware of the terms and conditions of this Agreement.

3.0 FEES

3.1 Given the long existence of the Gilbert Avenue roadway, the improvements provided by DOWNERS GROVE within Maple Grove as part of the sidewalk and guardrail project, and the continued maintenance of the Gilbert Avenue Improvements by DOWNERS GROVE in a quality manner, the easement fee is hereby waived.

4.0 RESTORATION

4.1 If DOWNERS GROVE damages the Easement Premises, DOWNERS GROVE shall restore all damaged areas according to the FOREST PRESERVE DISTRICT'S specifications. If DOWNERS GROVE fails to properly restore the Easement Premises within 30 days of service of the FOREST PRESERVE DISTRICT'S written demand for the restoration work, the FOREST PRESERVE DISTRICT shall have the right to take

such action as it deems necessary to perform the restoration or corrective work, which shall include the authority to (a) perform the work with its own personnel and/or; (b) engage the services of an independent contractor to perform the work. DOWNERS GROVE shall reimburse the FOREST PRESERVE DISTRICT for costs associated with said restoration or corrective work within 30 days of service of the FOREST PRESERVE DISTRICT's written demand for payment.

5.0 INDEMNIFICATION

- 5.1 To the extent permitted by law, DOWNERS GROVE shall defend, save, and hold harmless the FOREST PRESERVE DISTRICT, its elected officials, officers, employees and agents from any and all claims, liabilities, causes of action, losses and damages that may at any time arise or be claimed by any person or entity as a result of bodily injury, sickness, death or property damage, or as a result of any other claim or suit of any nature whatsoever, allegedly arising out of or in any manner connected with the use and maintenance of the Gilbert Avenue Improvements, when such bodily injury, sickness, death, property damage or other claim is allegedly caused by a negligent or intentional act or omission on the part of DOWNERS GROVE or its contractors, subcontractors, engineers, consultants, employees, or agents. In the event any person or entity obtains a judgment or settlement against the FOREST PRESERVE DISTRICT or any of its elected officials, officers, employees or agents, by reason of any negligent or intentional act or omission on the part of DOWNERS GROVE or its contractors, subcontractors, consultants, employees or agents, DOWNERS GROVE shall promptly, to the extent allowed by law, indemnify the FOREST PRESERVE DISTRICT or the elected official, officer, employee or agent, as the case may be, in the amount of said judgment or settlement and for all costs and expenses related thereto, including, without limitation, reasonable attorney and expert witness fees.
- 5.2 The obligation on the part of DOWNERS GROVE to defend, hold harmless and indemnify the FOREST PRESERVE DISTRICT shall survive the expiration or termination of this Agreement.
- 5.3 DOWNERS GROVE shall require each contractor who performs any work on the Easement Premises, to defend, hold harmless and indemnify the FOREST PRESERVE DISTRICT to the same extent as required of DOWNERS GROVE under paragraph 5.0, and DOWNERS GROVE shall include in all of its contracts a statement expressly declaring the FOREST PRESERVE DISTRICT to be a third-party beneficiary of the indemnification provision.
- 5.4 DOWNERS GROVE shall promptly pay all costs and expenses relating to any and all work within the Easement Premises performed by, or at the request of, DOWNERS GROVE, and shall not allow any liens on FOREST PRESERVE DISTRICT property as a result of the work. To the extent permitted by law, DOWNERS GROVE shall defend, indemnify and hold the FOREST PRESERVE DISTRICT harmless from any and all liens, costs and expenses arising from any work performed by, or at the request of, DOWNERS GROVE, on the Easement Premises or related to the use and maintenance of the Gilbert Avenue Improvements.

6.0 BREACH OF AGREEMENT

- 6.1 If a Party reasonably believes that a breach of this Agreement has occurred or is occurring, the Party shall serve written notice thereof upon the Party committing or permitting such breach to occur, specifying in detail the breach and the facts supporting such claim. The Party alleged to have committed the breach shall have 30 days within which to cure the violation. If the Party in violation is DOWNERS GROVE, and DOWNERS GROVE fails to cure the breach within the 30-day period, the FOREST PRESERVE DISTRICT may pursue monetary damages or specific performance provided that the 30-day cure period shall be extended for a reasonable time if DOWNERS GROVE has undertaken to cure the breach within the 30-day period and continues to diligently and in good faith to complete the corrective action. Given the importance of the Gilbert Avenue Improvements to the public, remedies available to the FOREST PRESERVE DISTRICT do not and shall not include termination of this Agreement.
- 6.2 Action by any Party to enforce this Agreement shall be without prejudice to the exercise of any other rights provided herein or by law or in equity to remedy a breach of this Agreement, subject to the terms of the preceding Paragraph 6.1.
- 6.3 A waiver by any Party of any breach of one or more of the terms of this Agreement on the part of one of the other Parties shall not constitute a waiver of any subsequent or other breach of the same or other term, nor shall the failure on the part of a Party to require exact, full and complete compliance with any of the terms contained herein be construed as changing the terms of this Agreement or estopping a Party from enforcing full compliance with the provisions set forth herein. No delay, failure or omission of a Party to exercise any right, power, privilege or option arising from a breach shall impair any right, privilege or option, or be construed as a waiver or acquiescence in such breach or as a relinquishment of any right. No option, right, power, remedy or privilege of the Parties shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, power, privileges and remedies given the Parties under this Agreement and by law shall be cumulative.

7.0 NOTICES

- 7.1 All notices required to be given under the terms of this Agreement shall be in writing and either served by certified or registered mail, return receipt requested, properly addressed with the postage prepaid and deposited in the United States mail. Notices served upon the FOREST PRESERVE DISTRICT shall be directed to the Executive Director, Forest Preserve District of DuPage County, P.O. Box 5000, Wheaton, IL 60189-5000. Notices served upon DOWNERS GROVE shall be directed to the Village Manager, Village of Downers Grove, 801 Burlington Avenue, Downers Grove, IL 60515. Notices served by mail shall be effective upon receipt as verified by the United States Postal Service. Notwithstanding anything to the contrary, any notice by a Party alleging a breach of this Agreement shall be either served by certified or registered mail as set forth above. Either Party may designate a new location for service of notices by serving notice of the change in accordance with the requirements of this paragraph

8.0 MISCELLANEOUS TERMS

- 8.1 All rights, title and privileges herein granted for the Easement Premises, including all benefits and burdens, shall be perpetual and shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and assigns.
- 8.2 The FOREST PRESERVE DISTRICT hereby reserves the right to use, or permit to be used, the Easement Premises in any manner that will not prevent or materially interfere with the exercise by DOWNERS GROVE of the rights granted herein.
- 8.3 If any Party initiates any legal proceeding or action, whether at law or in equity, to enforce any provision of this Agreement, the prevailing Party (as determined by the court) shall be entitled to recover its reasonable costs and expenses incurred in connection with said proceeding or action, including, but not limited to, reasonable expert witness and attorney fees.
- 8.4 DOWNERS GROVE shall be responsible for recording this Agreement, at its expense, in the Office of the Recorder of Deeds, DuPage County, and for providing the FOREST PRESERVE DISTRICT with a recorded copy.
- 8.5 The provisions set forth herein represent the entire agreement between the Parties and supersede any previous oral or written agreements, as it is the intent of the Parties to provide for a complete integration within the terms of this Agreement. No provision may be modified in any respect unless such modification is in writing, duly approved and signed by all Parties.
- 8.6 This Agreement shall be construed in accordance with the laws of the State of Illinois.
- 8.7 This Agreement shall be executed in duplicate, and each Party shall retain a fully executed original, both of which shall be deemed to be one Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the _____ day of _____, 2018.

**FOREST PRESERVE DISTRICT OF
DU PAGE COUNTY**

VILLAGE OF DOWNERS GROVE

BY: _____
Joseph Cantore, President

BY: _____
Martin T. Tully, Mayor

ATTEST: _____
Judith Malahy, Secretary

ATTEST: _____
April Holden, Village Clerk

Legal Description

-for-

Public Roadway

Located at

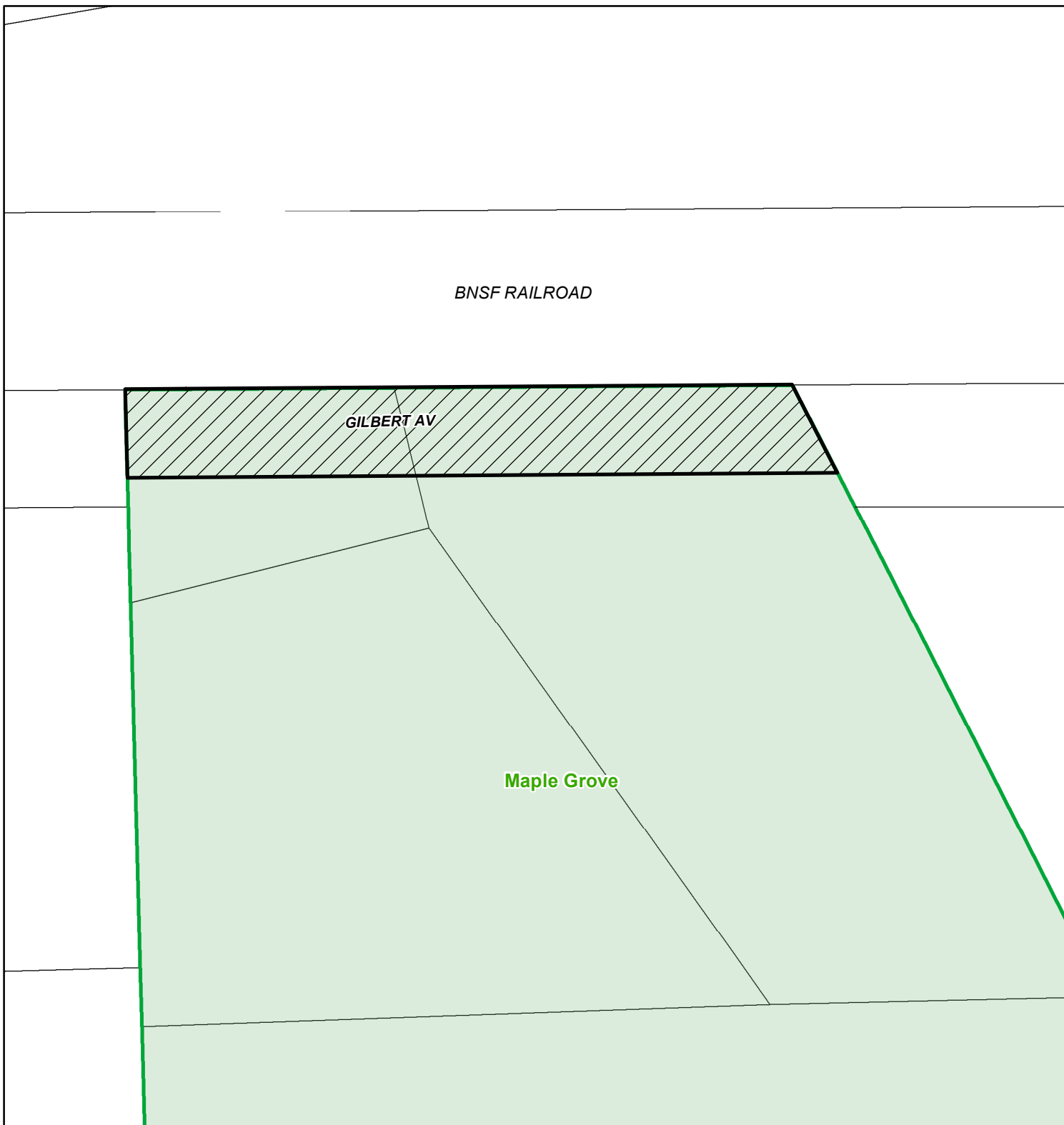
Gilbert Avenue at Maple Grove Forest Preserve Number 4



Gilbert Avenue Right-of-Way Easement:

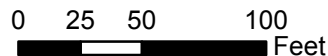
That part of Maple Grove Forest Preserve No. 4 situated in Sections 7 and 18, Township 38 North, Range 11, East of the Third Principal Meridian, DuPage County, Illinois, recorded as Document Number R1920-145494 W.D., described as follows: Beginning at the northwest corner of said Maple Grove Forest Preserve No. 4, thence southerly along the west property line a distance of 50.00 feet, thence easterly along a line parallel to the north property line of said Maple Grove Forest Preserve No. 4 a distance of 401.13 feet to the east property line of said parcel, thence northwesterly along the east property line of said parcel a distance of 55.98 feet to the northeast corner of said property, thence west along the north property line a distance of 376.8 feet, to the point of beginning, all in DuPage County, Illinois.

EXHIBIT "A"

MAPLE GROVE VILLAGE OF DOWNERS GROVE EASEMENT FOR GILBERT AVENUE IMPROVEMENTS



-  FPD Bounds
-  Easement Premises (50' wide)



Land Preservation Department

EXHIBIT "B"