ORDINANCE 11-57  Passed November 14, 2011

AUTHORIZING THE TRANSFER OF WATERMAIN EASEMENTS AT 1022 WEST LINCOLN HIGHWAY (CVS PROPERTY) IN THE CITY OF DEKALB, ILLINOIS.

WHEREAS, the City of DeKalb, DeKalb County, Illinois is a home rule community with those powers granted under the provisions of the Illinois Constitution and the Illinois Municipal Code, 65 ILCS 5/1-1-1, et. seq.; and,

WHEREAS, the City has previously accepted two grants of easement with respect to a certain watermain located on the property commonly referred to as the “CVS Property”; and,

WHEREAS, the City and the owner of the CVS Property have determined that it is necessary and advantageous, and serves the public interest for the City to vacate the previous two easements granted, and to accept a new grant of easement for the City’s watermain; and,

WHEREAS, the City seeks to do the same in the exercise of its home rule authority;

NOW, THEREFORE BE IT ORDAINED by the Mayor and City Council of the City of DeKalb, DeKalb County, Illinois, as follows;

SECTION ONE: EXCHANGE OF EASEMENTS AUTHORIZED

The City has previously accepted two private grants of easement for the maintenance and installation of water mains on the property commonly referred to as the CVS Property, which watermain easements were recorded with the DeKalb County Recorder’s Office as Document No. 2002005699 and No. 2002005826. Copies of those previous easements are attached hereto as Exhibits 1 and 2.

The City Manager and/or his designee is and shall be authorized to execute any and all documents required to vacate any previous easements granted to the City of DeKalb for the purpose of installing and maintaining a public watermain on the CVS Property (i.e. Exhibits 1 and 2). The City Manager and/or his designee is further authorized to execute any and all documents necessary to accept a grant of easement for the same purposes on the CVS Property, with such new grant of easement being substantially in the form attached hereto as Exhibit 3 (with sub-exhibits A and B). The City agrees and acknowledges that the new easement is being provided in exchange for and consideration of the City’s agreement to vacate the easements reflected in Exhibits 1 and 2.
SECTION TWO: GENERAL PROVISIONS

REPEALER: All ordinances or portions thereof in conflict with this Ordinance are hereby repealed.

SEVERABILITY: Should any provision of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and effect the same as if the invalid provision had not been a part of this Ordinance.

EFFECTIVE DATE: This Ordinance shall be in full force and effect on and after its passage, as provided by law.

RECORDING: That the City Clerk of the City of DeKalb, Illinois, is hereby authorized and directed to record with the County Recorder of DeKalb County, Illinois the vacation of the easements in Exhibit 1 and Exhibit 2 the fully executed new grant of easement for the CVS Property in Exhibit 3.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 14th day of November, 2011, and approved by me as Mayor on the same day. Passed on the Consent Agenda by roll call vote: 8-0. Aye: Jacobson, Teresinski, Lash, Gallagher, Naylor, Baker, O' Leary, Povlsen. Nay: None.

ATTEST:

STEVE KAPITAN, City Clerk

KRIS POVLSEN, Mayor
EASEMENT/MAINTENANCE AGREEMENT
BILL OF SALE

This Agreement made this 29th day of November, 1996, by and between the City of DeKalb, a Municipal Corporation of the State of Illinois, hereafter “CITY” and Farmers and Merchants Bank, not individually, but as Trustee under the terms of a Trust Agreement dated June 3, 1976, and known as Trust No. 1-049, hereafter “OWNER,” WITNESSETH:

WHEREAS, CITY owns, operates and maintains a waterworks system consisting of mains, valves, hydrants and appurtenances thereto, but excluding service lines; and,

WHEREAS, OWNER is the record owner of lands described in Exhibit “A”, attached hereto and made a part hereof; and,

WHEREAS, within the lands described in Exhibit “A”, OWNER has caused the construction of watermains, valves, hydrants and appurtenances thereto which are connected to CITY’S waterworks system; and,

WHEREAS, OWNER and CITY desire to establish a system for the proper maintenance and repair of the above-referenced watermains, valves, hydrants and appurtenances thereto within the aforementioned subdivision; now,

THEREFORE, the parties do hereby agree as follows:

1. OWNER, in consideration of One Dollar ($1.00), receipt of which is hereby acknowledged, and other good and valuable consideration, does hereby sell, convey and assign unto CITY all the watermains 6 (six) inches, valves, hydrants and appurtenances thereto, but excluding service lines, which are present on the lands described in Exhibit “A”, a copy of which is attached hereto and made a part hereof.

2. CITY shall own, operate, repair, maintain and replace as needed the items described in paragraph 1 and shall be responsible for final surface restoration of all areas excavated or disturbed by CITY’S repair, maintenance or replacement of said items.
3. OWNER does hereby grant a perpetual easement to CITY to own, operate, repair, maintain and replace the items described in paragraph 1 wherever located on the property described in Exhibit "A," said easement shall extend ten (10) feet on either side of the center line of such main valve, hydrant or appurtenance, together with the right of ingress and egress by reasonable routes across the adjoining property of the undersigned to and from said easement.

4. CITY hereby agrees to defend, hold harmless and indemnify OWNERS from and against any and all claims, costs, damages or expenses resulting from the acts and work performed by CITY pursuant to this Agreement.

5. Upon the execution of this agreement, OWNER agrees it shall not place or construct any permanent structures over or upon the easement described above, excepting those improvements constructed prior to the date of this Agreement.

6. All of the provisions and conditions of this Agreement shall run to, bind and inure to the benefit of the successors, assigns and heirs of each of the parties hereto.

7. The undersigned represents that he/she has the authority to execute this Easement/Maintenance Agreement and Bill of Sale on behalf of the Owner and bind the same.

CITY OF DEKALB

FARMERS AND MERCHANTS BANK, not individually, but as Trustee under the terms of a Trust Agreement dated June 3, 1976, and known as Trust No. 1-049

By: The American National Bank of DeKalb County, Successor Trustee,

BY: Grace Ann Askeland, its Ass'n V. Pres. & Title Trust Officer

ATTEST:

City Clerk Donna S. Johnson

Exculpatory Clause:

This document is executed by Farmers and Merchants Bank, not individually, but solely as Trustee under a certain Trust Agreement known as Trust No. 1-049. Said Trust Agreement is hereby made a part hereof and any claims against said Trustee which may result from the signing...
of this document shall be payable only out of any property which may be held hereunder, and
said Trustee shall not be personally liable for the performances of any of the terms and
conditions of this document or for the validity or condition of said title of said property or for
any agreement with respect thereto. Any and all personal liability of Farmers and Merchants
Bank is hereby expressly waived by the parties hereto and their respective successors and
assigns.

Prepared by/Return to:

Ronald G. Matekaitis
DeKalb City Attorney
200 South Fourth Street
DeKalb, Illinois 60115
EXHIBIT “A”

LINCOLN SHOPPING CENTER

PARCEL NO.: 08-22-152-035

OWNER OF RECORD: Farmers and Merchants Bank, as Trustee under the provisions of trust agreement dated the 3rd day of June, 1976, known as Trust Number 1-049

LEGAL DESCRIPTION:

Lot 1 of Glidden Lincoln Subdivision being a resubdivision of part of Lot 31 of Joseph F. Glidden’s Subdivision of part of the Northwest Quarter of Section 22, Township 40 North, Range 4 East of the Principal Meridian, according to the plat thereof recorded on April 21, 1976 in Volume “R” of Plats, Page 10, as document no. 393054, all situated in the City of DeKalb, County of DeKalb, and State of Illinois.
ON THE ADVICE OF THE DEKALB COUNTY STATES ATTORNEY’S OFFICE THE FOLLOWING STATEMENT IS BEING ADDED TO THIS DOCUMENT:

ALL SIGNATURES CONTAINED ON A DOCUMENT ARE REQUIRED TO BE “ORIGINAL” ACCORDING TO THE ILLINOIS COMPILED STATUTES, CHAPTER 5ILCS\165.4 AND AN OPINION BY THE ILLINOIS ATTORNEY GENERAL.

THE SIGNATURE OF GRACE ANN ASKELAND, ASSISTANT VICE PRESIDENT & TRUST OFFICER OF FARMERS AND MERCHANTS BANK, IS A COPY.

2002005699
EASEMENT/MAINTENANCE AGREEMENT
BILL OF SALE

This Agreement made this 26th day of November, 1996, by and between the City of DeKalb, a Municipal Corporation of the State of Illinois, hereafter "CITY" and Farmers and Merchants Bank, not individually, but as Trustee under the terms of a Trust Agreement dated June 3, 1976, and known as Trust No. 1-048, hereafter "OWNER," WITNESSETH:

WHEREAS, CITY owns, operates and maintains a waterworks system consisting of mains, valves, hydrants and appurtenances thereto, but excluding service lines; and,

WHEREAS, OWNER is the record owner of lands described in Exhibit "A", attached hereto and made a part hereof; and,

WHEREAS, within the lands described in Exhibit "A", OWNER has caused the construction of watermains, valves, hydrants and appurtenances thereto which are connected to CITY'S waterworks system; and,

WHEREAS, OWNER and CITY desire to establish a system for the proper maintenance and repair of the above-referenced watermains, valves, hydrants and appurtenances thereto within the aforementioned subdivision; now,

THEREFORE, the parties do hereby agree as follows:

1. OWNER, in consideration of One Dollar ($1.00), receipt of which is hereby acknowledged, and other good and valuable consideration, does hereby sell, convey and assign unto CITY all the watermains 6 (six) inches, valves, hydrants and appurtenances thereto, but excluding service lines, which are present on the lands described in Exhibit "A", a copy of which is attached hereto and made a part hereof.

2. CITY shall own, operate, repair, maintain and replace as needed the items described in paragraph 1 and shall be responsible for final surface restoration of all areas excavated or disturbed by CITY'S repair, maintenance or replacement of said items.
3. OWNER does hereby grant a perpetual easement to CITY to own, operate, repair, maintain and replace the items described in paragraph 1 wherever located on the property described in Exhibit "A," said easement shall extend ten (10) feet on either side of the center line of such main valve, hydrant or appurtenance, together with the right of ingress and egress by reasonable routes across the adjoining property of the undersigned to and from said easement.

4. CITY hereby agrees to defend, hold harmless and indemnify OWNERS from and against any and all claims, costs, damages or expenses resulting from the acts and work performed by CITY pursuant to this Agreement.

5. Upon the execution of this agreement, OWNER agrees it shall not place or construct any permanent structures over or upon the easement described above, excepting those improvements constructed prior to the date of this Agreement.

6. All of the provisions and conditions of this Agreement shall run to, bind and inure to the benefit of the successors, assigns and heirs of each of the parties hereto.

7. The undersigned represents that he/she has the authority to execute this Easement/Maintenance Agreement and Bill of Sale on behalf of the Owner and bind the same.

CITY OF DEKALB

BY: Grace Ann Askeland, its Asst. V. Pres.
(Name)
(Title: Trust Officer)

ATTEST:

City Clerk Donna S. Johnson

FARMERS AND MERCHANTS BANK, not individually, but as Trustee under the terms of a Trust Agreement dated June 3, 1976, and known as Trust No. 1-048

BY: THE AMERICAN NATIONAL BANK
OF DEKALB COUNTY, Successor Trustee

BY: Grace Ann Askeland, its Asst. V. Pres.
(Name)
(Title: Trust Officer)

Exculpatory Clause:

This document is executed by Farmers and Merchants Bank, not individually, but solely as Trustee under a certain Trust Agreement known as Trust No. 1-048. Said Trust Agreement is hereby made a part hereof and any claims against said Trustee which may result from the signing

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of this document shall be payable only out of any property which may be held hereunder, and
said Trustee shall not be personally liable for the performances of any of the terms and
conditions of this document or for the validity or condition of said title of said property or for
any agreement with respect thereto. Any and all personal liability of Farmers and Merchants
Bank is hereby expressly waived by the parties hereto and their respective successors and
assigns.

Prepared by/Return to:

Ronald G. Matekaitis
DeKalb City Attorney
200 South Fourth Street
DeKalb, Illinois 60115
EXHIBIT "A"

LINCOLN SHOPPING CENTER

PARCEL NO.: 08-22-152-036

OWNER OF RECORD: Farmers and Merchants Bank, as Trustee under the provisions of a trust agreement dated the 3rd of June, 1976, known as Trust Number 1-048

LEGAL DESCRIPTION:

Lot 2 of Glidden Lincoln Subdivision being a resubdivision of part of Lot 31 of Joseph F. Glidden's Subdivision of part of the Northwest Quarter of Section 22, Township 40 North, Range 4 East of the Third Principal Meridian, according to the plat thereof recorded on April 21, 1976 in Volume "R" of Plats, Page 10, as Document No. 393054, all situated in the City of DeKalb, County of DeKalb, and State of Illinois.
GRANT OF EASEMENT

This Instrument Prepared by:

Charles B. Allott, Esquire
Hinkle Allen & Snyder LLP
50 Kennedy Plaza, Suite 1500
Providence, RI 02903-2393

Return to Grantee:

Joel C. Maurer, P.E.
Director and Engineering/
City Engineer
City of DeKalb
223 S. Fourth Street
DeKalb, Illinois 60115

CVS Highland Park LLC, an Illinois limited liability company ("Grantor"), having an
address of c/o CVS Corporation, One CVS Drive, Woonsocket, RI 02895, Attn: Property
Administration, Store #2375, in consideration of the sum of One ($1.00) Dollar and other good
and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, grants
to the City of DeKalb, a municipal corporation ("Grantee"), having an address of 223 S. Fourth
Street, DeKalb, Illinois 60115, and their successors and assigns, a non exclusive easement (the
"Easement") to install, lay, construct, operate, renew, maintain, or remove from time to time,
water mains, braces, anchors, and appurtenances for the purpose of serving the property located
at 1022 West Lincoln Highway, DeKalb, Illinois (the "Property") and certain other properties,
contiguous or not, with water. Together with the right to install under or over the surface the
required service connections to serve improvements thereon. The right to cut, trim, or remove
trees, bushes, samplings and roots as may be reasonably required incidental to the rights herein
given and the right to enter upon the property at all times for such purposes. The Easement
granted herein is non-exclusive, and the Grantor retains and reserves the right to use the
easement area (above and below the surface) for any purposes which do not unreasonably
interfere with the use of the easement area for the purposes for which the easement right
described herein is granted, such reservation to include, without limitation, the installation,
construction, maintenance and operation of landscaping, parking area, driveways, curbing, curb
cuts and related improvements, and installation, operation and maintenance of underground
utilities. Any work authorized under the Easement shall be performed by the Grantee in a good
and workmanlike manner and in compliance with all applicable laws and, once commenced shall
be performed diligently to completion. The Grantee shall further exercise any rights granted
herein with best efforts so as to avoid or minimize any interference with the development,
operation and use of the Grantor’s land and of any buildings and improvements thereon. Upon
completion of any such work, the Grantee shall restore any paved surfaces or other
improvements on the surface of the easement area, and otherwise return the Property, to
substantially the same condition as existed prior to such work. In the event any mechanics’ liens
or materialmen’s liens that are filed against the Grantor’s property or any part thereof; as a result

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of the operation, repair, maintenance, or replacement of utility improvements, or as a result of any other work or activity performed by the Grantee pursuant to the rights granted herein, the Grantee shall pay the underlying claim, and/or take such other action, in order to cause such liens to be immediately discharged of record.

The Grantee shall indemnify Grantor and such Grantor's officers, directors, managers, members, partners, shareholders, employees, agents, successors and assigns, and each of their successors and assigns (collectively, the "Indemnitees") harmless from and against any injuries, liability, losses, damages, costs, or expenses (including without limitation reasonable attorneys fees and costs) incurred by the Indemnitees as a result of the Grantee's entry onto the Property and/or exercise of the Easement right granted hereunder, including any entry or actions taken by the Grantee's contractors, agents, employees, or any other person or persons action for or on behalf of Grantee. Grantor shall have the right to relocate the Easement and Grantee's improvements, in whole or part, to any other location on the Grantor's property, provided that the new location is reasonably adequate to serve the purposes for which the Easement was granted, and such relocation shall be performed by the Grantee at Grantee's expense. In the event of any such relocation, Grantor and Grantee shall execute and record an amendment to this Easement to reflect of record the new location of the Easement.

The above described Easement is designated as "Watermain Easement" on the plan attached hereto as Exhibit A and incorporated herein by reference and legally described on Exhibit B attached hereto and incorporated herein by reference.

By the countersigning hereof, the City of DeKalb, a municipal corporation ("Grantee") hereby consents and agrees to release the following liens filed for record with the County of DeKalb, IL as follows:

(1) Easement Maintenance Agreement Bill of Sale by and between the City of DeKalb, a municipal corporation of the State of Illinois, and Farmers and Merchants Bank, not individually, but as Trustee under the terms of a Trust Agreement dated June 3, 1976, and known as Trust No. 1-049 dated November 20, 1996 recorded March 20, 2002 as Document No. 2002005699, and

(2) Easement Maintenance Agreement Bill of Sale by and between the City of DeKalb, a municipal corporation of the State of Illinois, and Farmers and Merchants Bank, not individually, but as Trustee under the terms of a Trust Agreement dated June 3, 1976, and known as Trust No. 1-048 dated November 20, 1996 recorded March 21, 2002 as Document No. 2002005826.

[The remainder of this page is intentionally left blank. Signature page follows.]
IN WITNESS WHEREOF, Grantor has set its hand and seal hereto this 16 day of November 2011.

HIGHLAND PARK CVS, L.L.C.,
an Illinois limited liability company

By: [Signature]
Name: Toni A. Motta
Title: Assistant Secretary

CVS Legal Approval:
Charles B. Allott, Esq.
Hinckley, Allen & Snyder LLP

STATE OF RHODE ISLAND SS
COUNTY OF PROVIDENCE SS

I, Susan M. Schal, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Toni A. Motta, personally known to me to be the Assistant Secretary of Highland Park CVS, L.L.C., an Illinois limited liability company, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that as such Assistant Secretary she signed and delivered the said Instrument as her free and voluntary act and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16th day of November, A.D., 2011.

[Signature]
Notary Public

My Commission Expires: 3/8/2012

SUSAN M. SCHAL
NOTARY PUBLIC
STATE OF RHODE ISLAND
MY COMMISSION EXPIRES MAR. 9, 2012
IN WITNESS WHEREOF, Grantee has set its hand and seal hereto this 15th day of November 2011

City of DeKalb, a municipal corporation

By

Name: Mark E. Vurrillo
Title: City Manager

STATE OF ILLINOIS
COUNTY OF DEKALB

I, Mary Jo Harms, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Mark E. Vurrillo, personally known to me to be the City Manager of the City of DeKalb, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that as such they signed and delivered the said Instrument as their free and voluntary act and as the free and voluntary act and deed of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 15th day of November 2011.

Mary Jo Harms
Notary Public

My Commission Expires: 11-18-13

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EXHIBIT A

Easement Plan
EXHIBIT B

Easement Legal Description to be inserted
EASEMENT EXHIBIT 3
CVS STORE #2375, DEKALB, ILLINOIS

LEGAL DESCRIPTION

THAT PART OF LOT 2 OF GLIDDEN—LINCOLN SUBDIVISION, BEING A RESUBDIVISION OF PART OF LOT 31 OF JOSEPH F. GLIDDEN'S SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 4, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 21, 1976 IN BOOK "R" OF PLATS, PAGE 10, AS DOCUMENT NO. 393054 DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 2; THENCE NORTH 03 DEGREES 27 MINUTES 54 SECOND EAST ALONG THE EAST LINE OF SAID LOT 2, 42.20 FEET TO THE PLACE OF BEGINNING; THENCE NORTH 86 DEGREES 32 MINUTES 06 SECONDS WEST, 9.93 FEET; THENCE SOUTH 48 DEGREES 27 MINUTES 54 SECONDS WEST, 4.95 FEET; THENCE NORTH 86 DEGREES 32 MINUTES 06 SECONDS WEST, 128.72 FEET; THENCE NORTH 41 DEGREES 32 MINUTES 06 SECONDS WEST, 32.43 FEET; THENCE NORTH 03 DEGREES 27 MINUTES 54 SECONDS EAST, 27.29 FEET; THENCE NORTH 86 DEGREES 32 MINUTES 06 SECONDS WEST, 18.15 FEET; THENCE NORTH 49 DEGREES 02 MINUTES 06 SECONDS WEST, 11.80 FEET; THENCE NORTH 03 DEGREES 27 MINUTES 54 SECONDS EAST, 10.00 FEET; THENCE SOUTH 49 DEGREES 02 MINUTES 06 SECONDS EAST, 8.41 FEET; THENCE SOUTH 86 DEGREES 32 MINUTES 06 SECONDS EAST, 24.75 FEET; THENCE SOUTH 03 DEGREES 27 MINUTES 54 SECONDS WEST, 33.15 FEET; THENCE SOUTH 41 DEGREES 32 MINUTES 06 SECONDS EAST, 24.14 FEET; THENCE SOUTH 86 DEGREES 32 MINUTES 06 SECONDS EAST, 120.44 FEET; THENCE NORTH 48 DEGREES 27 MINUTES 54 SECONDS EAST, 4.95 FEET; THENCE SOUTH 86 DEGREES 32 MINUTES 06 SECONDS EAST, 14.07 FEET; THENCE SOUTH 03 DEGREES 27 MINUTES 54 SECONDS WEST 10.00 FEET TO THE POINT OF BEGINNING, IN DEKALB COUNTY, ILLINOIS. SAID PARCEL CONTAINS 2,316 SQUARE FEET, OR 0.0532 ACRES, MORE OR LESS.

SURVEYOR CERTIFICATE

STATE OF INDIANA

COUNTY OF LAKE

I, ANTHONY J. STRICKLAND, AN ILLINOIS PROFESSIONAL LAND SURVEYOR DO HEREBY CERTIFY THAT THE EXHIBIT HEREOF WAS PREPARED AT AND UNDER MY DIRECTION. ALL DIMENSIONS SHOWN ARE IN FEET AND DECIMAL PARTS THEREOF.

GIVEN UNDER MY HAND AND SEAL THIS 9TH DAY OF SEPTEMBER, A.D., 2011.

ANTHONY J. STRICKLAND
ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 35–3437
MY LICENSE EXPIRES ON NOVEMBER 30, 2012.
V3 COMPANIES OF ILLINOIS, LTD. PROFESSIONAL DESIGN FIRM NO. 184000902
THIS DESIGN FIRM NUMBER EXPIRES APRIL 30, 2013.