

CITY OF LEROY
COUNTY OF MC LEAN
STATE OF ILLINOIS

ORDINANCE NO. 842

AN ORDINANCE APPROVING ACCEPTANCE OF AN EASEMENT AND APPROVAL OF AN EASEMENT AGREEMENT, THE EASEMENT HAVING BEEN GRANTED ALONG AND ACROSS THE SOUTH PART OF LOT 1 IN BLOCK 21 IN THE ORIGINAL TOWN OF LEROY, MCLEAN COUNTY, ILLINOIS, LYING NORTH AND EAST OF THE NORTHERLY AND EASTERLY RIGHT-OF-WAY LINE OF THE NEW YORK CENTRAL RAILROAD, NOW CONRAIL RAILROAD, AND ACROSS THE EAST TWENTY-ONE FEET OF LOT 2, ON THE NORTHERLY AND EASTERLY SIDE OF THE NORTHERLY AND EASTERLY RIGHT-OF-WAY LINE OF THE NEW YORK CENTRAL RAILROAD, NOW CONRAIL RAILROAD

ADOPTED BY THE CITY COUNCIL OF THE CITY OF LE ROY THIS 7th
DAY OF June, 1999.

PRESENTED: June 7, 1999

PASSED: June 7, 1999

APPROVED: June 7, 1999

RECORDED: June 7, 1999

PUBLISHED: June 7, 1999

In Pamphlet Form

Voting "Aye" 5

Voting "Nay" 0

The undersigned being the duly qualified and acting City Clerk of the City of LeRoy does hereby certify that this document constitutes the publication in pamphlet form, in connection with and pursuant to Section 1-2-4 of the Illinois Municipal Code, of the above-captioned ordinance and that such ordinance was presented, passed, approved, recorded and published as above stated.

(SEAL)

X Sue Marcum
City Clerk of the City of LeRoy,
McLean County, Illinois

Dated: June 7, 1999.

ORDINANCE NO. 842

AN ORDINANCE APPROVING ACCEPTANCE OF AN EASEMENT AND APPROVAL OF AN EASEMENT AGREEMENT, THE EASEMENT HAVING BEEN GRANTED ALONG AND ACROSS THE SOUTH PART OF LOT 1 IN BLOCK 21 IN THE ORIGINAL TOWN OF LEROY, MCLEAN COUNTY, ILLINOIS, LYING NORTH AND EAST OF THE NORTHERLY AND EASTERLY RIGHT-OF-WAY LINE OF THE NEW YORK CENTRAL RAILROAD, NOW CONRAIL RAILROAD, AND ACROSS THE EAST TWENTY-ONE FEET OF LOT 2, ON THE NORTHERLY AND EASTERLY SIDE OF THE NORTHERLY AND EASTERLY RIGHT-OF-WAY LINE OF THE NEW YORK CENTRAL RAILROAD, NOW CONRAIL RAILROAD

WHEREAS, the City of LeRoy, McLean County, Illinois, an Illinois municipal corporation, has the authority to obtain and maintain easements for underground water service lines and mains; and

WHEREAS, it is necessary for the City of LeRoy to obtain an easement to install an underground water line to serve the following described premises: all that part of the West 45 feet of Lot 2 and all of Lot 3 in Block 21 in the Original Town of LeRoy, McLean County, Illinois, lying North of the right-of-way of the New York Central Railroad, now known as Conrail Railroad, in McLean County, Illinois (PIN: (Book 15) 30-21-313-001 and (Book 15) 30-21-313-004),

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of LeRoy, Illinois, in lawful meeting assembled, as follows:

SECTION 1. The grant of easement and easement agreement, a copy of which is attached hereto, labeled Exhibit A, and incorporated herein by reference, is hereby approved.

SECTION 2. The Mayor and City Clerk are hereby directed to execute the original and such copies as may be necessary of the aforesaid agreement, being certain to retain at least an original and one signed copy of said agreement and grant of easement for the City.

SECTION 3. This ordinance shall be in full force in effect from and after its passage, approval and publication in pamphlet form as required by law.

PASSED by the City Council of the City of LeRoy, Illinois, upon the motion by

Ryan Miles, seconded by Steve Dean

, by roll call vote on the 7th day of June, 1999, as follows:

Aldermen elected 6 Aldermen present 5

VOTINGAYE

Ryan Miles, Steve Dean, Dick Oliver, Dave McClelland, Dawn Thompson.
(full names)

VOTING NAY:
None

(full names)

ABSENT:
Ron Litherland

(full names)

ABSTAIN:
None

(full names)

OTHER:

(full names)

and deposited and filed in the office of the acting City Clerk in said municipality on the 7th day of
June, 1999.

X Sue Marcum
Sue Marcum, City Clerk of the City of LeRoy,
McLean County, Illinois

APPROVED BY the Mayor of the City of LeRoy, Illinois, this 7th day of
June, 1999.

X Robert Rice
Robert Rice, Mayor of the City of LeRoy,
McLean County, Illinois

ATTEST: (SEAL)

X Sue Marcum
Sue Marcum, City Clerk, City of LeRoy,
McLean County, Illinois

Mail to: Hunt Henderson, Attorney
for the City of LeRoy
112 East Center Street
LeRoy, Illinois 61752

EASEMENT

THE GRANTOR, Michael K. Miller, of the City of LeRoy, County of McLean, and State of Illinois (hereinafter referred to as "GRANTOR"), in consideration of One Dollar (\$1.00) in hand paid and other good and valuable consideration, does hereby agree with the City of LeRoy, McLean County, Illinois, an Illinois municipal corporation, and does hereby grant to the City of LeRoy, McLean County, Illinois (hereinafter referred to as "CITY"), a permanent easement across the following described premises (hereinafter referred to as the "Easement Premises"):

A part of Lot 1 and part of the East 21 feet of Lot 2 in Block 21 of the Original Town of LeRoy, McLean County, Illinois, more particularly described as follows: Commencing at the southeast corner of Lot 1 in Block 21 of the Original Town of LeRoy; thence South 89 degrees 27 minutes 10 seconds West 25.83 feet on the south line of said Lot 1 to the Point of Beginning; thence continuing South 89 degrees 27 minutes 10 seconds West 19.62 feet on the south line of said Lot 1 to the northerly right of way line of the Norfolk and Southern Railroad; thence North 59 degrees 54 minutes 07 seconds West 48.03 feet on said northerly right of way line to the west line of the East 21 feet of Lot 2 in Block 21 of the Original Town of LeRoy; thence North 00 degrees 00 minutes 00 seconds East 11.56 feet on the west line of the East 21 feet of said Lot 2; thence South 59 degrees 54 minutes 07 seconds East 70.71 feet parallel with the northerly right of way line of the Norfolk and Southern Railroad to the Point of Beginning, containing 593.68 square feet/0.01 acres, more or less, with assumed bearings given for description purposes only, in McLean County, Illinois (PIN: part of (Book 15) 30-21-313-006).

The easement granted herein shall be for the limited purposes of surveying, constructing, reconstructing, operating, replacing, maintaining, testing, inspecting, repairing, removing, or abandoning in place, and controlling, underground pipelines and mains for the conveyance of water in, over, across, through and under the Easement Premises together with all reasonable rights of ingress and egress across adjoining lands owned and operated by GRANTOR necessary for the exercise of the rights herein granted. The easement rights described herein are granted to CITY, its agents, employees, contractors and assignees. GRANTOR and CITY have determined that it is in their respective best interests for GRANTOR to grant and for CITY to accept this easement in and along the Easement Premises for the aforesaid purposes.

In consideration of the conveyance by GRANTOR, CITY agrees as follows:

1. CITY agrees that it shall place any underground water lines or any such other improvements, as permitted in accordance with this agreement, only in a strip of land located within the westerly and southerly 5 feet of the herein described real estate, being the 5 foot strip closest to, adjacent to, and parallel to, the New York Central Railroad, now Conrail Railroad, right of way, as previously described in this

it, it being the intention of the parties hereto that the remaining 5 feet, to the East and North part of the easement granted herein, shall be used for purposes of construction, repair, installation, and maintenance of the water line to be located in the westerly and southerly 5 foot strip of the easement granted herein.

2. Upon completion of any construction, reconstruction, maintenance, repair, or other work in the aforesaid easement way, for the purposes as aforesaid, CITY shall restore the premises previously described herein to that condition as such premises existed prior to the aforesaid construction, reconstruction, maintenance, repair or other work as nearly as may be reasonably possible in keeping with good engineering practices and accepted soil erosion control practices.

3. From time to time, should CITY make further improvements in the Easement Premises, in keeping with the purposes for which the easement is granted, CITY shall restore the premises described above to the condition as the same existed prior to said work as nearly may reasonably be possible, in keeping with good engineering practices and accepted soil erosion control practices.

4. GRANTOR shall have the right to grant other non-exclusive easements over, along or upon the Easement Premises; provided, however, that any such other easement(s) shall be subject to the easement hereby granted; and provided further, CITY shall have first consented in writing to the terms, nature and location of any such other easement(s) as not interfering with the rights granted hereunder.

5. GRANTOR reserves the right to use and shall have the right to use the premises located within the described easement for purposes not inconsistent with CITY's full enjoyment of the rights hereby granted, provided that GRANTOR shall not erect or construct any building or other structure, or drill or operate any well, or construct any other obstruction within the easement way, either above or below the surface thereof.

6. Any and all costs and expenses with regard to the aforesaid easement and use of the same by CITY, including, but not limited to, construction, reconstruction, operation and maintenance, in good repair, of any improvements placed within the aforesaid easement way as previously provided herein, shall be the duty and obligation of CITY and CITY shall repair any damage caused by it to GRANTOR's premises, and shall save and hold harmless and indemnify GRANTOR from any and all liability which may be incurred by GRANTOR by reason of the construction, reconstruction, maintenance, in good repair, or operation, of said easement way, by CITY, and that may be incurred by GRANTOR by reason of CITY's exercise of its right to enter and depart upon the described easement way as previously set forth herein. Any and all costs in regard to any future improvements or reconstructions in said easement way, in keeping with the purposes for the easement as previously provided herein, either existing or to be constructed in the future, including, but not limited to, construction, reconstruction, operation and maintenance of any water line in CITY easement, shall be the duty and obligation of CITY.

7. CITY may assign the rights granted to it hereunder to any assignee who demonstrates competence to CITY and gives adequate assurances to CITY that any work to be performed pursuant to such assignment shall be conducted in a good and workmanlike manner, and that GRANTOR's interest in the Easement Premises shall be protected to the extent as set forth in this instrument.

8. All rights, titles and privileges herein granted, including all benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit to the parties to this instrument, their respective heirs, executors, administrators, legal representatives, assigns and successors in interest.

9. The rule of strict construction shall not apply to this grant of easement. This grant shall be given a reasonable construction so that the intention of the parties to confer a usable right in grantee (CITY) is carried out.

10. This written agreement contains the sole and entire agreement between the parties, and supersedes any and all other agreements between them. The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this agreement or any representations inducing the execution and delivery of this agreement except such representations as are

specifically set forth herein, and each party acknowledges that he, she, or it has relied on his, her, or its own judgment in entering into this agreement. The parties further acknowledge that any statements or representations that may have heretofore been made by either of them to the other are void and of no effect and that neither of them has relied thereon in connection with his, her or its dealings with the other.

11. No waiver or modification of this agreement or of any covenant, condition or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. Furthermore, no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid. The provisions of this paragraph may not be waived except as herein set forth.

12. This agreement and performance hereunder and all suits and special proceedings hereunder shall be construed in accordance with the laws of the State of Illinois.

13. Should either party, or the respective heirs, executors, administrators, assigns or successors in interest of either party, to this agreement, be required to incur attorney fees, costs, and/or other expenses as a result of the other party's failure to perform any obligation pursuant to the terms of this agreement, then the party so failing to perform shall be liable to the other party for any reasonable attorney fees, costs, and expenses incurred by such other party. Should either party to this agreement, or the respective heirs, executors, administrators, assigns or successors in interest of either party, fail to reimburse the other party for such reasonable attorney fees, costs, and other expenses, as aforesaid, then said amount may be obtained or collected by the party to whom it is due by bringing an action against the other party for such fees, costs and expenses incurred as a result of the first party's failure to perform.

14. It is expressly understood and agreed between the parties to this agreement that in the event a court of competent jurisdiction shall at any time after the date of this agreement hold that a portion of this agreement is invalid, illegal or unenforceable, that the remainder shall not be affected thereby, but shall continue in full force and effect.

15. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

16. Whenever the context of this agreement requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural.

17. This agreement shall be binding upon and inure to the benefit of the respective parties, their respective heirs, executors, administrators, assigns and successors in interest.

18. This agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same agreement.

19. Service of all notices under this agreement shall be sufficient if given personally or mailed via certified mail to the party involved at its respective address as previously set forth in this agreement, or at such other address as such party may provide in writing from time to time in accordance with this section regarding notices. Any such notice mailed to such address shall be effective when deposited in the United States mail, duly addressed and with first-class postage prepaid.

20. GRANTOR, GRANTOR's agents, employees, tenants, assigns and successors in interest shall have the right to cross the easement ways at any point or place, including making multiple crossings at a number of points or places, for the purpose of reaching the other side of the easement ways to the extent GRANTOR, or GRANTOR's assignees or successors in interest, have land adjacent to the easement ways on either side of the easement ways, for all reasonable purposes that GRANTOR, or GRANTOR's assigns and successors in interest, may have for the use of all said real estate. In crossing the easement ways, GRANTOR, and GRANTOR's agents, employees, tenants, assigns and successors in interest, shall take every reasonable precaution to minimize or prevent damaging the way and thus making

the easement ways less likely to fulfill the purposes for which the way was granted to CITY, or increasing the burden of CITY to repair and maintain the easement ways in good condition.

IN WITNESS WHEREOF, the parties hereto have executed this instrument or caused this instrument to be executed by their proper officers duly authorized to execute the same. Effective this 26th day of May, 1999.

City of LeRoy, McLean, Illinois, an Illinois municipal corporation,

X Michael K. Miller
Michael K. Miller, Grantor

By: _____
Robert Rice, Mayor of the City of LeRoy

Attest: (SEAL)

By: _____
Sue Marcum, City Clerk of the City of LeRoy

STATE OF ILLINOIS)
COUNTY OF MCLEAN) SS.

I, the undersigned, a Notary Public in and for said county and state aforesaid, DO HEREBY CERTIFY that MICHAEL K. MILLER, personally known to me to be to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 26TH day of MAY, 1999.

Sue Marcum
Notary Public My Commission Expires: 03/19/00

SEAL



STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

I, the undersigned, a Notary Public in and for said county and state aforesaid, DO HEREBY CERTIFY that ROBERT RICE, personally known to me to be the Mayor of the City of LeRoy, and SUE MARCUM, personally known to me to be the City Clerk of said city, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such mayor and city clerk, they signed and delivered said instrument of writing as mayor and as city clerk of said city, and caused the seal of the City of LeRoy to be affixed thereto pursuant to authority given by the City Council of said city as a free and voluntary act, and as the free and voluntary act and agreement of the City of LeRoy for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 7th day of June, 1999.

_____ My Commission Expires: _____

SEAL

This instrument prepared by: Hunt Henderson, Attorney at Law #01186256
112 East Center Street, LeRoy, Illinois 61752 Telph: (309) 962-2791

CERTIFICATE

I, Sue Marcum, certify that I am the duly appointed and acting municipal clerk of the City of LeRoy, of McLean County, Illinois.

I further certify that on June 7, 1999, the Corporate Authorities of such municipality passed and approved Ordinance No. 842, entitled:


AN ORDINANCE APPROVING ACCEPTANCE OF AN EASEMENT AND APPROVAL OF AN EASEMENT AGREEMENT, THE EASEMENT HAVING BEEN GRANTED ALONG AND ACROSS THE SOUTH PART OF LOT 1 IN BLOCK 21 IN THE ORIGINAL TOWN OF LEROY, MCLEAN COUNTY, ILLINOIS, LYING NORTH AND EAST OF THE NORTHERLY AND EASTERLY RIGHT-OF-WAY LINE OF THE NEW YORK CENTRAL RAILROAD, NOW CONRAIL RAILROAD, AND ACROSS THE EAST TWENTY-ONE FEET OF LOT 2, ON THE NORTHERLY AND EASTERLY SIDE OF THE NORTHERLY AND EASTERLY RIGHT-OF-WAY LINE OF THE NEW YORK CENTRAL RAILROAD, NOW CONRAIL RAILROAD,

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 842, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted at the municipal building, commencing on June 7, 1999, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

Dated at LeRoy, Illinois, this 7th day of June, 1999

(SEAL)



Municipal Clerk

STATE OF ILLINOIS)
) SS:
COUNTY OF McLEAN)

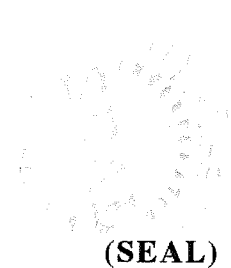
I, Sue Marcum, do hereby certify that I am the duly qualified and acting City Clerk of the City of LeRoy, McLean County, Illinois, and as such acting City Clerk that I am the keeper of the records and files of the Mayor and the City Council of said City.

I do further certify that the foregoing is a true, correct and complete copy of an ordinance entitled:

AN ORDINANCE APPROVING ACCEPTANCE OF AN EASEMENT AND APPROVAL OF AN EASEMENT AGREEMENT, THE EASEMENT HAVING BEEN GRANTED ALONG AND ACROSS THE SOUTH PART OF LOT 1 IN BLOCK 21 IN THE ORIGINAL TOWN OF LEROY, MCLEAN COUNTY, ILLINOIS, LYING NORTH AND EAST OF THE NORTHERLY AND EASTERLY RIGHT-OF-WAY LINE OF THE NEW YORK CENTRAL RAILROAD, NOW CONRAIL RAILROAD, AND ACROSS THE EAST TWENTY-ONE FEET OF LOT 2, ON THE NORTHERLY AND EASTERLY SIDE OF THE NORTHERLY AND EASTERLY RIGHT-OF-WAY LINE OF THE NEW YORK CENTRAL RAILROAD, NOW CONRAIL RAILROAD.

I do further certify said ordinance was adopted by the City Council of the City of LeRoy at a regular meeting on the 7th day of June, 1999, and prior to the making of this certificate the said ordinance was spread at length upon the permanent records of said City where it now appears and remains as a faithful record of said ordinance in the record books.

Dated this 7th day of June, 1999.



X Sue Marcum
City Clerk