

CITY OF LEROY  
COUNTY OF MC LEAN  
STATE OF ILLINOIS

ORDINANCE NO. 725

AN ORDINANCE APPROVING AN  
AGREEMENT FOR A UTILITY EASEMENT

ADOPTED BY THE CITY COUNCIL OF THE CITY OF LE ROY  
THIS 3rd DAY OF March, 1997

PRESENTED: March 3, 1997

PASSED: March 3, 1997

APPROVED: March 3, 1997

RECORDED: March 3, 1997

PUBLISHED: March 3, 1997


In Pamphlet Form

Voting "Aye" 6

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   
Acting City Clerk of the City of  
LeRoy, McLean County, Illinois

Dated: March 3, 1997.

AN ORDINANCE APPROVING AN  
AGREEMENT FOR A UTILITY EASEMENT

WHEREAS, the Mayor and City Council of the City of LeRoy, McLean County, Illinois, an Illinois municipal corporation, have reviewed a proposed easement agreement conveying an Exclusive and Permanent Easement and Grant of Right-Of-Way across the following described property:

The North 127.3 feet of the East 10 feet of Lot 28, both in Meadow Addition Subdivision in the North East 1/4 of Section 21, Township 22 North, Range 4 East of the Third Principal Meridian, in the City of LeRoy, McLean County, Illinois,

for the limited purposes of constructing, reconstructing, replacing, maintaining, and keeping in repair one or more subsurface sewer lines across and under the previously described permanent right-of-way, and for constructing, maintaining and keeping in repair, one or more other subsurface utility lines across and under the previously described permanent right-of-way.

WHEREAS, the Mayor and City Council of the City of LeRoy have determined that the work to be accomplished in connection with the aforesaid agreement is necessary in order to improve the placement of underground utilities in the City of LeRoy,

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

Section 1. The agreement title "Easement," a copy of which is attached hereto as Exhibit A and is incorporated herein by reference, is hereby approved.

Section 2. The agreement titled "Easement," a copy of which is attached hereto as Exhibit B and is incorporated herein by reference, is hereby approved.

Section 3 . The Mayor and City Clerk are hereby directed and authorized to sign the original and as many copies as appropriate of those agreements as set forth in Exhibit "A" and Exhibit "B", attached hereto, being certain to obtain one or more fully signed copies of each agreement for the records of the City.

Section 4. This ordinance shall be in full force and 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 \_\_\_\_\_

Ron Litherland \_\_\_\_\_, seconded by Dave McClelland \_\_\_\_\_ by roll call vote on the 3rd day of March, 1996, as follows:

Aldermen elected 6 Aldermen present 6

VOTING AYE: Ron Litherland, Bill Swindle, Dave McClelland, Dawn Thompson, Lois Parkin, Fred Dodson (full names)

VOTING NAY: None (full names)

ABSENT, ABSTAIN, OTHER: None (full names)

and deposited and filed in the office of the City Clerk in said municipality on the 3rd day of March, 1997.

[Signature] Sue Marcum, Acting City Clerk of the City of LeRoy, McLean County, Illinois

APPROVED BY the Mayor of the City of LeRoy, Illinois, this 3rd day of March, 1997.

[Signature] Jerry C. Davis, Mayor of the City of LeRoy, McLean County, Illinois

ATTEST: (SEAL)

[Signature] Sue Marcum, Acting 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(s), Erik Graybeal and Janice Graybeal, Husband and Wife, of 621 Meadow Lane , of the City of LeRoy , County of McLean, and State of Illinois (hereinafter referred to as "GRANTOR"), in consideration of One Dollar (\$1.00) and other good and valuable consideration, in hand paid, do hereby convey to the City of LeRoy , McLean County, Illinois, an Illinois municipal corporation (hereinafter referred to as "CITY"), an Exclusive Permanent Easement and Grant of Right-Of-Way across the following described premises:

The North 127.3 feet of the East 10 feet of Lot 28, both in Meadow Addition Subdivision in the North East 1/4 of Section 21, Township 22 North, Range 4 East of the Third Principal Meridian, in the City of LeRoy, McLean County, Illinois.

The easement granted herein shall be for the limited purposes of constructing, reconstructing, replacing, maintaining, and keeping in repair one or more subsurface sewer lines across and under the previously described permanent right-of-way, and for constructing, maintaining and keeping in repair, one or more other subsurface utility lines across and under the previously described permanent right-of-way. The subject premises shall not be available for public use as a travelway, roadway, or other means of ingress or egress to any other property, but shall be used for the purposes of constructing, re-constructing, replacing, maintaining, and keeping in repair, one or more subsurface sewer lines or other utility lines across and under the premises previously described herein. The City of LeRoy , its agents, employees and assignees, shall have the right from time to time to enter and depart over and upon the above-described premises to effect the purposes of the easement herein granted. The City of LeRoy, through its appropriate agents and officials, shall further have the right from time to time to grant rights to public utility entities and quasi-public utility entities, including electrical, natural gas, water, sewer, telephone, other telecommunications, and cable television companies and entities, to place underground utility lines in the exclusive permanent easement way and right-of-way previously described herein, and to grant such entities, and their agents, employees and assignees, the right to enter and depart over and upon the above-described premises from time to time to effect the purposes of the rights granted herein.

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

1. Upon completion of any construction, reconstruction, maintenance, or repair of the surface drainage way, open ditch, drain, waterway or drainage swale, as provided previously herein, CITY shall restore the premises previously described herein to that condition as such premises existed prior to the

Exhibit A

aforesaid construction, reconstruction, maintenance, or repair of the surface drainage way, open ditch, drain, waterway or drainage swale as 'nearly as may be reasonably possible, in keeping with good engineering practices and accepted soil erosion control practices.

2. From time to time, should CITY make further improvements in any existing utility line or sewer lines, or subsurface sewer lines or other subsurface utility lines, or install one or more subsurface sewer lines or other subsurface utility lines, CITY shall restore the premises described above to the condition as the same existed prior to said construction as nearly as may reasonably be possible, in keeping with good engineering practices and accepted soil erosion control practices.

3. CITY shall cause any entity or persons to whom CITY shall grant rights as provided herein for placement of underground utility lines to restore the premises previously described herein to that condition as such premises existed prior to any construction, reconstruction, maintenance, repair or deepening of any underground utility line, as nearly as may be reasonably possible, in keeping with good engineering practices and excepted soil erosion control practices.

4. GRANTOR shall have the right to use the premises located within the easement description for purposes not inconsistent with CITY's full enjoyment of the rights hereby granted, including those rights that CITY may grant to other entities as aforesaid, 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.

5. 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 the surface drainage way, open ditch, drain, waterway, or drainage swale, 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 surface drainage way, open ditch, drain, waterway or surface drainage way, open swale, or subsurface sewer line or other subsurface utility line(s) installed by or operated 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 any surface drainage way, open ditch, waterway, drain, drainage swale, or subsurface sewer line or other subsurface utility line(s) installed by or operated by CITY, either existing or to be constructed in the future, including, but not limited to, construction, reconstruction, operation and maintenance of said surface drainage way, open ditch, drain, waterway, drainage swale or subsurface sewer line or other subsurface utility line(s) installed by or operated by CITY, shall be the duty and obligation of CITY. Further, should CITY grant any rights to any entities as previously granted herein for the placement of underground utility lines of any sort, as previously described herein, CITY shall cause the assignee or grantee of any such rights to repair any damage caused by it to GRANTOR's premises, and shall cause said entity to save and hold harmless and indemnify GRANTOR from any and all liability which may be incurred by GRANTOR by reason of construction, reconstruction, maintenance, in good repair, or operation of any said underground utility line or improvement as well as for any future such improvements or reconstructions.

6. CITY agrees, upon the completion of any construction, reconstruction, or maintenance work conducted by it on or in the easement way to reseed the stand of grass in the easement way, to the extent of any grassy area damaged, and to follow up the reseeding, as may be necessary, to water and fertilize the seed bed in order to re-establish the grassy area in a condition the same as or better than it existed prior to the damage to the grassy area by CITY or its agents, employees, or contractors.

7. The parties hereto agree that CITY, its agents, employees and contractors, from time to time, may place temporary stakes and markers within the easement way in order to facilitate construction, reconstruction, or repair work. Further, that GRANTOR shall not place any fencing along the sides, on either end, or within the easement way, without CITY's consent.

8. All provisions of this instrument, including the benefits and burdens, run with the land and are binding upon and inure to the heirs, assigns, tenants, personal representatives, and successors in interest, of the parties hereto.

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



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 Erik Graybeal and Janice Graybeal, Husband and Wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this 25<sup>th</sup> day of February, 1997.

Hunt Henderson My Commission Expires: December 2, 1997  
Notary Public



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 March 3rd, 1997, the Corporate Authorities of such municipality passed and approved Ordinance No. 725, entitled:

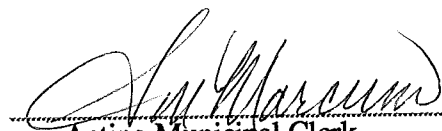
**AN ORDINANCE APPROVING AN  
AGREEMENT FOR A UTILITY EASEMENT**

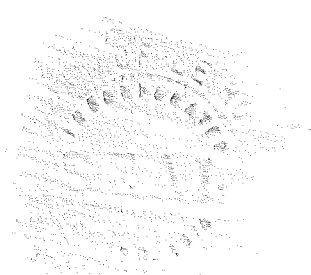
provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 725, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted at the municipal building, commencing on March 3rd, 1997, 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 3rd day of March, 1997.

(SEAL)

  
Acting 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 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 AN AGREEMENT FOR A UTILITY EASEMENT**

I do further certify said ordinance was adopted by the City Council of the City of LeRoy at a regular meeting on the 3rd day of March, 1997, 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 3rd day of March, 1997.

  
\_\_\_\_\_  
Acting City Clerk

(SEAL)

