

CITY OF LEROY
COUNTY OF MC LEAN
STATE OF ILLINOIS

ORDINANCE NO. 690

AN ORDINANCE APPROVING AN AGREEMENT
FOR DRAINAGE EASEMENT

ADOPTED BY THE CITY COUNCIL OF THE CITY OF LE ROY
THIS 15th DAY OF July, 1996

PRESENTED: July 15, 1996

PASSED: July 15, 1996

APPROVED: July 15, 1996

RECORDED: July 15, 1996

PUBLISHED: July 15, 1996

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)



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

Dated: July 15, 1996.

AN ORDINANCE APPROVING AN AGREEMENT
FOR DRAINAGE EASEMENT

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

A part of the South West 1/4 of Section 21, Township 22 North, Range 4 East of the Third Principal Meridian, described as follows: Commencing at the North East corner of Lot 1 of the Subdivision of the said South West 1/4 of Section 21; thence South 00 degrees 00 minutes 00 seconds West, 266.00 feet along the East line of Lot 1 to the South line of the North 266 feet of the said Lot 1; thence North 88 degrees 26 minutes 00 seconds West, 215.45 feet along the South line of the North 266 feet of the said Lot 1 to the Point of Beginning; thence North 20 degrees 24 minutes 24 seconds West, 324.51 feet to the South Line of Vine Street; thence North 89 degrees 43 minutes 00 seconds East, 113.15 feet along the South Line of Vine Street; thence South 00 degrees 00 minutes 00 seconds West, 304.70 feet to the Point of Beginning containing 0.40 acres, more or less, and being situated in the City of LeRoy, McLean County, Illinois, with bearings given for descriptive purposes only.

for the limited purposes of constructing, reconstructing, replacing, maintaining, deepening, and keeping in repair an open ditch, drain, waterway or drainage swale, and for constructing, maintaining, deepening and keeping in repair one or more subsurface sewer lines across and under the previously described permanent right-of-way, and have determined that approval of the same by the City of LeRoy is in the best interests of the city and its residents; and

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 removal of surface waters and the drainage thereof from the City of LeRoy,

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

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

Section 2. The Mayor and City Clerk are hereby directed and authorized to sign the original and as many copies as appropriate of that agreement as set forth in Exhibit "A" attached hereto, being certain to obtain one or more fully signed copies for the records of the City.

Section 3. 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
Lois Parkin....., seconded by Dave McClelland....., by
roll call vote on the 15th day of July....., 1996, as follows:

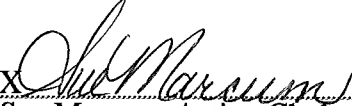
Aldermen elected 6 Aldermen present 6

Ron Litherland, Dave McClelland, Lois Parkin, Fred Dodson, Dawn Thompson, Bill Swindle
.....
(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 15th day of
July....., 1996.

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

APPROVED BY the Mayor of the City of LeRoy, Illinois, this 15th day of
July....., 1996.

X 
Jerry C. Davis, Mayor of the City of LeRoy,
McLean County, Illinois

ATTEST: (SEAL)
X 
Sue Marcum, Acting City Clerk of the
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), James R. Ensign, Trustee, under the provisions of a trust agreement dated June 20, 1990, known as McLean County Land Trust Number KD-1, of the 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, does 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:

A part of the South West 1/4 of Section 21, Township 22 North, Range 4 East of the Third Principal Meridian, described as follows: Commencing at the North East corner of Lot 1 of the Subdivision of the said South West 1/4 of Section 21; thence South 00 degrees 00 minutes 00 seconds West, 266.00 feet along the East line of Lot 1 to the South line of the North 266 feet of the said Lot 1; thence North 88 degrees 26 minutes 00 seconds West, 215.45 feet along the South line of the North 266 feet of the said Lot 1 to the Point of Beginning; thence North 20 degrees 24 minutes 24 seconds West, 324.51 feet to the South Line of Vine Street; thence North 89 degrees 43 minutes 00 seconds East, 113.15 feet along the South Line of Vine Street; thence South 00 degrees 00 minutes 00 seconds West, 304.70 feet to the Point of Beginning containing 0.40 acres, more or less, and being situated in the City of LeRoy, McLean County, Illinois, with bearings given for descriptive purposes only.

The easement granted herein shall be for the limited purposes of constructing, reconstructing, replacing, maintaining, deepening, and keeping in repair an open ditch, drain, surface drain, waterway or drainage swale, and for constructing, maintaining, deepening and keeping in repair one or more subsurface sewer lines across and under the previously described permanent right-of-way. 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.

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

1. Upon completion of any construction, reconstruction, maintainance, repair, or deepening 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 aforesaid construction, reconstruction, maintainance, repair or deepening 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, accepted soil erosion control practices, and in keeping with good farming and agricultural practices.

2. From time to time, should CITY make further improvements in said surface drainage way, drainage ditch, drain, waterway, drainage swale, or subsurface sewer lines, or install one or more subsurface sewer 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, accepted soil erosion control practices, and in keeping with good farming and agricultural practices.

3. 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, 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.

4. 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, 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, draomage swale, or subsurface sewer line, 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, shall be the duty and obligation of CITY.

5. 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.

6. 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.

7. GRANTOR, GRANTOR's agents, employees, tenants, assigns and successors in interest shall have the right to cross the easement way 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 way to the extent GRANTOR, or GRANTOR's assigns or successors in interest, have land adjacent to the easement way on either side of the easement way, 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 way, 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 way less likely to fulfill the purposes for which the way is granted to CITY, or increasing the burden of CITY to repair and maintain the easement way in good condition.

8. If CITY, as a result of its construction, reconstruction, repair or operation of the easement way should create a ditch or other area with such fall to the sides of the ditch or swale as to make it reasonably impossible for farm equipment to cross over the ditch, CITY shall construct a crossing or bridge suitable for the passage of farm equipment at a location mutually agreed upon with GRANTOR, and shall construct the bridge or crossing at CITY's expense and in such a way as to permit CITY to still be able to utilize the easement to the fullest extent possible.

9. Regardless of any other provisions set forth previously in this agreement, or subsequent to the provisions in this Section 9, CITY agrees the slope that it shall construct and maintain from time to time on the easement area shall never be greater than an angle that will reasonably allow the surface area within the easement way to be mowed or mowable. Further, regardless of any other provisions set forth previously in this agreement, or subsequent to the provisions in this Section 9, CITY agrees it shall not construct any permanent roadway within the easement way granted herein, unless by written consent of the Grantor, or the Grantor's successors in interest.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

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

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

19. 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.

20. 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.

21. 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.

22. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said trustee, are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the trustee, or for the purpose or with the intention of binding said trustee personally, but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said trustee not in his own right, but solely in the exercise of the powers conferred upon him as such trustee; and no personally liability or personally responsibility is assumed by, nor shall at any time be asserted or enforceable against, the trustee, as stated previously herein, and as executed hereafter, on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking, or agreement of the aforesaid trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, the GRANTOR has set his hand and seal this _____ day of _____, 1996, as trustee as aforesaid.

X _____ (SEAL)
James R. Ensign, Trustee, McLean County
Land Trust KD-1

CITY OF LEROY, McLean County, Illinois,
an Illinois municipal corporation,

By: _____
Jerry C. Davis, Mayor

ATTEST:

(SEAL)

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

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
_____ Jerry C. Davis _____, personally known to me to be the Mayor of the City of LeRoy, and _____ Sue Marcum _____, personally known to me to be the Acting 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 _____ day of _____, 1996.

Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

I, a Notary Public in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that JAMES ENSIGN, Trustee, under the terms of a trust agreement dated June 20, 1990, known as McLean County Land Trust Number KD-1, who is personally known to me 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 as Trustee, as aforesaid, and as the free and voluntary act of the trust for the uses and purposes set forth.

Given under my hand and notarial seal, this _____ day of _____, 1996.

Notary Public

My Commission Expires: _____

This instrument prepared by:
Hunt Henderson, Attorney at Law #01186256
112 East Center Street, LeRoy, Illinois 61752

CERTIFICATE

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

I further certify that on July 15, 1996, the Corporate Authorities of such municipality passed and approved Ordinance No. 690, entitled:

AN ORDINANCE APPROVING AN AGREEMENT
FOR DRAINAGE EASEMENT,

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

The pamphlet form of Ordinance No. 690, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted at the municipal building, commencing on July 15, 1996, 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 15th day of July, 1996.

(SEAL)


Sue Marcum
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 DRAINAGE EASEMENT.

I do further certify said ordinance was adopted by the City Council of the City of LeRoy at a regular meeting on the 15th day of July, 1996, 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 15th day of July, 1996.

X Sue Marcum
Acting City Clerk

(SEAL)

