

CITY OF LEROY  
COUNTY OF MCLEAN  
STATE OF ILLINOIS

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ORDINANCE NO. 724

AN ORDINANCE VACATING PORTIONS OF A PLATTED UTILITY EASEMENT LOCATED IN  
AND ACROSS MEADOW ADDITION TO THE CITY OF LEROY, MCLEAN COUNTY, ILLINOIS

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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

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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)



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

Dated: March 3, 1997.

ORDINANCE NO. 724

AN ORDINANCE VACATING PORTIONS OF A PLATTED UTILITY EASEMENT LOCATED IN AND ACROSS MEADOW ADDITION TO THE CITY OF LEROY, MCLEAN COUNTY, ILLINOIS

WHEREAS, prior to the date of this ordinance a request was received from the owner of property across which exists a certain platted, but currently unused, easement way for utility purposes, located in the East 10 feet of Lot 28, both in Meadow Addition of the City of LeRoy, McLean County, Illinois, requesting vacation of the aforesaid platted utility easement; and

WHEREAS, the City of LeRoy, through its Mayor and City Council, has determined that it is appropriate to take action in response to said request by passing and approving an ordinance vacating designated portion of said easement; and

WHEREAS, the Mayor and City Council of the City of LeRoy, McLean County, Illinois, an Illinois municipal corporation, find that it is in the public's interest to vacate portions of the aforesaid platted utility easement as previously described herein, and in return for the same to obtain a grant of easement for utility purposes across the East 10 feet of the aforesaid Lot 28 in Meadow Addition, as aforesaid,

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 platted utility easement previously described herein is no longer required for the public's use and the public's interest will be subserved by vacating said portion of the aforesaid platted utility easement.

Section 2. The heretofore platted and dedicated utility easement, legally described as:

Across the North 127.3 feet of the East 10 feet of Lot 28, both lots being 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,

be and the same is hereby vacated subject to the condition that a grant of easement as set forth in Exhibit Y, attached hereto and incorporated herein by reference, is recorded immediately subsequent to recording of a certified copy of this ordinance in the Office of the Recorder of Deeds of McLean County, Illinois.

Section 3. The vacation of a portion of the utility easement as provided herein is conditioned upon the execution of a grant of easement by the owners of Lot 28 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, a copy of the proposed grant of easement being set forth in Exhibit Y, attached hereto and incorporated herein by reference.

Section 4. A certified copy of this ordinance shall be filed by the City Clerk of the City of LeRoy, Illinois, for recording in the Office of the Recorder of Deeds of McLean County, Illinois, within thirty (30) days after passage of this Ordinance.

Section 5. Vacation of the public interest in the aforesaid platted utility easements on the conditions herein provided shall not abridge or destroy the rights or privileges of any other proprietor or property shown on the final plat of said subdivision. Said vacation does not constitute a closing or obstructing of any public way and for that reason, and only to the extent that said final plat conflicts with the provisions of this vacation ordinance, the final plat of the aforesaid Meadow Addition to the City of LeRoy, McLean County, Illinois, be and the same is hereby vacated in part.

Section 6. This ordinance is passed by the affirmative vote of at least three-fourths (3/4) of the Aldermen of the City of LeRoy now holding office.

Section 7. This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form, as required by law, and upon the fulfillment of the conditions set forth in Section 3 of this ordinance regarding recording of the Grant of Easement, in the original form, a copy of which is set forth in Exhibit Y, attached hereto and incorporated herein by reference.

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

Bill Swindle

, seconded by Dawn Thompson

\_\_\_\_\_, by roll call vote on the 3rd day of March, 1997, as follows:

Aldermen elected 6 Aldermen present 6

VOTING AYE:

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

VOTING NAY:

None  
(full names)

ABSENT, ABSTAIN, OTHER:

None  
(full names)

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

X Sue Marcum

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.

X Jerry C. Davis

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

ATTEST: (SEAL)

X Sue Marcum

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 Y

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 3, 1997, the Corporate Authorities of such municipality passed and approved Ordinance No. 724, entitled:

AN ORDINANCE VACATING PORTIONS OF A PLATTED UTILITY EASEMENT LOCATED IN AND ACROSS MEADOW ADDITION TO THE CITY OF LEROY, MCLEAN COUNTY, ILLINOIS, which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 724, 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 3, 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 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 VACATING PORTIONS OF A PLATTED UTILITY EASEMENT LOCATED IN AND ACROSS MEADOW ADDITION TO THE CITY OF LEROY, MCLEAN COUNTY, ILLINOIS.

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)