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**VILLAGE OF SUGAR GROVE  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
**FROM:** WALTER MAGDZIARZ, COMMUNITY DEVELOPMENT DIRECTOR  
DANIELLE MARION, PLANNING AND ZONING ADMINISTRATOR  
**SUBJECT:** ORDINANCE: HANNAFORD FARM ANNEXATION AGREEMENT AMENDMENT FOR LOT 43  
(1672 HANNAFORD DRIVE)  
**AGENDA:** JUNE 21, 2022 REGULAR VILLAGE BOARD MEETING  
**DATE:** JUNE 17, 2022

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**ISSUE**

Shall the Village Board approve an Annexation Agreement Amendment pertaining to Hannaford Farm Lot 43 (1672 Hannaford Drive).

**DISCUSSION**

The owner of Lot 43 has paid the current FILOD, thereby completing his obligations under the Annexation Agreement, and desires to remove the *lis pendens* from the lot in question.

The Annexation Agreement Amendment acknowledges the lot owner has completed his obligations under the Annexation Agreement. Upon approval of the Ordinance, the Village is obligated to remove the *lis pendens* recorded against the lot.

The required public hearing was held on June 21, 2022. Village staff recommends approval of the Annexation Agreement Amendment for Hannaford Farm Lot 43 (1672 Hannaford Drive).

For your information, the Village Board has approved similar Annexation Agreement amendments to date for 35 lots in Hannaford Farm (attached). With the adoption of this Annexation Agreement amendment 46 undeveloped lots remain in Hannaford Farm to follow the same course of action.

**ATTACHMENTS**

- List of paid FILOD lots
- Ordinance Authorizing Execution of an Annexation Agreement Amendment (Hannaford Farm Lot 43)

**COSTS**

There are nominal Village Attorney costs and recording costs associated with the required action that is the responsibility of the Village.

**RECOMMENDATION**

That the Village Board approve an Ordinance Authorizing Execution of an Annexation Agreement Amendment for Hannaford Farm Lot 43 (1672 Hannaford Drive).

## Hannaford Farm Paid FILOD Lots

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May 18, 2010	Lot 104	1011 Redbud Lane
June 1, 2010	Lot 29	1098 Chestnut Hill Lane
June 15, 2010	Lot 35	1014 Chestnut Hill Lane
November 1, 2011	Lot 53	1800 Hunters Ridge Lane
January 7, 2014	Lot 62	835 Wheatfield Avenue
February 4, 2014	Lot 28	494 Willow Street
March 4, 2014	Lot 99	1091 Redbud Lane
November 18, 2014	Lot 42	1759 Hunters Ridge Lane
January 20, 2015	Lot 36	990 Chestnut Hill Lane
February 17, 2015	Lot 55	1830 Hunters Ridge Lane
August 6, 2019	Lot 116	1885 Hunters Ridge Lane
August 20, 2019	Lot 46	1722 Hannaford Drive
"	Lot 54	1812 Hunters Ridge Lane
"	Lot 66	765 Wheatfield Avenue
"	Lot 67	747 Wheatfield Avenue
"	Lot 68	731 Wheatfield Avenue
"	Lot 91	1052 Wheatfield Avenue
"	Lot 96	1139 Redbud Lane
"	Lot 98	1107 Redbud Lane
"	Lot 100	1075 Redbud Lane
"	Lot 101	1059 Redbud Lane
"	Lot 103	1011 Redbud Lane
"	Lot 108	947 Redbud Lane
"	Lot 109	915 Redbud Lane
"	Lot 110	915 Redbud Lane
"	Lot 121	900 Redbud Lane
"	Lot 130	1134 Redbud Lane
November 5, 2019	Lot 59	1900 Hunters Ridge Lane
November 5, 2019	Lot 60	1918 Hunters Ridge Lane
January 7, 2020	Lot 69	717 Wheatfield Avenue
January 7, 2020	Lot 106	979 Redbud Lane
June 2, 2020	Lot 127	1044 Redbud Lane
June 2, 2020	Lot 131	1148 Redbud/1067 Wheatfield Avenue
April 20, 2021	Lot 128	1076 Redbud Lane
August 18, 2021	Lot 111	901 Redbud Lane
April 5, 2022	Lot 112	931 Wheatfield Avenue



**VILLAGE OF SUGAR GROVE  
KANE COUNTY, ILLINOIS**

**ORDINANCE NO. 2022-0621B**

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**AN ORDINANCE AUTHORIZING EXECUTION OF AN ANNEXATION AGREEMENT AMENDMENT FOR  
HANNAFORD FARM LOT 43  
(1672 HANNAFORD DRIVE)**

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Adopted by the Board of Trustees and President of the Village of Sugar Grove  
this 21<sup>st</sup> day of June 2022

Published in pamphlet form by authority of the Board of Trustees of the Village of Sugar Grove  
this 21<sup>st</sup> day of June 2022

**VILLAGE OF SUGAR GROVE**

**ORDINANCE NO. 2022-0621B**

**AN ORDINANCE AUTHORIZING EXECUTION OF AN ANNEXATION AGREEMENT AMENDMENT FOR  
HANNAFORD FARM - LOT 43  
(1672 HANNAFORD DRIVE)**

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**WHEREAS**, the Village of Sugar Grove (the "Village") is not a home rule municipality within Article VII, Section 6A of the Illinois Constitution and, pursuant to the powers granted to it under 65 ILCS 5/1-8 *et seq.*; and,

**WHEREAS**, Kevin and Kristen Otterness (the "LOT OWNER" and/or "LOT DEVELOPER") have petitioned for an amendment to the Annexation Agreement for a portion of the Hannaford Farm development, specifically, Lot 43 in Hannaford Farm Subdivision Unit 1, commonly known as 1672 Hannaford Drive; and,

**WHEREAS**, after due notice, the corporate authorities of the Village held a public hearing on June 21, 2022 on the proposed amended agreement, similar in form and substance to the Agreement attached hereto; and,

**WHEREAS**, the corporate authorities have approved this Agreement; and,

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, as follows:

**SECTION ONE: AMENDED ANNEXATION AGREEMENT**

That the Amended Annexation Agreement entered into by and between the Village of Sugar Grove, an Illinois municipal corporation (the "Village"); and Kevin and Kristen Otterness, (the "LOT OWNER" and/or "LOT DEVELOPER"); setting forth terms and conditions relating to the territory legally described in **Exhibit A** is hereby incorporated by reference in this ordinance as if fully set forth in the body hereof, a copy of which is attached hereto as **Exhibit B**. Said **Exhibit B** is hereby approved and the Village President and Clerk are hereby authorized and directed to execute said amended agreement on behalf of the Village of Sugar Grove.

## SECTION TWO: RECORDING AND NOTICE

The Village Clerk is hereby further authorized and directed to record this ordinance along with all exhibits in the Office of the Recorder of Kane County.

## SECTION THREE: 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 from and after its passage, approval and publication in pamphlet form as provided by law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois this 21<sup>st</sup> day of June 2022.

\_\_\_\_\_  
Jennifer Konen,  
Village President

ATTEST: \_\_\_\_\_  
Alison Murphy,  
Village Clerk

	<b>Aye</b>	<b>Nay</b>	<b>Absent</b>	<b>Abstain</b>
Trustee Matthew Bonnie	_____	_____	_____	_____
Trustee Sean Herron	_____	_____	_____	_____
Trustee Heidi Lendi	_____	_____	_____	_____
Trustee Michael Schomas	_____	_____	_____	_____
Trustee Ryan Walter	_____	_____	_____	_____
Trustee James F. White	_____	_____	_____	_____

**Exhibit A**

*(Legal Description)*

LOT 43 IN HANNAFORD FARM UNIT 1, BEING A SUBDIVISION OF PART OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 4 AND THE NORTHEAST  $\frac{1}{4}$  OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 14, 2004 AS DOCUMENT 2004K159382, IN THE VILLAGE OF SUGAR GROVE, KANE COUNTY, ILLINOIS.

Commonly known as: 1672 Hannaford Drive

**Exhibit B**

*(Amended Annexation Agreement on following pages)*

STATE OF ILLINOIS    )  
  ) ss  
COUNTY OF KANE    )

*Prepared by:*

Laura Julien  
Mickey, Wilson, Weiler, Renzi,  
Lenert & Julien, P.C.  
140 S. Municipal Drive  
Sugar Grove, IL 60554

*Return to after recording:*

Village Clerk  
Village of Sugar Grove  
10 S. Municipal Drive  
Sugar Grove, IL 60554

**LOT BY LOT AMENDMENT TO ANNEXATION AGREEMENT  
(Hannaford Farm Subdivision Lot 43)**

This Amendment to Annexation Agreement (the "Amendment"), is made and entered into this \_\_\_\_ day of June 2022, by and between the VILLAGE OF SUGAR GROVE, a municipal corporation (the "VILLAGE"); and Kevin and Kristen Otterness, owners of Lot 43 as successor Developer and Owner of said lot (the "LOT OWNER" and/or "LOT DEVELOPER") individually referred to as "Party" and collectively referred to as "Parties."

**WITNESSETH**

**WHEREAS**, LOT OWNER owns fee simple interest to the property which is legally described in **Exhibit "AA"**, attached hereto, consisting of Lot 43, (the "LOT"), and which was the subject of an Annexation Agreement recorded on July 8, 2004 in Kane County as Document number 2004K090340 (and subsequently amended); and,

**WHEREAS**, it is the desire of LOT OWNER and LOT DEVELOPER to amend the annexation agreement for this portion of the original development (pursuant to Section 16A) only to address changes in circumstances since the time of the original agreement was passed; and,

**WHEREAS**, due to the failure of the initial developer and owner of the property to complete the required public improvements, and the failure of the financial institution backing the Letters of Credit to provide the funds needed to completed these same improvements it falls to the successor LOT DEVELOPER/LOT OWNER to complete said public improvements pursuant to Section 16A and 18 of the original Annexation Agreement for the Property; and,



**WHEREAS**, in consideration of the negotiations between the Parties, the Parties have agreed that if the LOT OWNER/LOT DEVELOPER complies with all obligations of the annexation agreement and pays to the Village an additional impact fee (as noted herein) to address this LOT OWNER' s obligations for the Public Improvements and related improvements and expenses of development the Village will allow the LOT OWNER to develop this Lot.

**WHEREAS**, all notices required by law relating to amending the original annexation agreement of the Property to the VILLAGE have been given to the persons or entities entitled to such notice pursuant to the applicable provisions of the Illinois Compiled Statutes; and,

**WHEREAS**, the Corporate Authorities of the VILLAGE have duly affixed and completed the time for a public hearing on this Amendment and pursuant to legal notice have held (or will have held prior to execution) such hearing thereon all as required by the provisions of the Illinois Compiled Statutes; and,

**WHEREAS**, in accordance with the powers granted to the VILLAGE by the provisions of 65 ILCS 5/11-15.1-1 through 15.1-5, inclusive, relating to Annexation Agreements, the parties hereto wish to enter into a binding Amendment to Annexation Agreement and to provide for various other matters related directly or indirectly to the annexation of the LOT as authorized by the provisions of said statutes; and,

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements and conditions herein contained, and by authority of and in accordance with the aforesaid statutes of the State of Illinois, the parties agree as follows:

**1. SECTION 24 CREATED.**

Section 24 is hereby created as follows:

Prior to this amendment of the annexation agreement for this property, the LOT OWNER/LOT DEVELOPER was responsible for various improvements and related expenses listed on **Exhibit BB**. In lieu of completion of said items listed on **Exhibit BB**, the LOT OWNER/LOT DEVELOPER shall pay, at issuance of the building permit the amount of fifteen thousand, five hundred ninety-five dollars and forty cents (\$15,595.40) (subject to the next paragraph of this Section 24), in satisfaction of this LOT's obligation for the items listed on **Exhibit BB**. LOT OWNER/LOT DEVELOPER shall otherwise comply with all remaining obligations of the Annexation Agreement and development ordinances of the Village. All remaining sections of the Annexation Agreement (and previous amendments, if applicable to this LOT) shall remain in full force and effect.

Until paid, the above referenced fee may be changed by the VILLAGE at its discretion as to amount and timing by adoption of a motion or resolution by the Village Board of Trustees. Said adjusted fee shall be effective 30 days after passage of said motion or resolution.

**2. SECTION 25 CREATED.**

Section 25 is hereby created as follows:

The Parties acknowledge and agree that the terms and conditions of this Amendment, including the payment of new fees, have been reached through a process of good faith negotiation both by Parties and through counsel, and represent terms and conditions that are deemed by the Parties to be fair,

reasonable, acceptable and contractually binding upon each of them and not affecting any other lot or owner other than the LOT, LOT DEVELOPER and LOT OWNER herein and that the VILLAGE is free to negotiate additional amendments (with the same or different terms) with other lot owners without affecting in any way, the validity or enforceability of this Amendment and Agreement. Further this Amendment shall not be construed to benefit any third party, nor act as a release of any other owner, developer or surety's obligations under the original annexation agreement, any amendments thereto, the ordinances of the Village, the Letters of Credit previously posted, the liability of the issuing bank(s) or the FDIC in its action relative to said sureties.

By entering into this agreement, the LOT OWNER/LOT DEVELOPER (and its successors and assigns) hereby waives and releases any and all claims against the VILLAGE, its officers, agents, consultants, and assigns for any and all claims or damages of any type or character, including the costs of defending any such claims or damages, (including reasonable attorney's fees for attorneys to be chosen at the discretion of the VILLAGE) as a result of the actions of the VILLAGE in filing *lis pendens* and notices of breach, denial of building permits or other actions taken by the VILLAGE to insure the cure of the breach of the Annexation Agreement.

**3. SECTION 26 CREATED.**

Section 26 is hereby created as follows:

The LOT OWNER and LOT DEVELOPER agree that prior to issuance of a building permit they shall execute and have recorded upon their LOT (and have their LOT subjected to said covenants) the covenants attached hereto as **Exhibit CC**.

**4. SECTION 27 CREATED.**

Section 27 is hereby created as follows:

The LOT OWNER/LOT DEVELOPER agree as condition of the issuance of the building permit and of this Amendment that LOT OWNER/LOT DEVELOPER shall install at its own expense, the required sidewalk and parkway tree requirements for the LOT in question. To the extent that said sidewalk and/or parkway tree already exist for said LOT, should the LOT OWNER/LOT DEVELOPER damage said sidewalk or parkway tree, it shall be responsible for repair and/or replacement of same. The LOT OWNER/LOT DEVELOPER agree as condition of the issuance of the building permit, and of this Amendment, that it shall also be responsible for insuring that the water service connections, sanitary service connections function to the Village standards (as determined by the Village Engineer) for said LOT and that the LOT OWNER/LOT DEVELOPER shall also be responsible for any and all parkway restoration for said LOT. LOT OWNER/LOT DEVELOPER shall at the time of issuance of the Building permit for said LOT, post a \$5,000.00 cash escrow for any damage to public improvements occurring during construction. Said escrow, if not used, shall be returned (without interest) to LOT OWNER/LOT DEVELOPER upon issuance of the final certificate of occupancy for said LOT.

**5. REMAINDER OF AGREEMENT UNAFFECTED; AMENDMENT INTEGRATED IN AGREEMENT, TERM.**

The Parties hereby agree and acknowledge that the remaining provisions of the original annexation agreement and previous amendments which are not referenced or amended by this Amendment shall remain in effect for the term of the Agreement. For purposes of construing the

provisions of the Agreement, the Parties agree that this Amendment shall be fully integrated into the Agreement from and after its execution by the Parties. This Amendment shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns including, but not limited to, successor owner of record, successor developers, lessees and successor lessees, and upon any successor municipal authority of the VILLAGE and successor municipalities for a period of twenty (20) years from the later of the date of execution hereof and the date of adoption of the ordinances pursuant hereto.

**IN WITNESS WHEREOF**, the parties have executed this Annexation Agreement the day and year first above written.

VILLAGE:

Village of SUGAR GROVE, an Illinois  
municipal corporation

ATTEST:

\_\_\_\_\_  
Alison Murphy,  
Village Clerk

\_\_\_\_\_  
Jennifer Konen,  
Village President

STATE OF ILLINOIS   )  
                                      )  
COUNTY OF KANE    )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the Village President and Village Clerk, respectively, of the Village of Sugar Grove, and 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 severally acknowledge that as such Village President and Village Clerk, they signed and delivered the said instrument as President and Village Clerk caused the corporate seal of said Village to be affixed thereto, pursuant to authority, given by the Village of Sugar Grove Village Trustees as the free and voluntary act and deed of said Village for the uses and purposes set forth.

Given under my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary    Public

**OWNER, LOT 43:**

\_\_\_\_\_  
Kevin Otterness

\_\_\_\_\_  
Kristen Otterness

STATE OF ILLINOIS )  
                                  )  
COUNTY OF KANE    )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that \_\_\_\_\_ and \_\_\_\_\_, 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 as the free and voluntary act and deed for the uses and purposes set forth.

Given under my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

## LIST OF EXHIBITS

Exhibit AA	Legal Description of Lot
Exhibit BB	List of Public Improvements being addressed for this Lot only by payment of an additional fee
Exhibit CC	Covenants to be recorded against Lot

## **EXHIBIT AA**

### *Legal Description*

Lot 43 in Hannaford Farm Unit 1, being a subdivision of part of the southeast  $\frac{1}{4}$  of section 4 and the northeast  $\frac{1}{4}$  of section 9, township 38 north, range 7 east of the third principal meridian, according to the plat thereof recorded December 14, 2004 as document 2004K159382, in the Village of Sugar Grove, Kane County, Illinois.

## **EXHIBIT BB**

### *Public Improvements*

The improvements include some grading to accommodate the overland flow route, sanitary sewer manhole repairs and adjustments, valve vault and fire hydrant repairs and adjustments, storm sewer and structure repairs, adjustments and installation, curb and gutter repairs, pavement patching and replacement as required, surface course installation on roadways of the internal subdivision and Denny Road, minor sidewalk repairs, signage repairs and replacement, streetlight repairs, landscaping, minor restoration within the right of way adjacent to common areas, bike path repairs, additional bike path installation and replacement along Wheatfield and Redbud, soil erosion control necessary to complete these improvements, record drawing preparation, and fees associated with engineering, attorney, and snowplowing for the Hannaford Farm subdivision.

**EXHIBIT CC**

*Conditions, Covenants and Restrictions*

Conditions Covenants and Restrictions (CCR's) recorded as  
document number 2011K026408 in the Kane County Recorder's Office