
VILLAGE OF SUGAR GROVE BOARD REPORT

TO: VILLAGE PRESIDENT & BOARD OF TRUSTEES
FROM: WALTER MAGDZIARZ, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: ORDINANCE: AUTHORIZING ACCEPTANCE OF A TEMPORARY CONSTRUCTION AND PERMANENT DRAINAGE AND UTILITY EASEMENT AGREEMENT FOR COPE PROPERTY (PRAIRIE GROVE COMMONS) (STAR/STER)
AGENDA: NOVEMBER 1, 2022 VILLAGE BOARD MEETING
DATE: OCTOBER 27, 2022

ISSUE

Shall the Village Board approve an Ordinance approving a temporary construction and permanent drainage and utility easement on the Cope property.

DISCUSSION

In order to proceed with development of the proposed Prairie Grove Commons commercial development an off-site utility easement is needed to accommodate the sanitary sewer Prairie Grove Commons will construct to serve the development. The attached Ordinance authorizes and accepts the off-site easement which easement includes a temporary construction easement as well as the permanent drainage and utility easement.

The easement is customary and ordinary in every way except that the grantor requested reservation of sanitary sewer capacity and is refusing the mutual indemnification provision. Since the grantor agreed to the reservation of capacity only if the property is annexed, Village staff is comfortable with this term in the easement in this instance. With respect to the mutual indemnification, Village staff is puzzled but risk exposure to the Village is relatively small and remote. Again, in this instance, this term in the easement agreement is acceptable.

COSTS

The costs associated with establishing the easement is borne by the Prairie Grove Commons property owner.

ATTACHMENTS

- Ordinance Authorizing Acceptance of a Temporary Construction and Permanent Drainage and Utility Easement Agreement for Cope Property

RECOMMENDATION

That the Village Board approve Ordinance Authorizing Acceptance of a Temporary Construction and Permanent Drainage and Utility Easement Agreement for Cope Property, subject to Village Attorney and Village Engineer review.



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

Ordinance No. 20221101B

**AN ORDINANCE AUTHORIZING ACCEPTANCE OF A TEMPORARY CONSTRUCTION AND PERMANENT
DRAINAGE AND UTILITY EASEMENT AGREEMENT (COPE PROPERTY)**

Adopted by the
Board of Trustees and President of the Village of Sugar Grove
this 1st day of November, 2022

Published in pamphlet form by authority of the Board of Trustees of the Village of Sugar Grove
this 1st day of November, 2022

ORDINANCE NO. 20221101B

AN ORDINANCE AUTHORIZING ACCEPTANCE OF A TEMPORARY CONSTRUCTION AND PERMANENT DRAINAGE AND UTILITY EASEMENT AGREEMENT (COPE PROPERTY)

WHEREAS, the Village of Sugar Grove 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 5/1-1 *et seq.*; and,

WHEREAS, the Village desires to obtain a temporary construction and permanent drainage and utility easement (“Easements”) on property owned by Sugar Grove Investments, LLC, and MMB, LLC, and RCL. LLC (the “Cope” property) for the purposes of constructing, operating, and maintaining underground water, storm water, and sanitary sewer main and related appurtenances (“Facilities”); and

WHEREAS, both the Village and Cope find that it is mutually beneficial to enter into agreement and to accept both Easements; and

WHEREAS, the corporate authorities of the Village of Sugar Grove have reviewed a certain agreement, a copy of which is attached hereto as **Exhibit A**, providing the terms and conditions of such, and hereby seek to approve the aforesaid agreement and its terms and conditions;

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, that the Village President and Village Clerk are hereby authorized and directed to execute any and all such further agreements or documents to accept said Easements as may be necessary to effectuate the provisions of the Agreement and the Village Clerk is further directed to cause said Agreement to be recorded with the Kane County Recorder’s Office.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, this 1st day of November 2022.

ATTEST:

Jennifer Konen,
President of the Board of Trustees

Alison Murphy,
Village Clerk

	Aye	Nay	Absent	Abstain
Trustee Matthew Bonnie	___	___	___	___
Trustee Sean Herron	___	___	___	___
Trustee Heidi Lendi	___	___	___	___
Trustee Michael Schomas	___	___	___	___
Trustee Ryan Walter	___	___	___	___
Trustee James F. White	___	___	___	___

EXHIBIT A

GRANT OF TEMPORARY CONSTRUCTION AND PERMANENT DRAINAGE AND UTILITY EASEMENT

PREPARED BY & RETURN TO:

**Laura M. Julien
MICKEY, WILSON, WEILER, RENZI,
LENERT & JULIEN, P.C.
140 S. Municipal Drive
Sugar Grove, IL 60554**

GRANT OF TEMPORARY CONSTRUCTION AND PERMANENT DRAINAGE AND UTILITY EASEMENT

THIS GRANT OF TEMPORARY CONSTRUCTION AND PERMANENT DRAINAGE AND UTILITY EASEMENT (“Grant”) is made and entered into as of this ___ day of ____, 2022, by and between **SUGAR GROVE INVESTMENTS, L.L.C.**, an Illinois limited liability company, 70 W. Madison Street, Suite 2300, Chicago, Illinois 60602; **MMB, L.L.C.**, an Illinois limited liability company, 70 W. Madison Street, Suite 2300, Chicago Illinois 60602; and **RCL, L.L.C.**, an Illinois limited liability company, 70 W. Madison Street, Suite 2300, Chicago, Illinois 60602, and their successors and assigns (“**Grantors**”) and **THE VILLAGE OF SUGAR GROVE**, an Illinois municipal corporation, 10 S. Municipal Drive, Sugar Grove, IL 60554, and its successors and assigns (“**Grantee**”) (as each may be individually referred to as a “**Party**” or collectively as the “**Parties**”).

RECITALS

WHEREAS, Grantors are the owners of record of certain real property identified by parcel numbers 14-15-300-013 & 14-16-400-014, Kane County, Illinois, and legally described on the attached **Exhibit A** (“**Grantors’ Property**”), incorporated herein by reference; and,

WHEREAS, Grantee desires to obtain a permanent drainage and utility easement (“**Permanent Easement**”) across certain portions of Grantors’ Property for the purposes of constructing, operating, and maintaining underground water, storm water, and sanitary sewer mains and related appurtenances (“**Facilities**”); and,

WHEREAS, to install the Facilities on Grantors’ Property, Grantee requires a temporary construction easement for the purpose of locating personnel, equipment, and material (“**Temporary Construction Easement**”); and,

WHEREAS, Grantors desire to grant Grantee both the Temporary Construction Easement and Permanent Easement (collectively, “**Easements**”) in and along Grantors’ Property at the locations set forth on **Exhibit B**, incorporated herein by reference, for the construction and installation of the Facilities in accordance with the terms and conditions of this Grant; and,

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The above recitals are incorporated herein by reference.
2. **Grant of Easements.**

A. Consideration. In consideration for the Grant of Easements set forth herein, Grantee shall pay Grantors a sum in the amount of Ten and 00/100 Dollars (\$10.00).

B. General Conditions. Grantors hereby grant and convey to Grantee, for the benefit of Grantee, both a Permanent Easement for the Facilities and a Temporary Construction Easement for the construction, maintenance and repair of said Facilities, together with the right of ingress and egress for the purpose of constructing and maintaining said Facilities, over, under, along, upon and through said Easements hereinafter described. Further, Grantors agree take any and all other actions necessary to effectuate this Grant.

The Easements described herein are all situated in unincorporated Kane County immediately adjacent to the corporate limits of the Village of Sugar Grove, County of Kane in the State of Illinois, and to the extent applicable, Grantors hereby release and waive all rights under and by virtue of the Homestead Exemption Laws of this State.

Grantee's rights in the Easements described above shall include the right to have third-parties enter onto Grantors' Property and utilize the Easements to perform the construction and maintenance activities to the Facilities herein described.

Grantee shall install, or cause to be installed, a twelve-inch (12") sewer in the within the Permanent Easement.. Grantors and Grantors' successors and assigns shall have the right to make connections to the Facilities at no cost, including tap-on fees, and without recapture or reimbursement. Grantee shall reserve sufficient capacity to service a residential development on Grantors' Property with a density of up to twelve (12) units per acre. Any development proposed at a later date is otherwise subject to Village review and approvals per the ordinances of the Village of Sugar Grove. The waiver of tap-on fees and reservation of capacity set forth in this paragraph shall be conditional upon the annexation of Grantors' Property into the Village of Sugar Grove.

C. Temporary Construction Easement. A temporary, non-exclusive easement over, under, in, along, across, and upon the portion of Grantors' Property shown on the attached and incorporated **Exhibit B**. Grantee may use the Temporary Construction Easement for the purposes of constructing and installing the Facilities, which shall include, but shall not be limited to, the right to conduct studies, tests, examination and surveys, the right to temporarily place and store equipment, vehicles and materials, and to erect structures, the right to trim, cut and remove all trees, structures, and any other obstruction or obstacles. The Temporary Construction Easement shall commence on the Effective Date of this Grant and shall automatically terminate and expire upon the completion of construction of the Facilities; provided, however, that Grantee shall have the right to utilize the Temporary Construction Easement as reasonably required in connection with the repair, replacement and maintenance of the Facilities following completion of construction of the Facilities. Upon the completion of any such construction, repair, replacement or maintenance, Grantee shall restore the Easements to the condition that existed prior to the commencement thereof. Grantee shall make reasonable efforts not interfere with the existing farm operation on Grantor's Property.

D. Permanent Easement. A permanent, non-exclusive drainage and utility easement over, under, in, along, across, and upon the portion of Grantors' Property shown on the attached and incorporated **Exhibit B**, including the right to ingress and egress for the lawful construction, installation, operation, maintenance, repair, replacement, and use of the Facilities. The Permanent Easement shall commence upon the effective date of this Grant and shall run with the land and continue in full force and effect until Grantee formally vacates the Permanent Easement. Grantors, successors and assigns, shall have access over the easement for construction of roads, driveways, berming and landscaping within the easement.

3. Cost of Construction and Maintenance. All work undertaken by Grantee or its licensees, successors in interest, or assigns, shall be at no expense to Grantors.

4. **Grantee's Obligations.** Grantee guarantees to Grantors that:

A. Restoration and Non-Interference. In the event the surface of any Easement is disturbed by Grantee's exercise of any of its easement rights under this Grant, such Easement shall be restored, as reasonably as practical, to the condition in which it existed at the commencement of such activities. Grantee shall not permit, operate, or install any object or improvement in the Easements which would in any way unreasonably restrict or interfere with Grantors' ingress and egress from Grantors' Property or the use of Grantors' Property by Grantors, their tenants, invitees, licensees and guests.

B. Indemnification. Grantee will indemnify and hold harmless Grantors and their agents and employees from and against all claims, damages, losses, and expenses arising out of or resulting from the performance of the work and caused by Grantee, Grantee's contractor, or anyone directly or indirectly employed by either of them, including but not limited to loss of farm rental income to Grantors resulting from the performance of the work. Grantee shall reimburse Grantors for any such loss upon demand.

5. **Grantors' Assurances.** Grantors, for themselves and their heirs, assigns and successors in interest, hereby covenants with Grantee, that Grantee's officers, agents, employees, or persons under contract with Grantee, may at any and all times, when necessary or convenient to do so, go over and upon the Easements, and do or perform any and all acts necessary or convenient for effectuating the purposes for which this grant is made; that Grantors shall not disturb, injure, molest, or in any manner interfere with any of said Facilities or material for laying, maintaining, operating or repairing the same in, over or upon the Easements. Grantors further covenants that no buildings, structures or fencing shall be constructed or placed on the Easements, and that Grantee shall have the right to remove any such buildings, structures, or fencing so constructed or placed.

6. **Additional Considerations.**

A. Title to Property. Full and complete title, ownership and use of Grantors' Property is hereby reserved to Grantors, subject only to the right, permission and authority expressly granted to Grantee with regard to the Easements in this Grant.

B. Title to Improvements. Title to the Facilities, as previously defined, that are installed within the Easements by or on behalf of Grantee or its successors, assigns, and licensees shall vest solely in Grantee.

C. Crop Damage. In consideration for crop damage, Grantee agrees that it will compensate Grantors (or the party farming Grantors' Property or the owner of the crops, as the case may be) in a fair and reasonable amount for the crop losses sustained from said damage and compensate Grantors (or the party farming Grantors' Property or owner of crops, as the case may be) in a fair and reasonable amount for the crop losses sustained from said damage and compensate Grantors (or the party farming Grantors' Property, as the case may be). The reasonable amount of any such loss shall be determined by then current crop prices as set forth in a generally available farm industry publication. In the event any act or omission of Grantee in connection with this Grant results in any loss of farm rent, Grantee shall reimburse Grantors for same based on the rent per acre under the most recent farm lease affecting Grantors Property.

D. No Recapture. Both Grantee and Grantors agree that there shall be no reimbursement to Grantors, nor any recapture, due for the improvements set forth herein.

E. Waiver of Future Village Connection Fee. Upon the annexation of Grantors' Property into the Village of Sugar Grove, Grantee hereby agrees to waive its connection fee for Grantors' Property to connect to Grantee's sanitary sewer main located within the Permanent Easement. This waiver shall be limited to one (1) connection of reasonable size required to serve Grantors' Property tributary to the proposed sewer by gravity, as determined by the Village Engineer of Grantee. This waiver shall not include fees payable to

other entities or fees associated with third-party expenses (e.g., consultant review fees). This waiver is conditioned upon the satisfaction of all other Village ordinances for making such a connection. This waiver is not transferrable or applicable to any other property within the Village of Sugar Grove.

F. Insurance. Grantee shall require insurance from any of Grantee's contractors performing work in the Easements for the construction, maintenance, and repair of the Facilities. A copy of said insurance shall be provided to Grantors prior to the commencement of work..Such insurance shall name Grantors as an additional insured.

7. Miscellaneous Provisions.

A. Amendments. Except as otherwise provided herein, this Grant may be amended or modified by, and only by written instrument duly authorized and executed by the Parties hereto.

B. Binding Effect. This Grant shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, beneficiaries, grantees, successors, and assigns, and shall run with the land.

C. Liberal Construction. This Grant and the rights and duties created hereby shall be liberally construed to give effect to the purpose and intent of the Parties hereto.

D. Captions and Paragraph Headings. The captions and paragraph headings inserted into this Grant are for convenience only and are not intended to, and shall not be construed to limit, enlarge, or affect the scope or intent of this Grant or the meaning of any provisions hereof.

E. Recitals and Exhibits. The recitals set forth at the beginning of this Grant and the exhibits attached hereto are incorporated into this Grant and made part of the substance hereof.

F. Governing Law. This Grant shall be governed by and construed in accordance with the laws of the State of Illinois and venue shall lie exclusively in the Sixteenth Judicial Circuit, Kane County, Illinois.

G. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or telecopied with confirmation of receipt, or two business days following deposit in the United States mail, by certified or regular mail, first-class postage paid, return receipt requested, and addressed to the appropriate party or parties as follows:

If to Grantors: c/o Ronald S. Cope
Schain Banks
70 West Madison Street, Suite 2300
Chicago, IL 60602

If to Grantee: Village of Sugar Grove
10 S. Municipal Drive
Sugar Grove, IL 60554
Attn: Village Administrator

With a copy to: Mickey, Wilson, Weiler, Renzi, Lenert & Julien, P.C.
140 S. Municipal Drive
Sugar Grove, IL 60554
Attn: Village Attorney

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the date first above written.

GRANTORS:

SUGAR GROVE INVESTMENTS, L.L.C.,
an Illinois limited liability company

By: _____
Ronald S. Cope, Manager

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

I, _____, a notary public, in and for said county and state aforesaid, do hereby certify that **Ronald S. Cope**, Manager of **SUGAR GROVE INVESTMENTS, L.L.C.**, an Illinois limited liability company, personally known to me the _____, and the same person whose name is subscribed in the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the foregoing instrument as their own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this ____ day of _____, 2022.

Notary Public

Notary Public

GRANTEE:

VILLAGE OF SUGAR GROVE, an Illinois
municipal corporation

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

I, _____, a notary public, in and for said county and state aforesaid, do hereby
certify that _____, _____ of **VILLAGE OF SUGAR GROVE**, an
Illinois municipal corporation, personally known to me the _____, and the same person whose
name is subscribed in the foregoing instrument, appeared before me this day in person and acknowledged
that they signed and delivered the foregoing instrument as their own free and voluntary act, for the uses
and purposes therein set forth.

Given under my hand and notarial seal this ____ day of _____, 2022.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF GRANTORS' PROPERTY

PINs #: 14-15-300-013 & 14-16-400-014

Common Address: Property 1/3 mile Easterly of the Southeast Corner of Route 47 and Galena Road, Sugar Grove, Illinois 60554

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 15 AND PART OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 15; THENCE EASTERLY ALONG THE NORTH LINE OF SAID SECTION 15, 674.11 FEET TO A MONUMENTAL LIMESTONE; THENCE SOUTHERLY 5294.07 FEET TO A POINT ON THE SOUTH LINE OF SAID SOUTHWEST QUARTER THAT IS 673.20 FEET (10.20 CHAINS) EASTERLY OF THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER AND ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 16 1308.12 FEET (19.82 CHAINS); THENCE NORTHERLY ALONG THE WEST LINE, AS FORMERLY MONUMENTED, OF A TRACT OF LAND CONVEYED TO HARRIETTE M. MCVAY BY DEED RECORDED AS DOCUMENT 1594484, 71.88 FEET TO THE NORTH LINE OF ILLINOIS STATE ROUTE 56 FOR A POINT OF BEGINNING; THENCE CONTINUING NORTHERLY ALONG THE WEST LINE, AS FORMERLY MONUMENTED, OF SAID MCVAY TRACT 2338.92 FEET TO THE SOUTHERLY LINE OF A TRACT OF LAND CONVEYED TO THE STATE OF ILLINOIS FOR HIGHWAY PURPOSES BY DOCUMENT 93K52850; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID STATE OF ILLINOIS TRACT, BEING A CURVE TO THE RIGHT HAVING A RADIUS OF 2467.16 FEET, TANGENT TO A LINE FORMING AN ANGLE OF 87 DEGREES 05 MINUTES 24 SECONDS WITH THE LAST DESCRIBED COURSE (MEASURED COUNTER-CLOCKWISE THEREFROM) 269.92 FEET; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID STATE OF ILLINOIS TRACT, TANGENT TO THE LAST DESCRIBED CURVE AT THE LAST DESCRIBED POINT 1911.31 FEET; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID STATE OF ILLINOIS TRACT, BEING A CURVE TO THE RIGHT, HAVING A RADIUS OF 22,140.75 FEET TANGENT TO THE LAST DESCRIBED COURSE 587.27 FEET TO A LINE DRAWN PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST QUARTER FROM A POINT ON THE SOUTH LINE OF SAID SOUTHWEST QUARTER THAT IS 577.50 FEET (8.75 CHAINS) WESTERLY OF THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER; THENCE SOUTHERLY PARALLEL WITH SAID EAST LINE 1871.70 FEET TO THE NORTHERLY LINE OF SAID STATE ROUTE; THENCE WESTERLY ALONG THE NORTHERLY LINE OF SAID STATE ROUTE. BEING A CURVE TO THE RIGHT HAVING A RADIUS OF 4483.75 FEET TANGENT TO A LINE FORMING AN ANGLE OF 96 DEGREES 10 MINUTES 46 SECONDS WITH THE LAST DESCRIBED COURSE (MEASURED COUNTER-CLOCKWISE THEREFROM) 447.42 FEET; THENCE WESTERLY ALONG THE NORTHERLY LINE OF SAID STATE ROUTE 2278.98 FEET TO THE POINT OF BEGINNING, IN SUGAR GROVE TOWNSHIP, KANE COUNTY, ILLINOIS.

EXHIBIT B

