

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

Prepared by:
Laura Julien
Mickey, Wilson, Weiler, Lenert &
Julien, P.C.
140 S. Municipal Drive
Sugar Grove, Illinois, 60554

Return to after recording:
Village Clerk
Village of Sugar Grove
10 S. Municipal Drive
Sugar Grove, IL 60554

Reserved for Recorder's Use

ANNEXATION AGREEMENT

This Annexation Agreement (“Agreement”), is made and entered into this __ day of _____, 2020, by and between the Village of Sugar Grove, an Illinois municipal corporation (“Village”) and Grove Farms, LLC, a _____ (“Owner”) individually referred to as “Party” and collectively referred to as “Parties.”

WITNESSETH

WHEREAS, the Property is situated in the unincorporated area of Kane County, and is, or will soon be contiguous to, the incorporated territory of the VILLAGE; and,

WHEREAS, OWNER is the owner of the Property; and,

WHEREAS, it is the desire of OWNER to annex to and develop the Property as a business selling mulch, firewood and topsoil for landscaping purposes in accordance with the terms of this Agreement and the ordinances of the VILLAGE; and,

WHEREAS, it is the desire of the VILLAGE to annex the Property and to facilitate its use and development pursuant to the terms and conditions of this Agreement and the ordinances of the VILLAGE; and,

WHEREAS, OWNER has or will perform all acts required by law to effectuate such annexation; and,

WHEREAS, the Parties wish to zone the Property under the terms of this Agreement; and,

WHEREAS, all notices required by law relating to this Agreement 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 the time for a public hearing on this Agreement and pursuant to legal notices have held such hearing thereon all as required by the provisions of the Illinois Compiled Statutes; and,

WHEREAS, the Corporate Authorities and the Plan Commission of the VILLAGE have duly held all public hearings relating to zoning and Preliminary Plan approval and variations pursuant to public notices thereof, all as required by the provisions of the VILLAGE'S ordinances and the Illinois Compiled Statutes; and,

WHEREAS, in reliance upon the development of the Property in the manner proposed, OWNER and the VILLAGE have executed all petitions and other documents that are necessary to accomplish the annexation of the Property to the VILLAGE; and,

WHEREAS, it is the desire of the VILLAGE and OWNER that the development of the Property proceed, subject to the ordinances, codes and regulations of the VILLAGE, as amended; and,

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

WHEREAS, pursuant to due notice and publication in the manner provided by law, the appropriate zoning authorities of the VILLAGE have had such public hearing and have taken all further action required by the provisions of 65 ILCS 5/11-15.1-3 and the ordinances of the VILLAGE relating to the procedure for the authorization, approval and execution of this Annexation Agreement by the VILLAGE.

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:

I. ANNEXATION

The Preamble to this Agreement and all exhibits referred to in this Agreement are incorporated herein as though fully set forth in this Paragraph.

The OWNER shall file with the Village Clerk a properly executed Annexation Petition pursuant to this Agreement and in accordance with 65 ILCS 5/7-1-1 *et seq.*, covering the Subject Property as described on **Exhibit A**, simultaneous with the execution of this Agreement. The VILLAGE

agrees to do all things necessary or appropriate to carry out the terms of this Agreement and to aid and assist the OWNER in complying with the terms hereof.

II. ZONING AND PLANNING

A. Zoning Map.

Contemporaneously with the annexation of the Property, the VILLAGE shall adopt an ordinance amending the provisions of the Sugar Grove Zoning Map so as to provide that the Property shall be classified as E-1 Residential District, with a Special Use Permit for mulch and firewood bulk storage and sales, subject to the standards, criteria and restrictions of said Special Use Permit and the Village Zoning Regulations.

B. Village Codes and Ordinances

The VILLAGE and OWNER agree that the Property shall be used and developed in compliance with all ordinances, codes and regulations of the VILLAGE, as amended from time to time.

C. Continuation of Current Use.

The Property is presently being used for an orchard and row crop farming. The VILLAGE has given due consideration to the continuation of such current use. Accordingly, and notwithstanding any provision of VILLAGE ordinances or regulations now in effect or adopted during the term of this AGREEMENT, and notwithstanding the VILLAGE's zoning of the Property or any part thereof, agricultural use of orchard and row crop farming only shall continue to be permitted on the Property until such time as development of the property occurs, as more specifically set forth in Section __. The permission to continue the current use shall only extend to that orchard and row crop farming which is currently taking place as of the date of this Agreement and any expansion of or change to such use shall require approval by the VILLAGE. Except as provided herein, no other uses may be commenced, nor may any further development of the Property (of any type or character) take place until an amended annexation agreement is agreed to. The VILLAGE is free to condition its approval of an amendment on any items it deems appropriate at the time and shall not be required to approve any amendment or allow any use (other than what is occurring as of the date of this Agreement) unless it wishes to do so in its sole and absolute discretion.

D. Other Zoning/Planning Issues

The OWNER agrees to annex the Property in anticipation of establishing a mulch, firewood and topsoil landscape commodity sales business on a portion of the Property. OWNER and the VILLAGE acknowledge and agree that annexation contemplated by this Agreement shall be concurrent with the granting of a Special Use Permit for mulch and firewood sales.

III. PUBLIC IMPROVEMENTS

A. Extension of all Public Improvements

The Parties recognize and agree that the current use of the property does not require the extension of public water and sanitary sewer facilities. OWNER shall extend all required public improvements to the borders of its Property and off-site, if necessary, at such time such public improvements are required to serve the property if the use or intensity of use of the Property changes in the future. All required public improvements shall be laid out, designed and constructed in compliance with all ordinances, codes and regulations of the VILLAGE, as amended from time to time.

B. Easements

At the time of annexation, all easements currently required by the VILLAGE shall be provided by OWNER pursuant to a plat of dedication.

When requested by the VILLAGE and/or as may be necessitated by future development of the Property, OWNER agrees to permit others to construct public improvements as may be required on the Property and agrees to provide for public utility easements on the Property necessary to accommodate public utility improvements extended on or to the Property by OWNER or others at no cost to the Village.

OWNER further agrees that should the VILLAGE require easements pursuant to its transportation plan (e.g. future construction of a pedestrian/multi-use path), such easements shall be granted upon request at no cost to the VILLAGE

C. Right-of-Way

OWNER shall dedicate, free of cost to the VILLAGE, a fifty (50) foot right-of-way along and adjacent Prairie Street as further specified by the Village Engineer.

The Parties acknowledge and agree that the Property is currently accessed through an adjacent parcel which is not subject to this Agreement. If the OWNERS seek an access point to Village right-of-way through the Property, OWNER acknowledges that it must comply with all Village codes and ordinances. In addition, any such access point must be constructed _____.

D. Water Supply

VILLAGE acknowledges and agrees that the current well may remain to provide water for the contemplated uses.

OWNER agrees that they will not expand the diameter or depth of the current well(s) or increase the capacity, and that OWNER will cease use of and properly abandon any well(s) that exist on the property, and connect to the VILLAGE water system, if the use or intensity of use of the property changes in the future.

OWNER acknowledges and agrees that any connection to the VILLAGE water supply necessary for current or future use is subject to all regulations and fees of the VILLAGE in effect at such time.

E. Sanitary Sewer

1. **Annexation to Fox Metro Water Reclamation District.** The Property is located in the Fox Metro Water Reclamation District (“Fox Metro”) FPA. Only Fox Metro has the present ability to provide sanitary services to the Property. OWNER and its successors and assigns agree to file the necessary petitions to request annexation of the Property to Fox Metro and to pay required fees at that time in order to receive sanitary sewer service at such time sanitary sewers are constructed on the Property. VILLAGE shall use its best efforts to assist OWNER in the annexation process.
2. **Septic System.** VILLAGE acknowledges and agrees that the current septic system may remain to provide sanitary waste disposal for the current and contemplated Special Use.

OWNER agrees that they will not expand or increase the capacity of the current system, and that OWNER will cease use of and properly abandon any septic system that may exist on the property, and connect to the VILLAGE sanitary sewer system if the use or intensity of use of the property changes in the future.

OWNER acknowledges and agrees that any connection to the VILLAGE sanitary sewer system necessary for current or future use is subject to all regulations and fees of the VILLAGE in effect at such time.

F. Wetlands

OWNER shall comply with all United States Army Corps of Engineers and Illinois Department of Transportation District 1, Division of Water Resources, and Kane County Storm Water Department requirements in connection with any wetland areas located on the Property and shall obtain permits from such agencies before construction begins on wetland areas to be granted by the VILLAGE. OWNER shall copy the VILLAGE with any plans, applications for permits, and issued permits relating to such wetland areas.

G. Stormwater

OWNER shall provide for the handling of storm water in accordance with the applicable Rules and Regulations of the United States Army Corps of Engineers, the Illinois Department of Transportation, Division of Water Resources, Kane County Storm water Department, and any Village Ordinances now or hereafter in effect. The storm water facilities shall also include construction by OWNER of storm drainage retention/detention facilities as may be required by such agencies and the Village Engineer. The size, depth, and outlet of the storm water detention areas is to be determined by final engineering plans based upon a controlled release rate of storm water runoff which shall not exceed the rate allowed by the Village Subdivision Ordinance.

H. No Recapture

The Parties agree that if OWNER is required to oversize public water, sanitary or storm sewer or construct any other improvements that may benefit other parties, that no recapture will be provided.

IV. FEES, DONATIONS, AND CONTRIBUTIONS

The Parties recognize and acknowledge that presently there do not exist any specific plans for the development of the Property, but the Parties agree that nevertheless that annexation prior to development will promote the orderly development of the Village and the Property. For purposes of this provision, “development” shall constitute a change in or expansion of use from that which is contemplated herein. Part of the consideration for this Agreement includes the ability of the VILLAGE to impose various conditions on the development of the Property, including the payment of various fees which may impact the VILLAGE or other governmental entities having jurisdiction over the Property. The Parties therefore agree that any such development shall be done pursuant to an Amendment to this Agreement and that OWNER and/or developer shall be required to comply in all respects with any applicable subdivision control ordinance, school/park/land cash donation ordinances, impact fee ordinances or resolutions (or separate negotiation thereof) and any other applicable rules, regulations, or ordinances of the VILLAGE. Notwithstanding the foregoing, the VILLAGE is not under any obligation to approve an amendment, unless, in the discretion of the VILLAGE Board, the negotiated amendment is appropriate to be approved

V. SIGNAGE

OWNER shall be permitted to use signs on the premises in accordance with the Village Zoning Ordinance regulations. Notwithstanding the foregoing, in order to preserve the character of the area, electronic signs (e.g. message boards) and internally illuminated signs shall be prohibited. All signage must be approved by the VILLAGE.

VI. BUILDING AND OCCUPANCY PERMITS

A. Building Permits

The VILLAGE agrees to issue each building permit for which the OWNER applies within a reasonable period of time of the date of application therefore or to advise said applicant of objections to such issuance, designating in writing the ordinances, rules, and/or regulations relied upon by the VILLAGE in so objecting. The VILLAGE agrees to issue such building permits upon the applicant’s compliance with those provisions of the ordinances, rules, and regulations so designated by the VILLAGE.

B. Occupancy Permits

The VILLAGE shall issue occupancy permits within a reasonable period of time following application thereof or post a notice of denial informing the applicant specifically as to the corrections necessary as a condition precedent to the issuance of an occupancy permit and designating the section of the Code of Ordinances relied upon by the VILLAGE in its request for correction. VILLAGE agrees to issue temporary occupancy permits in accordance with VILLAGE

Ordinances, good for six (6) months, between November 1, and April 15 of each year, when final grading work, landscaping, and pavement installation cannot be completed.

IX. DISCONNECTION

OWNER shall not petition to disconnect any portion or all of said Property from the VILLAGE.

X. SECURITY AND PAYMENTS

A. Letter of Credit or Bond

If OWNER constructs any public improvements on the Property, OWNER shall post the appropriate letter of credit or bond as provided by state law and the Village's Subdivision Control Ordinance for public improvements prior to the construction of any such public improvements.

B. Release or Reduction

If OWNER constructs any public improvements on the Property, OWNER and VILLAGE agree that upon completion and inspection of all public improvements, and in a condition acceptable by the VILLAGE (as reviewed by the Village Engineer and approved by the Board), OWNER shall be entitled to a release and/or reduction of any Letter of Credit or Subdivision Control Performance Bond, subject to a Maintenance Bond remaining in place for eighteen (18) months from the date of acceptance by the VILLAGE, in conformance with the VILLAGE Subdivision Control Ordinance. Reductions of Letters of Credit or Subdivision Performance Bonds may be authorized by the VILLAGE when public improvement components are substantially completed. Said subdivision security shall not be used for payment of contractors and the VILLAGE makes no representation or guarantee of the timelines of any Letter of Credit or Subdivision Performance Bond reductions.

C. Acceptance of Improvements

If OWNER constructs any public improvements on the Property, upon the completion of said public improvements, OWNER shall initiate the acceptance procedures as provided in the Village's Subdivision Control Ordinance for public improvements.

D. Municipal Consultants' Fees

OWNER and VILLAGE agree that for the costs of review by experts and other consultants necessary for the review of the development of the Property, OWNER shall reimburse the VILLAGE as required in the Village Ordinances.

E. Staff Time

OWNER and VILLAGE agree that for the costs of review by staff necessary for the review of the development of the Property, OWNER shall reimburse the VILLAGE as required in the Village Ordinances. This obligation shall commence upon the Village's approval of this Agreement.

XI. Special Service Area

OWNER their respective successors, assignees and grantees, shall not object to and agree to cooperate with the VILLAGE in establishing a special service area ("SSA"), or any number thereof, for the Property to be utilized as a backup mechanism for the care and maintenance of the storm water management facilities that may be constructed on the Property in the future, which include but are not limited to, detention areas, lift stations, common landscaped areas, and any other common areas of the future development. Any such SSA shall be established at the time of final platting or final PUD of a portion of the Property. If at any time OWNER fails to conduct the maintenance of stormwater management facilities and common landscape areas, then the VILLAGE shall have the right, but not the obligation, to undertake such maintenance and utilize the SSA to provide sufficient funds to pay the costs of the said maintenance undertaken by the VILLAGE. The SSA shall provide for the authority of the VILLAGE to levy up to One dollar and Ten cents (\$1.10) per \$100.00 of assessed valuation ("Rate Cap") to fund the payment of the aforesaid costs and expenses. A maintenance easement ("Common Facilities Maintenance Easement") shall be established over all of those stormwater management facilities and other Common Facilities located on the Final Plat or Final PUD Plan for each Phase of Development in favor of the VILLAGE and any future Property Owners Association which undertakes responsibility for the Common Facilities Maintenance. The substance of the Common Facilities Maintenance Easement shall be as approved by legal counsel for the VILLAGE and OWNERS, which approvals shall not be unreasonably withheld.

XII. GENERAL OBLIGATIONS

A. Successor Owner and/or Developer

If the Property, or any portion thereof, is transferred from the OWNER, both the fee obligation and any further development obligations under this Agreement shall transfer and be binding and become the exclusive obligation of any successor OWNER and/or OWNER of the Property, or any portion of the Property.

B. Recording

This Agreement shall be recorded in the Office of the Recorder of Deeds of Kane County.

C. Term of Agreement

The term of this Agreement shall be for twenty (20) years from the date of execution hereof. All amendments to ordinances, codes, and regulations required pursuant to this Agreement, shall remain in effect during the term of this Agreement.

D. Time is of the Essence

It is understood and agreed by the Parties that time is of the essence in this Agreement and that all Parties will make every reasonable effort to expedite the subject matter hereof. It is further

understood and agreed by the Parties that the successful consummation of this Agreement requires their continued cooperation.

E. Binding Effect and Term

This Annexation Agreement shall be binding upon and insure 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.

F. Breach of Agreement

1. Remedy

This Agreement and the covenants and undertakings made hereunder are performable in Kane County, Illinois, and shall be governed by the laws of the State of Illinois. Any legal proceedings of any kind arising from this Agreement shall be filed in the Circuit Court for the 16th Judicial Circuit, Kane County, Illinois.

2. Notice Required

Before any failure of any Party to this Agreement to perform its obligations under this Agreement shall be deemed a breach of this Agreement, the Party claiming such failure shall notify, in writing, by certified mail, return receipt requested, the Party alleged to have failed to perform, state the obligation allegedly not performed, and the performance demanded.

3. Addresses

Notice shall be provided to the following addresses:

To VILLAGE: Village of Sugar Grove
10 S. Municipal Drive
Sugar Grove, IL 60554
Attn: Village Administrator

Copy to: Mickey, Wilson, Weiler, Lenert & Julien
140 S. Municipal Drive
Sugar Grove, IL 60554
Attn: Laura Julien

To PARTY:

Copy to:

G. Agreement to Prevail Over Ordinances

In the event of any conflict between this Agreement and any ordinances of the VILLAGE in force at the time of execution of this Agreement or enacted during the pendency of this Agreement, the provision of this Agreement shall prevail to the extent of any such conflict or inconsistency.

H. Partial Invalidity of Agreement

If any provision of this Agreement or its application to any person, entity, or property is held invalid, such provision shall be deemed to be excised herefrom and the invalid thereof shall not affect the application or validity of any other terms, conditions, and provisions of this Agreement and, to that end, any terms conditions and provisions of this Agreement are declared to be severable. If for any reason during the term of this Agreement any approval or permission granted hereunder regarding plans or plats of subdivision or zoning is declared invalid, the VILLAGE agrees to take whatever action is necessary to reconfirm such plans, plat approvals, or zoning ordinances effectuating the zoning, variations, and plat approvals proposed herein.

I. Headings

The article headings are for convenience only, and in no way define, limit or describe the scope or intent or any article or section of this Agreement.

J. Counterparts

This Agreement may be executed in counterparts.

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

VILLAGE:

VILLAGE OF SUGAR GROVE

By: _____
Village President

Attest: _____
Village Clerk

STATE OF ILLINOIS)
COUNTY OF _____) SS
)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, Village President and _____, Village Clerk, personally known to me to be the same persons whose names are subscribed on the foregoing instruments, appeared before me this day in person and severally acknowledged that as such Village President and Village Clerk, they signed and delivered the said instrument as Village President and Village Clerk and caused the corporate seal of said Village to be affixed thereto, pursuant to the authority, given by the Village of Sugar Grove Board of Trustees as a 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 _____, 2020.

Notary Public

OWNER:

GROVE FARMS, LLC

By: _____

Its: _____

STATE OF ILLINOIS)
COUNTY OF _____) SS
)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, personally known to me as the _____ of _____, a _____, and 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 severally acknowledged that as such _____ he signed and delivered the said instrument and caused the corporate seal to be affixed thereto, as the free and voluntary act for the use and purposes set forth.

Given under my hand and official seal this ____ day of _____, 2020.

Notary Public

LIST OF EXHIBITS

Exhibit A Legal Description

Exhibit B

FOR REVIEW ONLY

Exhibit A

Legal Description

That part of the Southwest Quarter of Section 22, Township 38 North, Range 7 East of the Third Principal Meridian described as follows: Commencing at the intersection of the West line of said Southwest Quarter and the centerline of Prairie Street; thence Northeasterly along said centerline 566.99 feet for the Point of Beginning; thence Northerly, parallel with said with said West line, 491.05 feet to the Southerly line of the right-of-way of the Burlington Northern Railroad; thence Westerly along said Southerly line to a line which is parallel with and 66.0 feet (normally distant) easterly of said West line; thence Southerly, along said parallel line, 630.02 feet to said centerline; thence Northeasterly, along said centerline, 500.00 feet to the Point of Beginning, in Sugar Grove Township, Kane County, Illinois.