

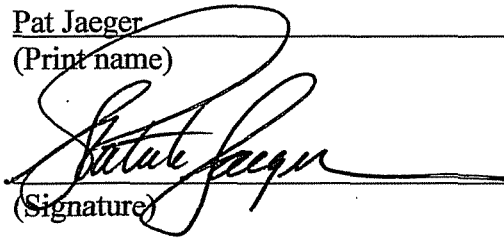
DOCUMENT VET SHEET
for
Karen McConnaughay
Chairman, Kane County Board

Name of Document: Elmhurst Chicago Stone Company to Kane County – Stearns Road Corridor Right of Way Agreement

Submitted by: Patrick Jaeger

Date Submitted: October 7, 2008

Examined by: Pat Jaeger
(Print name)


(Signature)

10-07-08
(Date)

Comments: _____

Chairman signed: Yes No 10-7-08
(Date)

Document returned to: Pat Jaeger ONLY! Call 630-514-9353 For Pick Up.

**REAL ESTATE
ACQUISITION AGREEMENT BY AND BETWEEN
ELMHURST CHICAGO STONE COMPANY AND
THE COUNTY OF KANE**

This Agreement entered into this 7th day of October 2008 by and between the Elmhurst Chicago Stone Company, a Delaware corporation authorized to conduct business in the State of Illinois, located at 400 West First Street, Elmhurst, Illinois 60126 (hereinafter referred to as "ECSC"), and the County of Kane, a body corporate and politic of the State of Illinois, 719 South Batavia Avenue, Geneva, Illinois 60134 (hereinafter the "COUNTY"). ECSC and the COUNTY are sometimes hereinafter collectively referred to as the "Parties" and each individually as a "Party".

WITNESSETH

Whereas, ECSC is the owner of a tract of land situated at or near the intersections of Illinois Route 25, Gilberts Street and Dunham Road in St. Charles Township, County of Kane, State of Illinois which is legally described in Exhibit "A" (hereinafter the "ECSC Site"). The ECSC Site is depicted on Exhibit "B" which is attached hereto and incorporated herein and made a part hereof. On the ECSC Site, ECSC manufactures, stores and distributes concrete pipe products; and,

Whereas, a part of the ECSC Site consists of three tracts of land; ECSC Parcel I as legally described in Exhibit "C", ECSC Parcel II as legally described in Exhibit "D" and ECSC Parcel III as legally described in Exhibit "E" which Exhibits "C" through "E" are attached hereto, incorporated herein and made a part hereof, and which ECSC Parcels I, II and III are hereinafter collectively referred to as the "ECSC Parcels" The ECSC Parcels are depicted on Exhibit "B"; and,

Whereas, the COUNTY is the owner of two tracts of land; County Parcel I as legally described in Exhibit "F" and County Parcel II as legally described in Exhibit "G" which Exhibits "F" and "G" are attached hereto, incorporated herein and made a part hereof, and which County Parcel I and County Parcel II are hereinafter collectively referred to as the "County Parcels". The County Parcels are also depicted on Exhibit "B"; and,

Whereas, the COUNTY desires to acquire from ECSC in fee simple, the ECSC Parcels as legally described in Exhibit "C", Exhibit "D" and Exhibit "E" for highway purposes, specifically for the purpose of constructing, operating and maintaining the proposed extension of Stearns Road and the associated Stearns Road Bridge Corridor; and,

Whereas, the COUNTY also desires to obtain from ECSC a temporary construction easement on and across those parts of the ECSC Site as legally described and depicted in Exhibit "H" which is attached hereto and incorporated herein and hereinafter referred to as the "Easement Premises", for highway, grading, demolition, restoration, creek restoration and storm water facility construction purposes among other purposes on the ECSC Site; and,

Whereas, ECSC desires to continue its concrete pipe manufacturing operation at the ECSC Site and the Parties acknowledge that the loss of the ECSC Parcels from the ECSC Site shall substantially impact the continuing viability of ECSC's concrete pipe storage capacity and ECSC's concrete pipe manufacturing operations; and,

Whereas, in order to address the negative impact of the loss of the ECSC Parcels to ECSC's concrete pipe manufacturing operation, ECSC desires to obtain from the COUNTY, the County Parcels as legally described in Exhibit "F" and Exhibit "G" in order to continue the operations of ECSC's concrete pipe manufacturing business; and,

Whereas, the Parties have negotiated a mutually satisfactory agreement for, among other things, the acquisition of the ECSC Parcels and the Easement Premises by the COUNTY and the acquisition of the County Parcels by ECSC; and,

Whereas, the COUNTY and ECSC desire to set forth the terms and conditions for the COUNTY's negotiated acquisition of the ECSC Parcels and the Easement Premises and the acquisition of the County Parcels by ECSC.

NOW THEREFORE, in consideration of the preambles set forth hereinabove and for good and valuable consideration, the sufficiency of which is acknowledged and agreed to by and between the Parties hereto, the COUNTY and ECSC covenant, agree and bind themselves as follows, to wit:

1. The Parties hereto acknowledge and agree that the preambles set forth hereinabove are specifically made a part of and incorporated into this Agreement.
2. The Parties hereto also acknowledge and agree that the negotiated acquisition of the ECSC Parcels by the COUNTY from ECSC is "under threat of condemnation" by the COUNTY.
3. The Parties further acknowledge and agree that the acquisition of the ECSC Parcels by the COUNTY may cause ECSC to incur costs to relocate a part of ECSC concrete pipe inventory and other concrete pipe manufacturing appurtenances and personal property and that said costs of relocation shall be reimbursed pursuant to the Federal Relocation Act.
4. The Parties hereto acknowledge and agree that for purposes of this Agreement, "closing" shall be held and "possession" (unless possession is granted earlier pursuant to Paragraph No. 16 hereof), shall occur at 1:00 p.m. on or before the 30th day of October 2008 at the Geneva Illinois offices of the Chicago Title Insurance Company or as otherwise agreed to by the Parties hereto. The closing and possession date are legally significant to the COUNTY, and ECSC. The Parties hereto understand that when this Agreement is signed by the COUNTY and ECSC the closing and possession date may only be changed by mutual agreement of the Parties.
5. The COUNTY shall, at the COUNTY's cost, prepare plats of survey for the ECSC Parcels, the Easement Premises and the County Parcels and shall also prepare for the signature of ECSC and the COUNTY, which will be executed by

ECSC and the COUNTY at or prior to the closing, any and all deeds, the Temporary Construction Easements (as hereinafter defined), the affidavits of title and any other documents as required by the Illinois Department of Transportation, the COUNTY, ECSC and the Internal Revenue Code.

6. The COUNTY shall be responsible for obtaining commitments and title insurance for the ECSC Parcels, the Easement Premises and the County Parcels at the COUNTY's cost.
7. At closing, ECSC shall convey to the COUNTY, by a recordable warranty deed, with release of homestead rights if any, conveying good, marketable and merchantable title to the ECSC Parcels as described in Exhibit "C", Exhibit "D", and Exhibit "E", subject only to the following described exceptions: covenants conditions and restrictions of record provided they are not violated nor contain a reverter or right of re-entry, zoning laws and ordinances, easement for public utilities, drainage ditches, feeders, laterals, drainpipe, tile or other conduit, and if applicable installments or assessments due after the date of closing.
8. At closing, ECSC shall grant to the COUNTY, by the Temporary Easement Agreement attached hereto as Exhibit "H" a temporary construction easement on, over, across and through those parts of the ECSC Site as described and depicted in Exhibit "H" (hereinafter the "Easement Premises").
9. At closing the COUNTY shall convey to ECSC, by a recordable quit claim deed, conveying good, marketable and merchantable title to the County Parcels as described in Exhibit "F" and Exhibit "G" subject only to the following described exceptions: covenants conditions and restrictions of record, zoning laws and ordinances, easements for public utilities, drainage ditches, feeders, laterals, drainpipe, tile and/or other conduit.
10. In the event that the COUNTY cannot obtain title insurance over any Schedule "B" exceptions (except those provided in paragraph 7 above), for the ECSC Parcels, any amount sufficient to secure the release of said exceptions shall be paid by ECSC at closing. In the event that the title commitment shows encroachments or exceptions not acceptable to the COUNTY, ECSC shall have said exceptions removed prior to closing, or alternatively at ECSC's cost insure over said exceptions. If ECSC is unable to either remove said exceptions or have said exceptions insured over, the COUNTY may terminate this contract at no expense to either the COUNTY or ECSC.
11. In the event that the COUNTY cannot obtain title insurance over any Schedule "B" exceptions (except those provided in paragraph 9 above), for the County Parcels any amount sufficient to secure the release of said exceptions shall be paid by the COUNTY at closing. In the event that the title commitment shows encroachments or exceptions not acceptable to the ECSC, the COUNTY shall have said exceptions removed prior to closing, or alternatively obtain a policy of insurance to insure over said exceptions. If the COUNTY is unable to either remove said exceptions or have said exceptions insured over, ECSC may terminate this contract at no expense to either the COUNTY or ECSC.

12. Rents, deposits or other assessments, if any, for the ECSC Parcels and the County Parcels shall be prorated at closing.
13. The real estate taxes for the ECSC Parcels shall be prorated at closing based upon the most recent tax bill therefor. The County Parcels are tax exempt and real estate taxes shall not be prorated.
14. ECSC agrees to leave the ECSC Parcels in clean and orderly condition at the time of possession by the COUNTY. The COUNTY agrees to leave the COUNTY Parcels in clean and orderly condition at the time of possession by the ECSC.
15. Prior to closing and possession, the COUNTY agrees, at the COUNTY's sole cost and expense, that County Parcel II shall be graded to conform with the grading plan that is attached hereto as Exhibit "I" which is incorporated herein and made a part hereof. The COUNTY shall also at its sole cost and expense spread and compact gravel on the area of County Parcel II in the amounts and according to the specifications as described in Exhibit "J" which is incorporated herein and made a part hereof.
16. Prior to closing, the COUNTY agrees that it shall, at the request and sole option of ECSC, enter into the right of entry agreement with ECSC in the identical form and substance as contained in Exhibit "K" which is attached hereto and incorporated herein. The Parties acknowledge and agree that the right of entry agreement shall be for the purpose of ECSC relocating its concrete pipe inventory onto County Parcel II prior to the closing thereon as set forth in Paragraph No. 4 hereof.
17. Upon possession of the County Parcels and/or County Parcel II, ECSC shall immediately commence removal of any and all personal property from the ECSC Parcels, and at ECSC's sole discretion shall relocate any such personal property (or parts thereof) onto those parts of the County Parcels avoiding whenever and wherever practicable those parts thereof burdened by the Temporary Construction Easement as set forth in Exhibit "H". If possession is granted at closing, the removal, by ECSC of all personal property from the ECSC Parcels shall be completed no later than the 30th day after the date of closing. If possession is granted prior to closing, the removal, by ECSC of all personal property from the ECSC Parcels shall be completed no later than the 30th day after the date of possession.
18. Between the date of possession and the date of removal of all personal property by ECSC from the ECSC Parcels, the COUNTY shall to the fullest extent permitted by law, indemnify and hold harmless ECSC, and its officials, directors, officers, agents, and employees from and against any and all claims, damages, losses, and expenses, including but not limited to court costs and attorney's fees, arising out of or resulting from the negligence of the COUNTY relating to any activity, during said time period, of the COUNTY on the ECSC Parcels and the County Parcels, provided that such claim, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property,

including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the COUNTY, any contractors or subcontractors or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, excluding any proportionate amount of any claim, damage, loss or expense which is caused by the negligence of ECSC. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity, which would otherwise exist as to a party or person described in this paragraph. In claims against ECSC and its officials, directors, officers, agents, and employees by an employee of the COUNTY, a contractor, subcontractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the COUNTY or a contractor or subcontractor thereof under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts. Nothing contained herein shall be construed as prohibiting ECSC, its officials, directors, officers, agents, and employees, from defending through the selection and use of their own agents, attorneys and experts, to defend any claims, actions or suits brought against them.

19. Between the possession date and the date of removal of all personal property by ECSC from the ECSC Parcels, ECSC shall to the fullest extent permitted by law, indemnify and hold harmless the COUNTY, and its officials, directors, officers, agents, and employees from and against any and all claims, damages, losses, and expenses, including but not limited to court costs and attorney's fees, arising out of or resulting from the negligence of ECSC relating to any activity, during said time period, of ECSC on the ECSC Parcels and the County Parcels, provided that such claim, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property, including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the ECSC, any contractors or subcontractors or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, excluding any proportionate amount of any claim, damage, loss or expense which is caused by the negligence of COUNTY. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity, which would otherwise exist as to a party or person described in this paragraph. In claims against the COUNTY and its officials, directors, officers, agents, and employees by an employee of ECSC, a contractor, subcontractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for ECSC or a contractor or subcontractor thereof under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts. Nothing contained herein shall be construed as prohibiting the COUNTY its officials, directors, officers, agents, and employees, from defending through the selection and use of their own agents, attorneys and experts, to defend any claims, actions or suits brought against them.

20. Between the closing date and the date of removal of all personal property by ECSC from the ECSC Parcels, or from the date of possession by ECSC of the

County Parcels and the date of removal of all personal property from the County Parcels by ECSC, ECSC, shall maintain insurance coverage including:

- A. Worker's Compensation Insurance in the statutory amounts.
 - B. Employer's Liability Insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) each accident/injury and Five Hundred Thousand Dollars (\$500,000) each employee/disease.
 - C. Commercial General Liability Insurance, (including contractual liability) with limits of not less than One Million Dollars (\$1,000,000) per occurrence bodily injury/property damage combined single limit; Two Million Dollars (\$2,000,000) excess liability coverage in the aggregate for injury/property damage combined single limit and Two Million Dollars (\$2,000,000) in the aggregate for products-completed operations.
 - D. Commercial Automobile Liability Insurance with minimum limits of at least One Million Dollars (\$1,000,000) for any one person and One Million Dollars (\$1,000,000) for any one occurrence of bodily injury or property damage.
21. It shall be the duty of ECSC to provide to the COUNTY copies of ECSC's certificates of insurance as above stated at closing. If ECSC takes possession of the County Parcels pursuant to Paragraph No. 16 prior to closing, ECSC shall provide the certificates of insurance as above stated prior to the date of possession. Also at closing, or possession by ECSC of the County Parcels, which ever occurs first, ECSC shall provide to the COUNTY and continue to maintain until the date of removal of all personal property by ECSC from the ECSC Parcels, a certificate of insurance for its General Liability Policy which certificate shall include the COUNTY as additional named insured. The additional named insured endorsement included on ECSC's Commercial General Liability policy will provide the following:
- A. That the coverage afforded the additional named insured will be primary insurance for the additional named insured with respect to claims arising out of operations performed by or on behalf of ECSC;
 - B. That if the additional named insured has other insurance which is applicable to the loss, such other insurance will be only on an excess or contingent basis;
 - C. That the amount of ECSC's liability under the insurance policy will not be reduced by the existence of such other insurance; and,
 - D. That the certificate of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled,

materially changed, nor renewal refused until at least thirty (30) days prior written notice has been given to COUNTY.

22. The insurance required to be purchased and maintained by ECSC as above stated, shall be provided by an insurance company with an AM Best rating of A- or better, and licensed to do business in the State of Illinois; and shall include at least the specified coverage and be written for not less than the limits of the liability specified herein or required by law or regulation whichever is greater. In no event shall any failure of the COUNTY to receive policies or certificates of insurance or to demand receipt of the same be construed as a waiver of ECSC's to obtain and keep in force the required insurance.
23. Any contractor hired by the COUNTY to perform the construction work on the ECSC Site (hereinafter referred to as the 'Contractor') shall be required by the COUNTY to indemnify and hold harmless ECSC from worker injury claims by including the following provision in the construction contract:

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the COUNTY and ECSC and their respective agents and employees from and against any and all claims, damages, losses, economic losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the work, provided that such claim, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting there from, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, any subcontractor(s) of the Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, excluding any proportionate amount of any claim, damage, loss or expense which is caused by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity, which would otherwise exist as to a party or person described in this paragraph. In claims against any person or entity indemnified under this paragraph by an employee of the Contractor, their subcontractor(s), anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or their subcontractor(s) under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The COUNTY shall require the Contractor to name ECSC as additional insured on the Contractor's general liability policy by including the following provision in the construction contract:

The Contractor will obtain and maintain Commercial General Liability Insurance with broad form property damage coverage and contractual liability endorsement insuring the indemnity required of the Contractor. The Elmhurst Chicago Stone Company Inc. will be named as additional

insured on the Contractor's insurance policy. The additional insured endorsement included on the Contractor's policy will provide the following:

- a) That the coverage afforded the additional insureds will be primary insurance for the additional insureds with respect to claims arising out of operations performed by or on behalf of the Contractor;
 - b) That if the additional insureds have other insurance which is applicable to the loss, such other insurance will be on an excess or contingent basis;
 - c) That the amount of the company's liability under the insurance policy will not be reduced by the existence of such other insurance; and,
 - d) That the additional insureds will be given not less than 30 days prior written notice of any cancellation thereof.
24. ECSC makes no covenant, representation or warranty as to the suitability of the ECSC Parcels for any purpose whatsoever or as to the physical condition of the property. The COUNTY acknowledges having inspected the property, having observed its physical characteristics and existing conditions, and having had the opportunity to conduct such investigation and study on and of said property as it deems necessary, and hereby waives any and all objections to or complaints about physical characteristics and existing conditions, including without limitation subsurface conditions and solid and hazardous wastes and hazardous substances on, under or related to the property.
25. The COUNTY shall, at its sole cost and expense, be solely responsible for reconstruction, within the Easement Premises, of the ECSC settling pond that requires relocation due to the COUNTY's acquisition of the ECSC Parcels.
26. The COUNTY makes no covenant, representation or warranty as to the suitability of the County Parcels for any purpose whatsoever or as to the physical condition of the property. ECSC acknowledges having inspected the property, having observed its physical characteristics and existing conditions, and having had the opportunity to conduct such investigation and study on and of said property as it deems necessary, and hereby waives any and all objections to or complaints about physical characteristics and existing conditions, including without limitation subsurface conditions and solid and hazardous wastes and hazardous substances on, under or related to the property.
27. Any and all notices given pursuant to this Contract shall be in writing and signed by either the attorney for ECSC or the attorney for the COUNTY and shall be given by certified mail or in person at the addresses herein below. Notice to any one of a multiple person party shall be notice to all.

28. The date of this Contract shall be the last date of acceptance of this Contract as provided herein below.
29. If any Party defaults hereunder, the non-defaulting party may elect either to (i) terminate all of the Parties obligations under this Contract by written notice to the other Party, or alternatively (ii) the non-defaulting Party may file an action for specific performance of this Contract to compel the defaulting to convey, subject to the Permitted Exceptions and Survey Matters with a set off for liens of a definite and ascertainable or in the case of an easement to grant the easement(s) and with the defaulting Party being liable for all litigation costs, fees and expenses incurred by the non defaulting party in pursuing that remedy, if the non-defaulting Party prevails in such action.
30. ECSC hereby represents and warrants to the COUNTY as follows, which representations and warranties shall be deemed remade by ECSC to the COUNTY at the closing, and which shall survive the closing:
 - (a) To ECSC's knowledge, there is no pending or threatened litigation affecting the ECSC Parcels, nor to the best knowledge and belief of ECSC is any such litigation contemplated by any party;
 - (b) ECSC has received no notice of, and has no actual knowledge of, any change that is contemplated with respect to the zoning of the ECSC Parcels, the availability of utility services to the ECSC Parcels, violation of any existing law, municipal ordinance or other governmental regulation, contemplated or threatened condemnation, or any other matter which would affect the ECSC Parcels ;
 - (c) ECSC has the authority to execute and perform the terms of this Contract; and,
 - (d) ECSC has not received notice of any violations of local, state or federal laws including environmental laws, rules or regulations concerning the ECSC Parcels.
31. The COUNTY hereby represents and warrants to ECSC as follows, which representations and warranties shall be deemed remade by ECSC to the COUNTY at the closing, and which shall survive the closing:
 - (a) To the COUNTY's knowledge, there is no pending or threatened litigation affecting the County Parcel, nor to the best knowledge and belief of the COUNTY is any such litigation contemplated by any party;
 - (b) The COUNTY has received no notice of, and has no actual knowledge of, any change that is contemplated with respect to the zoning of the County Parcel, the availability of utility services to the County Parcel, violation of any existing law, municipal ordinance or other governmental regulation, contemplated or threatened condemnation, or any other matter which would affect the County Parcel;

- (c) The COUNTY has the authority to execute and perform the terms of this Contract; and,
 - (d) The COUNTY has not received notice of any violations of local, state or federal laws including environmental laws, rules or regulations concerning the County Parcel.
32. From and after the date hereof and so long as this Contract is in effect, ECSC shall not, without the COUNTY's prior written consent, execute any lease, license, contract or other agreement affecting the ECSC Parcels that will survive the closing.
33. From and after the date hereof and so long as this Contract is in effect, the COUNTY shall with out ECSC's prior written consent, execute any lease, license, contract, easement or other agreement affecting the COUNTY Parcels that will survive the closing.
34. This contract may be amended only in writing upon the signatures of all the parties hereto.
35. This AGREEMENT shall be governed by the laws of the State of Illinois both as to interpretation and performance. Venue for any dispute arising hereunder shall be in the Circuit Court of the Sixteenth Judicial Circuit, Kane COUNTY, Illinois.
36. Any required notice shall be sent to the following addresses and party:

KANE COUNTY DIVISION OF TRANSPORTATION
41W011 Burlington Road
Saint Charles, IL 60175
Attn.: Carl Schoedel, P.E., Kane COUNTY Engineer
Fax No.: 630-584-5265

ELMHURST CHICAGO STONE COMPANY
400 West First Street
Elmhurst, IL 60126
Attn.: Ken Lahner
Fax No. 630-~~832~~ 4064

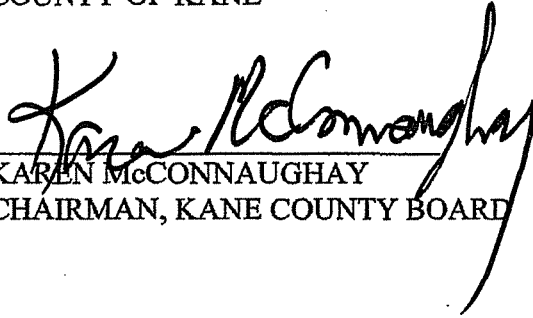
37. This AGREEMENT and all other agreements or instruments entered into in connection with this AGREEMENT, and any amendments, hereto or thereto, to the extent delivered by means of a facsimile machine or electronic mail shall be treated in all manner and respects as an original signed version thereof as if delivered in person. At the request of any Party hereto or to any such agreement or instrument, each other Party hereto or thereto shall re-execute original forms thereof and deliver them to all other Parties. No Party hereto or to any such agreement or instrument shall raise the use of electronic delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of electronic delivery as a defense to the

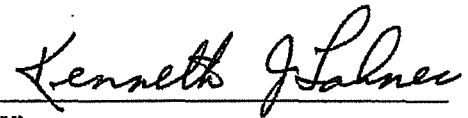

formation of a contract and each such Party forever waives any such defense, except to the extent such defense related to lack of authenticity.

IN WITNESS WHEREOF, the parties set their hands and seals as of the date first written above.

COUNTY OF KANE

ELMHURST CHICAGO STONE COMPANY

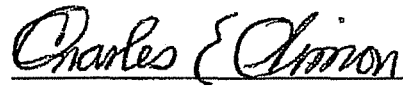

KAREN McCONNAUGHAY
CHAIRMAN, KANE COUNTY BOARD


By: 
PRESIDENT

ATTEST:

ATTEST:

JOHN A. CUNNINGHAM
KANE COUNTY CLERK


By: _____
SECRETARY

Fed. Tax I. D. 36-1039230

EXHIBIT LIST

- Exhibit "A" ECSC Legal Description Entire Parcel / Holding
- Exhibit "B" Overhead Depiction of all Parcels (ECSC and COUNTY)
- Exhibit "C" ECSC Parcel I Legal Description
- Exhibit "D" ECSC Parcel II Legal Description
- Exhibit "E" ECSC Parcel III Legal Description
- Exhibit "F" COUNTY Parcel I Legal Description
- Exhibit "G" COUNTY Parcel II Legal Description
- Exhibit "H" ECSC Temporary Easement Premise
- Exhibit "I" COUNTY Temporary Construction Easement
- Exhibit "J" COUNTY Grading Specifications / Plan
- Exhibit "K" COUNTY Gravel Paving Specifications / Plan

Exhibit "H"

TEMPORARY EASEMENT FOR
GRADING CONSTRUCTION AND
RESTORATION

This Grant of Temporary Easement is made this ___ day of August 2008, between the Elmhurst Chicago Stone Company, a Delaware corporation authorized to business in the State of Illinois of 400 West First Street, Elmhurst, Illinois 60126 (hereinafter the "GRANTOR") and the County of Kane, a body corporate and politic of the State of Illinois, 719 South Batavia Avenue, Geneva, Illinois 60134 (hereinafter "GRANTEE").

WHEREAS, the GRANTEE has requested from the GRANTOR a temporary construction easement (hereinafter the "EASEMENT") for the purpose of grading, demolition, construction, restoration, creek restoration among other things and all things appurtenant thereto over, under, upon, across, on and through the real property described in Exhibit "A" which is attached hereto and incorporated herein (hereinafter the "Easement Premises"); and,

WHEREAS, the GRANTOR has agreed to grant and convey unto the GRANTEE the EASEMENT; and,

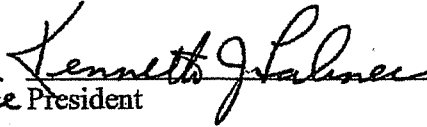
NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged by the parties hereto, the GRANTOR and the GRANTEE mutually covenant, agree and bind themselves as follows, to wit:

1. The GRANTOR and the GRANTEE acknowledge and agree that the preambles as stated hereinabove are made a part of this Agreement.
2. The GRANTOR does hereby grant and convey to the GRANTEE, its successors and assigns, the EASEMENT for the purpose of grading, demolition, construction, restoration and creek restoration among other things and all things appurtenant thereto over, upon, under, across, on and through the real estate as shown and legally described in Exhibit "A" (the Easement Premises).
3. The term of this EASEMENT shall be temporary, shall commence upon the execution hereof and will expire on January 1, 2012 or upon completion of the work contemplated hereunder which ever occurs first, unless otherwise relinquished earlier in writing by the GRANTEE.

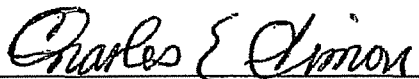
4. The GRANTOR, for itself and its successors and assigns, covenants and agrees that it shall not interfere with the lawful use of the Easement Premises by the GRANTEE, its successors and assigns, pursuant to the terms of this EASEMENT.
5. The GRANTEE, for itself and its successors and assigns, covenants and agrees that the EASEMENT shall include the following obligations of the GRANTEE:
 - A. The GRANTOR will be notified forty-eight (48) hours before scheduled construction is to commence by the GRANTEE on the Easement Premises.
 - B. During construction by the GRANTEE on the Easement Premises, the GRANTEE shall fence and/or cover any excavation opening with protective cover at all times when construction personnel are not present.
 - C. The GRANTEE and its contractor(s) will be responsible for safety measures to protect the public and the GRANTOR during any work by the GRANTEE on the Easement Premises.
 - D. The GRANTEE shall construct any and all improvements on the Easement Premises in accordance with approved plans therefor.
 - E. The GRANTEE represents to the GRANTOR that prior to any work on the Easement Premises, all permits, licenses, authorizations and approvals required by all federal, state and local governmental agencies having jurisdiction over the work will be obtained.
 - F. The GRANTEE shall, after completion of any construction on the Easement Premises, restore the Easement Premises in accordance with the approved construction plan.
 - G. The GRANTEE shall restore sod, plant material or other landscaping improvements damaged in the course of the GRANTEE working on the Easement Premises.
6. The GRANTOR, for itself and its successors and assigns, covenants and agrees that the EASEMENT shall include the following obligations of the GRANTOR:
 - A. The GRANTEE will be notified forty-eight (48) hours before any work is to commence by the GRANTOR on the Easement Premises except in the case of emergency repairs, whereupon reasonable notice will be provided either before or after said emergency repairs.
 - B. The GRANTOR and its contractor(s) will be responsible for safety measures to protect the public and the GRANTEE during any work by the GRANTOR on the Easement Premises.

- C. The GRANTOR represents to the GRANTEE that prior to any work on the Easement Premises, all permits, licenses, authorizations and approvals required by all federal, state and local governmental agencies having jurisdiction over the work will be obtained.
 - D. The GRANTOR shall, after completion of any work on the Easement Premises, restore the Easement Premises in accordance with the approved plan therefor.
 - E. The GRANTOR shall restore the Easement Premises if damaged in the course of the GRANTOR working on, maintaining, repairing or utilizing the Easement Premises.
 - F. The GRANTOR shall permit the GRANTEE access to the Easement Premises over and across the adjacent property of the GRANTOR for emergency purposes.
7. The GRANTEE hereby agrees to indemnify and save harmless the GRANTOR from and against any loss, damage or expense which the GRANTOR may suffer, incur or sustain or for which the GRANTOR may become legally liable arising or growing out of the GRANTEE's activities and/or negligence and that of its contractors, agents, employees, and invitees in the GRANTEE's use of the Easement Premises during the term hereof.
8. The GRANTOR hereby agrees to indemnify and save harmless the GRANTEE from and against any loss, damage or expense which the GRANTEE may suffer, incur or sustain or for which the GRANTEE may become legally liable arising or growing out of the GRANTOR's activities and/or negligence and that of its contractors, agents, employees, and invitees in the GRANTOR's use of the Easement Premises during the term hereof.
9. The GRANTOR makes no covenant, representation or warranty as to the suitability of the property for any purpose whatsoever or as to the physical condition of the property. GRANTEE acknowledges having inspected the property, having observed its physical characteristics and existing conditions, and having had the opportunity to conduct such investigation and study on and of said property as it deems necessary, and hereby waives any and all objections to or complaints about physical characteristics and existing conditions, including without limitation subsurface conditions and solid and hazardous wastes and hazardous substances on, under or related to the property. GRANTEE further acknowledges and agrees that the EASEMENT is granted to and accepted by GRANTEE in its present condition "as is", and GRANTEE hereby assumes the risk that adverse physical characteristics and existing conditions may not have been revealed by its investigation.
10. The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto.

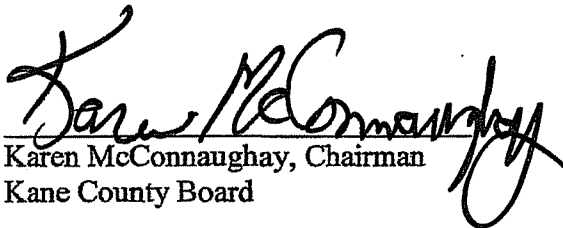
GRANTOR:
ELMHURST CHICAGO STONE
COMPANY


Vice President

ATTEST:


Secretary

GRANTEE:
COUNTY OF KANE


Karen McConaughay, Chairman
Kane County Board

ATTEST:

John Cunningham
County Clerk

Exhibit "A"

(Legal description of Easement Premises)

EXHIBIT "K"

RIGHT OF ENTRY

FOR THE PROPERTY DESCRIBED IN EXHIBIT "A"
ATTACHED HERETO (Hereinafter the "PREMISES").

This Agreement entered into this ____ day of August 2008 by and between the County of Kane, a body corporate and politic of the State of Illinois (hereinafter referred to as the "County") and the Elmhurst Chicago Stone Company, a Delaware corporation authorized to conduct business in the State of Illinois, located at 400 West First Street, Elmhurst, Illinois 60126 (hereinafter referred to as the "Occupant") for the occupancy of the PREMISES which are more particularly described herein in Exhibit "A" which is incorporated herein and made a part hereof.

WITNESSETH

1. **TERM:** The term of this Agreement shall first commence on August 22, 2008 and shall terminate on the conveyance in fee simple of the PREMISES to the Occupant or on October 30, 2008, which ever occurs first. During the term hereof the Occupant shall use the PREMISES for the purpose of the storage of concrete pipe and for no other purpose. The Occupant shall not grant to anyone a sublease or license for the PREMISES.
2. **PAYMENT:** The Occupant shall not be required to pay the use and occupancy of the PREMISES.
3. **INSURANCE:** The Occupant agrees to purchase and maintain in the name of the County at the sole cost of the Occupant in the amount of five million dollars in the aggregate, an owners protective policy in a form and with an insurance company satisfactory to the County. The Occupant shall provide to the County, prior to its use or occupancy of the Premise, a certificate of insurance evidencing the above described coverages. Said insurance coverage shall be kept in force during the term of the Occupant's use and occupancy of the PREMISES. Declarations in each policy of insurance shall identify that there shall be no exclusions in the policy not otherwise approved by the County. Said certificate of insurance shall provide therein that it shall not be cancelled without thirty days written notice to the County.
4. **INDEMNITY:** The Occupant shall indemnify and save harmless the County, its officers, employees, contractors and agents, from any and all claims, litigation and liability asserted against them or any of them, and any costs and attorney's fees incidental thereto, on account of injury or death to any person or persons whomsoever, or on account of damages to property, from any cause whatsoever, arising or growing, directly or indirectly: (a) out of the use or occupancy of the PREMISES, (b) out of any defect in the PREMISES, out of any act or omission of the County, its officers, employees, contractors and agents while on or about the PREMISES or the property of the County, or

(c) out of any act or omission of the County, its officers, employees, contractors and agents while on or about the PREMISES or the property of the County; (d) out of the failure of the County, its officers, employees, contractors and agents to abide by or comply with the terms and conditions of this Agreement, even though such loss, damage, injury or death may have been caused or contributed to by the County's use of the property of the County adjacent to the PREMISES, excepting therefrom those injuries, deaths or losses caused by the willful and wanton negligence of the County, its officers, employees, contractors and agents, or (e) caused by, connected with or in any way attributable to the rights herein granted to the Occupant, or due to the Occupant's failure to comply with any of the terms, conditions or obligations contained in this Agreement. The Occupant shall upon the request of the County undertake the defense of the County, its officers, employees, contractors and agents in any such litigation. The County shall not be liable for any acts of neglect of the Occupant, their family or invitees.

5. LIMITATION OF LIABILITY: the County shall not be liable for any damage occasioned by failure to keep PREMISES in repair, and shall not be liable for any damage done or occasioned by water, snow or ice being upon or coming onto the PREMISES, nor for damages to Occupant or others claiming through Occupant for any loss or damage of or to property wherever located in or about the PREMISES, nor for any damage arising from acts or neglect of other occupants of the PREMISES, or of any owners or occupants of adjacent or contiguous property.

6. CONDITION OF PREMISES - REDELIVERY TO COUNTY: Occupant has examined and knows the condition of PREMISES and has received the same in good order and repair except as herein otherwise specified, and no representations as to the condition or repair thereof have been made by County or its contractors or agents prior to, or at the execution of this Agreement, that are not herein expressed or endorsed hereon; and upon the termination of this Agreement in any way, Occupant will immediately yield up PREMISES to County in as good condition as when the same were entered upon by Occupant, ordinary wear and tear only excepted, and shall then return all keys to County.

7. OCCUPANT: The PREMISES shall be occupied by the following only: the Elmhurst Chicago Stone Company its officers, employees and agents.

8. USE; SUBLET; ASSIGNMENT: Occupant will not allow PREMISES to be used for any purpose that will increase the rate of insurance thereon, nor for any purpose other than that hereinbefore specified, nor to be occupied in whole or in part by any other persons, and will not sublet or allow the same to be occupied by others, nor any part thereof, nor assign this Agreement, and will not permit any transfer, by operation of law or otherwise, of the interest in PREMISES acquired through this Agreement, and will not permit PREMISES to be used for any unlawful purpose or purpose that will injure the reputation of the same or of the PREMISES., or the neighborhood.

9. ALTERATIONS: Occupant will take good care of the PREMISES and will commit and suffer no waste thereon; no changes or alterations of the PREMISES shall be made including but not limited to alterations to the grading, gravel paving or drainage without the written approval of the Kane County Engineer. The County shall not be required to pay for any work performed under this section.

10. **USE AND REPAIR:** The Occupant is liable for all damages that are caused by the Occupant's acts or neglect and any acts and neglect of the Occupant's officers, employees, agents, invitees, or guests. The Occupant shall be solely responsible for the maintenance and repair of the PREMISES. When occasioned by the Occupant's acts or neglect the Occupant shall make all repairs required to the PREMISES, whenever damage or injury to the same shall have resulted from misuse or neglect of the Occupant or the Occupant's invitees. In the event that the Occupant fails to make any needed repair or replacement, the County may do the same and may and shall bill the Occupant therefor. Occupant shall also comply with and conform to all applicable laws and governmental rules and regulations affecting the PREMISES and the use and occupancy thereof. The Occupant shall at the Occupant's expense keep the PREMISES in a clean, orderly and sanitary condition at all times. At the end of the term the Occupant shall leave the PREMISES in a clean and orderly condition, with the exception of ordinary wear and tear

11. **ACCESS:** The Occupant will allow the County free access to the PREMISES at all hours without notice for the purpose of examining or using the same.

12. **STORAGE:** The County shall not be liable for any loss or damage of or to any property placed in any area or any place in or near the PREMISES, or on any adjacent premises. The Occupant shall not use any portion of the PREMISES for storage of anything other than those materials used in the day to day operation of the Occupant's concrete pipe operation.

13. **DEFAULT BY OCCUPANT:** If default be made in any of the covenants herein contained to be kept by the Occupant, the County may at any time thereafter at its election declare said term ended and re-enter the PREMISES or any part thereof, with or without notice or process of law, and remove the Occupant or any persons occupying the same, without prejudice to any remedies which might otherwise be used by the County.

14. **PAYMENT OF COSTS:** The Occupant will pay and discharge all reasonable costs, attorney's fees and expenses that shall be made and incurred by the County in enforcing the covenants and agreements of this right of entry.

15. **RIGHTS CUMULATIVE:** The rights and remedies of the County under this right of entry are cumulative. The exercise or use of any one or more thereof shall not bar the County from exercise or use of any other right or remedy provided herein or otherwise provided by law, nor shall exercise nor use of any right or remedy by the County waive any other right or remedy.

16. **PLURALS; SUCCESSORS:** The "Occupant" wherever herein occurring and used shall be construed to mean and "Occupants" in case more than one person constitutes either party to this right of entry; and all the covenants and agreements herein contained shall be binding upon, and inure to, their respective successors, heirs, executors, administrators and assigns and be exercised by his or their attorney or agent.

17. **SEVERABILITY:** Wherever possible each provision of this right of entry shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this right of entry shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without

invalidating the remainder of such provision or the remaining provisions of this right of entry.

18. COMPLIANCE WITH LAWS STATUTES AND ORDINANCES: The parties to this right of entry acknowledge that the terms of this right of entry may be inconsistent with the laws, statutes, or ordinances of the jurisdiction in which the PREMISES are located, and where inconsistent, those terms may be superseded by the provisions of such laws, statutes or ordinances. To the extent the provisions of such laws, statutes or ordinances supersede the terms of this right of entry, such provisions are hereby incorporated into the terms of this right of entry by this reference, and the parties to this lease agree to refer to such provisions and to be bound thereby.

Executed this 7 day of ^{Oct} ~~August~~ 2008.

Elmhurst Chicago Stone Company

Kane County

Occupant: 345 Kenneth J. Lakner

County: Kane McDonough

By: KENNETH J LAKNER

By:

Title: v.p.

Title:

Charles E. Aron
Secretary

Subscribed and Sworn To
this 7th day of October 2008.

Subscribed and Sworn To
this ___ day of ___ 2008.

[Signature]
Notary Public

Notary Public

