

VACANT LAND PURCHASE AGREEMENT

THIS AGREEMENT is made as of _____, 2015, between 711 Land Holdings, LLC, a Minnesota limited liability company ("Seller"), and The City of Lake Elmo, a Minnesota municipal corporation ("Buyer").

In consideration of this Agreement, Seller and Buyer agree as follows:

1. Sale of Property. Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller, the following property ("Property"):
 - 1.1 Real Property. The real property located on Inwood Avenue a/k/a County State Aid Highway 13, City of Lake Elmo, Washington County, Minnesota, as further shown on the map attached hereto as **Exhibit A** and as further legally described on the attached **Exhibit B**, together with all easements and rights benefiting or appurtenant to said real property.
 - 1.2 City of Lake Elmo, which has condemnation authority, as a condition of approval of the Inwood PUD, has required Inwood 10, LLC/711 Land Holdings, LLC to sell the City of Lake Elmo approximately 1.5 acres of property for the purpose of building a municipal water tower.
2. Purchase Price and Manner of Payment. The total purchase price ("Purchase Price") to be paid for the Property is \$165,000.00. The Purchase Price shall be payable as follows:
 - 2.1 \$5,000.00 as earnest money ("Earnest Money"); and
 - 2.2 \$160,000.00 by certified check or wire transfer of funds on the Closing Date.
3. Contingencies. The obligations of Buyer under this Agreement are contingent upon each of the following:
 - 3.1 Representations and Warranties. The representations and warranties of Seller contained in this Agreement must be true now and on the Closing Date as if made on the Closing Date.
 - 3.2 Title. Title shall have been found acceptable, or been made acceptable, in accordance with the requirements and terms of the Title Examination

Section below.

- 3.3 Access and Inspection. Seller shall allow Buyer, and Buyer's agents, access to the Property without charge and at all reasonable times for the purpose of Buyer's investigation and testing the same, including, without limitation, soil tests to determine the adequacy of the soil for Buyer's intended use of the Property. Within ten (10) days of the acceptance of this Agreement, Seller shall provide Buyer with copies of all blueprints, plans, specifications, soil tests and surveys of the Property which are presently in Seller's possession. Seller shall make available to Buyer and Buyer's agents, without charge, all plans and specifications, records, inventories, permits and correspondence.
- 3.4 Public Access. The Buyer shall establish future public street connection to CSAH 13 with Washington County.
- Seller shall have the right to use the public street access as depicted on the attached Exhibit B (Road Parcel Description) and may connect a future public street or private driveway to this access for the current agricultural use of the property or for future subdivision of the property. Any use or connection to said street must be a permitted use by city ordinance and must be consistent with city zoning, subdivision regulations and city engineering design standards.
- 3.5 Improvements. The Buyer and Sellers shall equally share costs, not paid by Washington County, associated with any improvements to Inwood Avenue/CSAH 13 as may be required for the public street access established per Section 3.4, including, but not limited to turn lanes. The Buyer shall also pay one-half of the cost of the first 100 feet of roadway East of Inwood Avenue/CSAH 13 at the time said street is constructed. This obligation shall continue as long as the Buyer owns or maintains the water tower on the property.
- 3.6 Easements. The Seller shall grant the Buyer a temporary construction site easement to enable the construction of the water tower. Easement shall be acceptable to buyers.
- 3.7 Trunk Water Main. The Buyer shall install a trunk water main along Inwood Avenue/CSAH 13 no later than December 1, 2016. However, failure to meet this deadline shall not invalidate this Agreement.

The trunk water main depicted on the attached Exhibit C is part of a planned city project. For additional consideration, as set forth and as limited herein, the Buyer shall not levy special assessments against Seller for the construction of the water tower or Inwood Trunk Water main, and Seller shall receive an exemption for up to 5 units of water lateral benefit charges, which is currently \$5,800 per REC unit or \$29,000. Said exemption shall apply to new commercial buildings developed within the Inwood Creek development, that are adjacent to Inwood Avenue, and connect its private water service directly to the Inwood Trunk Water main. All properties, including the exemptions stated above, remain subject to all city standard water availability charges and water connection charges.

If any contingency has not been satisfied on or before the date set forth above for satisfaction of that contingency, then this Agreement may be terminated by written notice from Buyer to Seller, which notice must be given no later than five (5) days after the applicable satisfaction date. If no such notice is given with respect to any contingency, such contingency shall be deemed waived. Closing shall be deemed a waiver of all of the above contingencies. Upon termination, the Earnest Money, and any interest accrued thereon, shall be released to Buyer, the parties shall sign a cancellation of this Agreement, and neither party will have any further rights or obligations to the other regarding this Agreement or the Property. All the contingencies are specifically for the benefit of the Buyer, and the Buyer shall have the right to waive any contingency by written notice to Seller.

4. Closing. The closing of the purchase and sale contemplated by this Agreement (the "Closing") shall occur on or before _____, 2015 ("Closing Date at the office of Johnson/Turner Legal). Seller agrees to deliver possession of the Property to Buyer immediately after Closing.

4.1 Seller's Closing Documents. On the Closing Date, Seller shall execute and deliver to Buyer the following (collectively, "Seller's Closing Documents"), all in form and content reasonably satisfactory to Buyer:

4.1.1 Deed. A Warranty Deed conveying the Property to Buyer, free and clear of all encumbrances, except the Permitted Encumbrances hereafter defined.

4.1.2 FIRPTA Affidavit. A non-foreign affidavit, properly executed, containing such information as is required by IRC Section 1445(b)(2)

and its regulations.

- 4.1.3 IRS Forms. A Designation Agreement designating the "reporting person" for purposes of completing Internal Revenue Form 1099 and, if applicable, Internal Revenue Form 8594.
- 4.1.4 Well Certificate. A completed Minnesota Well Disclosure Certificate or a statement on the Warranty Deed that "The Seller certifies that the Seller does not know of any wells on the described real property."
- 4.1.5 Storage Tanks. If the Property contains or contained a storage tank, an affidavit with respect thereto, as required by Minn. Stat. § 116.48.

- 4.1.6 Individual Sewage Treatment Systems. If the Property contains an individual septic system, a disclosure statement as required by Minn. Stat. § 115.55.
- 4.1.7 Seller's Affidavit. An affidavit in the form required by Title evidencing the absence of bankruptcies, judgments or tax liens involving Seller or parties with the same or similar names as Seller, and evidencing the absence of mechanic's lien rights affecting the Property, unrecorded interests affecting the Property, persons in possession of the Property, and known encroachments or boundary line questions affecting the Property.
- 4.1.8 Other Documents. All other documents reasonably determined by Buyer or Title to be necessary to transfer the Property to Buyer free and clear of all encumbrances.
- 4.2 Buyer's Closing Documents. On the Closing Date, Buyer will execute and deliver to Seller the following (collectively, "Buyer's Closing Documents"):
 - 4.2.1 Purchase Price. Funds representing the Purchase Price and execution and delivery of any required financing documents.
 - 4.2.2 IRS Form. A Designation Agreement designating the "reporting person" for purposes of completing Internal Revenue Form 1099 and, if applicable, Internal Revenue Form 8594.
- 5. Prorations. Seller and Buyer agree to the following prorations and allocation of costs regarding this Agreement:
 - 5.1 Title Insurance and Closing Fee. Seller will pay all costs of the Title Evidence, the cost of having a commitment for an ALTA Owner's Policy of Title Insurance for the Property (the "Title Policy") (in the amount of the Purchase Price) and the fees charged by the Title Company for any escrow required regarding Buyer's Objections. Buyer will pay the premium required for the issuance of the Title Policy. Seller and Buyer will each pay one-half of the fee charged by Title (as defined below) to conduct the Closing.
 - 5.2 Deed Tax. Seller shall pay all State Deed Tax payable in connection with this transaction. Buyer shall pay all Mortgage Registry Tax payable in connection with Buyer's financing, if any.

- 5.3 Real Estate Taxes and Special Assessments. Real Estate Taxes payable in the year in which Closing occurs shall be pro-rated based upon a calendar year with Seller paying through the Date of Closing. Seller shall pay any installments of special assessments payable with said real estate taxes. Seller shall pay all other levied special assessments in full as of the Date of Closing, and shall pay all special assessments which are pending as of the Date of Closing. Seller's provision for payment of a pending assessment shall be made by payment into escrow with Title of one and one-half times the estimated amount of the assessment, with the right to a refund of any excess of the escrow.
- 5.4 Other Costs. All other operating costs of the Property shall be allocated between Seller and Buyer as of the Closing Date, so that Seller pays that part of operating costs payable through the Closing Date, and Buyer pays that part of operating costs payable after the Closing Date.
- 5.5 Attorney's Fees. Each of the parties will pay its own attorney's fees, except that a party defaulting under this Agreement or any Closing Documents will pay the reasonable attorneys' fees and court costs incurred by the non-defaulting party in enforcing its rights hereunder.
6. Title Examination. Title Examination will be conducted as follows:
- 6.1 Seller's Title Evidence. Seller shall, within twenty (20) days after the date of this Agreement, furnish the following (collectively, "Title Evidence") to Buyer: (a) a commitment ("Title Commitment") for an ALTA Owner's Policy of Title Insurance insuring title to the Property, deleting standard exceptions and including affirmative assurance regarding zoning, contiguity, appurtenant easements and such other matters as may be identified by Buyer, in the amount of the Purchase Price, issued by Johnson/Turner Legal, ("Title"); (b) a survey, paid for by Buyer, certified by a registered land surveyor and certified to Buyer, Title and such other parties as Buyer may designate, and showing the Property and location of all improvements and easements thereon and otherwise complying with the requirements set forth in the "Minimum Standard Requirements for ALTA/ACSM Land Title Surveys" jointly established by ALTA and ACSM in 1992, and containing such other information as Buyer or Buyer's lender shall reasonably request.
- 6.2 Buyer's Objections. Within twenty (20) days after receiving the last of the

Title Evidence, Buyer will make written objections (“Objections”) to the form and/or contents of the Title Evidence. Buyer’s failure to make Objections within such time period will constitute waiver of Objections. Any matter shown on such Title Evidence and not objected to by Buyer shall be a “Permitted Encumbrance” hereunder. Seller will have thirty (30) days after receipt of the Objections to cure the Objections, during which period the Closing will be postponed, if necessary. Seller shall use its best efforts to cure any Objections. To the extent an Objection can be satisfied by the payment of money, Buyer shall have the right to apply a portion of the cash payable to Seller at the Closing to satisfaction of such Objection, and the amount so applied shall reduce the amount of cash payable to Seller at the Closing. If the Objections are not cured within such 30-day period, Buyer will have the option to do any of the following:

6.2.1 Extend the time period for Seller to cure the Objections by up to sixty (60) days, at the end of which time Buyer may exercise any of the remaining options set forth below.

6.2.2 Terminate this Agreement and receive a refund of the Earnest Money and the interest accrued thereon, if any.

6.2.3 Withhold from the Purchase Price an amount which, in the reasonable judgment of Title, is sufficient to assure cure of the Objections. Any amount so withheld will be placed in escrow with Title, pending such cure. If Seller does not cure such Objections within sixty (60) days after such escrow is established, Buyer may then cure such Objections and charge the costs of cure against the escrowed amount. The parties agree to execute and deliver such documents as may be reasonably required by Title, and Seller agrees to pay the charges of Title, to create and administer the escrow.

6.2.4 Waive the Objections and proceed to close.

7. Subordination. This Purchase Agreement, and the rights of the Buyer in and to the real property which is the subject hereof, is specifically made subject and subordinate to the lien of any mortgage(s) or other encumbrance(s) (“Liens”) made or given by Seller, whether prior to or after the date of this Purchase Agreement, and shall, prior to Closing and payment by Buyer of the Purchase Price, remain subordinate and junior to all such Liens as if the same had been duly executed and acknowledged by the Seller, and recorded, prior to the date of this Purchase

Agreement. At Closing, Seller will be responsible, at its sole expense, for obtaining any release necessary to convey fee title to the Property to Buyer free and clear of any such Liens.

8. Operation Prior to Closing. During the period from the date of Seller's acceptance of this Agreement to the Closing Date (the "Executory Period"), Seller shall operate and maintain the Property in the ordinary course of business in accordance with prudent, reasonable business standards, including the maintenance of adequate liability insurance and insurance against loss by fire, windstorm and other hazards, casualties and contingencies, including vandalism and malicious mischief. Seller shall execute no contracts, leases or other agreements regarding the Property during the Executory Period that are not terminable on or before the Closing Date, without the prior written consent of Buyer, which consent may be withheld by Buyer at its sole discretion.

9. Representations and Warranties by Seller. Seller represents and warrants to Buyer as follows:
 - 9.1 Existence; Authority. If Seller is a corporation, limited liability company or partnership, Seller is duly organized, qualified and in good standing, and has the requisite power and authority to enter into and perform this Agreement and the Seller's Closing Documents; such documents have been duly authorized by all necessary action; such documents are valid and binding obligations of Seller, and are enforceable in accordance with their terms.

 - 9.2 Environmental Laws. No toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, and any hazardous substance as defined in any state, local or federal law, regulation, rule, policy or order relating to the protection of the environment) (collectively, "Hazardous Substance") have been generated, treated, stored, transferred from, released or disposed of, or otherwise placed, deposited in or located on the Property, nor has any activity been undertaken on the Property that would cause or contribute to the Property becoming a treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, any state, local or federal law, regulation, rule, policy or order relating to the protection of the environment. There has been no discharge, release or

threatened release of Hazardous Substances from the Property. There are no Hazardous Substances or conditions in or on the Property that may support a claim or cause of action under any state, local or federal law, regulation, rule, policy or order relating to the protection of the environment. The Property is not now, and to the best knowledge of Seller never has been, listed on any list of sites contaminated with Hazardous Substances, nor used as landfill, dump, disposal or storage site for Hazardous Substances.

- 9.3 FIRPTA. Seller is not a "foreign person," "foreign partnership," "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.
- 9.4 Proceedings. There is no action, litigation, investigation, condemnation or proceeding of any kind pending or threatened against Seller or any portion of the Property.

- 9.5 Wells and Individual Sewage Treatment Systems. Seller does not know of any "Wells" on the Property within the meaning of Minn. Stat. § 103I or "Individual Sewage Treatment Systems" on the Property within the meaning of Minn. Stat. § 115.55. This representation is intended to satisfy the requirements of those statutes.
- 9.6 Storage Tanks. No above ground or underground tanks are located on or about the Property, or have been located on or about the Property and have subsequently been removed or filled.
- 9.7 Reports. Seller has no environmental reports or studies relating to the Property, except those which have been or will be delivered to Buyer as required under this Agreement.

Seller will indemnify Buyer, its successors and assigns, against, and will hold Buyer, its successors and assigns, harmless from, any expenses or damages, including reasonable attorneys' fees, which Buyer incurs because of the breach of any of the above representations or warranties, whether such breach is discovered before or after Closing. Consummation of this Agreement by Buyer with knowledge of any such breach by Seller will not constitute a waiver or release by Buyer of any claims due to such breach.

10. Assignment. Either party may assign its rights under this Agreement with the prior written consent of the other party, before or after the Closing. Any such assignment will not relieve such assigning party of its obligations under this Agreement.
11. Survival. All of the terms of this Agreement and warranties and representations herein contained shall survive and be enforceable after the Closing.
12. Notice. Any notice to be given by a party hereto shall be personally delivered, sent by certified mail, or sent via a nationally recognized courier service that issues a receipt, to the other party at the address set forth for that party below (or to such other address as may be designated by notice to the other party), and shall be deemed given upon the earlier of personal delivery, two days after the date postmarked, two (2) days after depositing with such courier for delivery or upon the refusal to accept such service.

Address for Notice to Seller:

95 South Owasso Boulevard West

Little Canada, MN 55117

With a Copy to: Warren Peterson
55 East 5th Street
St. Paul, MN 55101

Address for Notice to Buyer: City of Lake Elmo
Attn: Dean Zuleger
City Administrator
3800 Laverne Avenue North
Lake Elmo, MN 55042

With a Copy to: David K. Snyder
Michele R. Loughrey
Johnson/Turner Legal
56 E. Broadway Avenue, Suite 206
Forest Lake, MN 55025

15. Miscellaneous. The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement. This Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Property. There are no verbal agreements that change this Agreement, and no waiver of any of its terms will be effective unless in a writing executed by the parties. This Agreement binds and benefits the parties and their successors and assigns, and has been made under the laws of the State of Minnesota and such laws will control its interpretation.
16. Remedies. The following shall be the exclusive remedies available to the parties under this agreement:
- 16.1 If Buyer defaults under this Agreement due to no fault of Seller, then Seller may terminate this Agreement by providing at least thirty days' prior written notice to Buyer. If Buyer fails to cure Buyer's default within such thirty-day period, then at Seller's election (i) this Agreement shall thereupon be terminated, and Seller shall retain the Earnest Money as liquidated damages; or (ii) Seller may seek specific performance of this Agreement by Buyer.
- 16.2 If Seller defaults under this Agreement due to no fault of Buyer, then Buyer may terminate this Agreement by providing at least thirty (30) days'

prior written notice to Seller. If Seller fails to cure Seller's default within such thirty-day period, then at Buyer's election (i) this Agreement shall thereupon be terminated, and Buyer shall be entitled to a refund of all Earnest Money, together with accrued interest thereon, if any; or (ii) Buyer may pursue such other actions or remedies as are available to it, including its right to damages against Seller for its failure to perform, or for misrepresentation or for specific performance of this Agreement by Seller.

- 16.3 Any suit by a party hereto which is described above and is based upon the other party's default must be commenced no later than one hundred twenty (120) days after the date of the occurrence of the default. The said 120-day limitation shall not apply to claims for indemnification otherwise provided for in this agreement.
17. Severability. In case any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, such holding shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
18. Business Days. In the event any deadline or performance date set forth in this Agreement falls on a Saturday, Sunday or legal holiday in the State of Minnesota, such deadline or performance date shall be deemed to be postponed to the next business day thereafter.

Seller and Buyer have executed this Agreement as of the date first written above.

SELLER:

BUYER:

711 LAND HOLDINGS, LLC

THE CITY OF LAKE ELMO

By: _____

By: _____

Its: _____

Its: _____

EXHIBIT A

Map of Property

EXHIBIT B

Legal Description

Proposed Water Tower Description:

The north 250.00 feet of the south 290.00 feet of the west 310.00 feet of the Northwest Quarter of the Southeast Quarter of Section 28, Township 29 North, Range 21 West, Washington County, Minnesota, which lies easterly of the east right of way of County State Aid Highway No. 13 per WASHINGTON COUNTY HIGHWAY RIGHT OF WAY PLAT NO. 43.

AND

Proposed Road Description:

The south 40.00 feet of the west 310.00 feet of the Northwest Quarter of the Southeast Quarter and the north 40.00 feet of the west 310.00 feet of the Southwest Quarter of the Southeast Quarter, all in Section 28, Township 29 North, Range 21 West, Washington County, Minnesota, which lies easterly of the east right of way line of County State Aid Highway No. 13 per WASHINGTON COUNTY HIGHWAY RIGHT OF WAY PLAT NO. 43.

EXHIBIT C

Trunk Water Main Map