
Return to:
David K. Snyder
Johnson / Turner Legal
56 East Broadway Avenue, Suite 206
Forest Lake, MN 55025

ESCROW AGREEMENT

THIS AGREEMENT is entered into on _____, 2015, by _____ (hereinafter "_____") and the City of Lake Elmo (hereinafter "City"), a Minnesota municipal corporation.

RECITALS

WHEREAS, City and Developer have entered into a Developer's Agreement dated _____ ("Developer's Agreement") pursuant to which Developer has agreed to deposit certain funds as identified in Paragraph 1 below in escrow; and,

WHEREAS, this Escrow Agreement guarantees security for completion of the Improvements in accordance with the Plans and Specifications approved by the City Engineer for Easton Village; and,

WHEREAS, Developer agrees to privately construct railroad crossing improvements serving the property legally described on attached Exhibit A in accordance with the Developers Agreement ("Improvements") not later than _____; and,

WHEREAS, in addition to the requirements of the Development Agreement, Developer will petition for, secure, build and install a public rail crossing at the location shown in Exhibit B to specifications required by the City, the Minnesota Department of Transportation, the Carrier Rail Road _____, and any other regulatory agency having jurisdiction over the crossing and the track in accordance with the specifications of the City of Lake Elmo; and,

WHEREAS, capitalized terms used, and not otherwise defined herein, shall have the meanings set forth in the Developer's Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, it is agreed between the parties as follows:

1. Developer will deposit escrowed funds in the amount of \$_____ with the City of Lake Elmo (hereinafter "Initial Escrow"). To guarantee compliance with the terms of this agreement, payment of the costs of the rail crossing, and construction of related public improvements, the Developer shall furnish the City with an irrevocable letter of credit, in the form approved by the City, from a bank, cash escrow or a combination cash escrow and Letter of Credit ("security") for \$_____. The amount of the security was calculated as follows:

_____ (insert calculation: _____)

This breakdown is for historical reference; it is not a restriction on the use of the security. The bank shall be subject to the approval of the City. The City may draw down the security, without notice, for any violation of the terms of this Contract or if the security is allowed to lapse prior to the end of the required term. If the required public improvements are not completed at least thirty (30) days prior to the expiration of the security, the City may also draw it down. If the security is drawn down, the proceeds may but are not required to be used to cure the default.

2. Developer shall petition for, secure and install the crossing not later than _____. If Developer does not install the crossing, then the City may draw upon the Letter of Credit, seek specific performance or pursue any remedy or combination of remedies to correct or cure the breach.
3. This Agreement may not be assigned without the express written consent of all other parties, but in the event that it is so assigned, it shall be binding upon the parties hereto and their respective successors and assigns, and may be amended or modified only by written Amendment signed by all parties.
4. If it is determined by state and federal regulatory agencies that additional safety measures are needed beyond what would be required for a standard urban rail crossing, then the City agrees to contribute up to twenty-five percent (25%) of the actual, verified costs needed to bring the crossing into compliance with those requirements.
5. This Agreement is intended to provide security for the satisfactory construction of the rail Improvements and for the benefit of the City, and does not inure to and is not intended for the benefit of any third parties, and no claims by any person or entity, including all Contractors, subcontractors or others providing labor or material for the Improvements, shall be entitled to make a claim under this Agreement, to any of the funds held by the City and does not create any rights in any third parties or third party beneficiary rights, including one not a party to this Agreement.

6. This Agreement and the funds held hereunder shall not be pledged, mortgaged or otherwise used as security or collateral by the Developer, and the funds deposited shall be free of liens or other encumbrances.
7. Prior to the execution of this Agreement, the Escrow Agent shall submit financial statements to the City for review and approval.
8. Time is of the essence as to each provision of this Agreement.
9. All notices required or permitted under this Agreement shall be (i) delivered to the addresses set forth below, and (ii) mailed, delivered or transmitted by one party to the other(s) and such notice shall be deemed given and effective: upon receipt if personally delivered; upon receipt if sent by telecopy or electronic mail; upon receipt or upon the date of first attempted delivery, if sent by certified or registered mail with postage prepaid, return receipt requested, or if sent by Federal Express or other nationally recognized carrier service; or upon receipt if sent in any other way. Any party hereto may from time to time, by written notice to the other parties, designate a different address which shall be substituted for the one specified below.
10. In the event the City declares default under the Developer's Agreement or this Agreement a copy of the notice of default shall be provided to the Developer. If the default is not remedied by the Developer pursuant to and within the time, if any, allowed under the Developer's Agreement ("Cure Period"), this Escrow agreement shall terminate and all funds held in escrow, at the time notice of default is given, shall be remitted to the City within 3 business days of notice by the City that the Cure Period has expired. Funds so received shall be used by the City exclusively to pay for the completion of the Improvements and the Cities reasonable administration costs pursuant to the Developer's Agreement and this Agreement.

City: City of Lake Elmo
Attn: City Administrator
3800 Laverne Avenue North
Lake Elmo, MN 55042

Developer: _____
Attn: _____

12. This document shall be recorded in the office of the County Recorder of Washington County, Minnesota.

[SIGNATURES ON FOLLOWING PAGES]

CITY OF LAKE ELMO

By: Mike Pearson

Its: Mayor

By: Dean Zuleger

Its: City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

On this _____ day of _____, 2015, before me, a Notary Public, in and for said County and State, appeared Mike Pearson and Dean Zuleger, to me personally known, who being by me first duly sworn, did say that they are respectively the Mayor and Administrator of the City of Lake Elmo, who executed the foregoing document by authority of the City Council of the City of Lake Elmo, and said Mayor and Administrator acknowledge said instrument to be the free act and deed of said City of Lake Elmo.

Notary Public

[INSERT DEVELOPER]

By: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2015, before me, a Notary Public, in and for said County and State, appeared _____, to me personally known, who being by me first duly sworn, did say that he/she is the _____ for _____ and acknowledged said instrument to be the free act and deed of said _____ who then executed the foregoing document by authority _____, and acknowledging said instrument to be the free act and deed of said corporation.

Notary Public

DRAFTED BY:
David K. Snyder
Johnson / Turner Legal
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Forest Lake, MN 55025
(651) 464-7292

EXHIBIT A
(Legal Description)

EXHIBIT B
(Description of Crossing Location)