

**VILLAGE OF WINDSOR
RESOLUTION 2018-94**

**APPROVAL OF AN ESCROW AGREEMENT
FOR WINDSOR CROSSING – PHASE 2A**

WHEREAS, Windsor Crossing, LLC (“Developer”) is developing certain real estate in the Village known as Windsor Crossing Single Family Replat (the “Development”); and

WHEREAS, the Developer and the Village entered into a Development Agreement dated effective as of September 7, 2016 (the “Development Agreement”), which sets forth, among other things, certain requirements of the Developer relating to various public improvements in the Development; and

WHEREAS, the Developer previously completed the public improvements for Phase 1 of the Development, consisting of twenty-five (25) single-family, residential lots; and

WHEREAS, the Developer intends to commence construction of the public improvements for Phase 2A of the Development, consisting of five (5) single-family, residential lots; and

WHEREAS, the Developer’s lender has extended or agreed to extend certain financing to the Developer for the purpose of, among other things, funding the cost of the public improvements required for Phase 2A of the Development (the “Loan”); and

WHEREAS, Section 10 of the Development Agreement provides that, prior to performing any work on the Development, the Developer will furnish to the Village financial surety in the form of an irrevocable letter of credit to secure the Developer’s performance under the Development Agreement; and

WHEREAS, the Developer has requested the ability to deposit certain of the Loan proceeds as security for the Developer’s performance under the Development Agreement relative to the public improvements for Phase 2A of the Development, in lieu of furnishing the letter of credit required by the Development Agreement; and

WHEREAS, the Village Attorney, Developer, Developer’s lender, and the escrow agent have negotiated the attached escrow agreement setting forth the manner in which the above-referenced Loan proceeds would be deposited in escrow, held therein and released, in lieu of a letter of credit.

NOW, THEREFORE, BE IT RESOLVED by the Village Board of the Village of Windsor as follows:

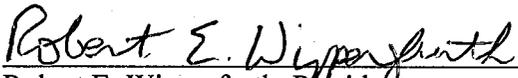
- A. The attached escrow agreement is hereby approved as acceptable security, under section 10 of the Development Agreement in lieu of a letter of credit, for the Developer’s

performance of its obligations under the Development Agreement to complete the infrastructure improvements required for Phase 2A of the Development. The Village President and staff are authorized to execute same on behalf of the Village.

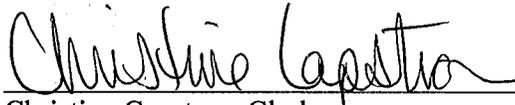
- B. All other provisions of the Development Agreement, except as expressly amended above, remain as stated therein without modification. The Developer shall remain obligated to timely satisfy all of the conditions imposed by the Village Board to which the letter of credit was intended as surety, and to provide satisfactory verification of compliance to the Village. Any necessary or requested reviews or submissions to the Village for determinations of compliance shall be made at least ten (10) business days prior to the date upon which verification of compliance is required.

The above and foregoing Resolution was duly adopted by the Village Board of the Village of Windsor, Dane County, Wisconsin at a meeting held on November 1, 2018 by a vote of 5 in favor and 0 opposed.

VILLAGE OF WINDSOR


Robert E. Wipperfurth, President

Attested by:


Christine Capstran, Clerk

Incorporated by Reference:
Escrow Agreement

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is made and entered into effective as of the 10th day of October, 2018 (the "Effective Date"), by and among the VILLAGE OF WINDSOR, a municipal corporation (the "Village"), with its principal business office located at 4084 Mueller Road, Deforest, Wisconsin, WINDSOR CROSSING, LLC, a Wisconsin limited liability company (the "Developer"), with its principal business office located at 161 Horizon Drive, Suite 101A, Verona, Wisconsin, MCFARLAND STATE BANK (the "Lender"), with its principal business office located at 5990 Highway 51, McFarland, Wisconsin, and FIRST AMERICAN TITLE INSURANCE COMPANY (the "Escrow Agent"), with its principal business office located at 10 West Mifflin Street, Suite 302, Madison, Wisconsin.

RECITALS

WHEREAS, the Developer has received approval from the Village as set forth in Village Board Resolution No. 2016-44, of a development to be known as Windsor Crossing Single Family Replat (the "Development") and located in the SE ¼ of the SE ¼ and the SW ¼ of the SE ¼ of Section 29, T9N, R10E, Village of Windsor, Dane County, Wisconsin (the "Plat"); and

WHEREAS, the Developer and the Village entered into a Development Agreement dated effective as of September 7, 2016 (the "Development Agreement"); which sets forth, among other things, certain requirements relating to various public improvements in the Development; and

WHEREAS, the Developer previously completed the public improvements for Phase 1 of the Development, consisting of twenty-five (25) single-family, residential lots; and

WHEREAS, the Developer intends to commence construction of the public improvements for Phase 2A of the Development, consisting of five (5) single-family, residential lots; and

WHEREAS, the Lender has extended or agreed to extend certain financing to the Developer for the purpose of, among other things, funding the cost of infrastructure improvements required for Phase 2A of the Development (the "Loan"); and

WHEREAS, Section 10 of the Development Agreement provides that, prior to performing any work on the Development, the Developer will furnish to the Village with surety in the form of an Irrevocable letter of credit to secure the Developer's performance of under the Development Agreement; and

WHEREAS, the parties hereto have agreed that the Developer may deposit certain of the Loan proceeds as collateral security for the Developer's performance under the Development Agreement relative to the public improvements for Phase 2A of the Development, in accordance with and subject to the terms and conditions set forth in this Agreement, in lieu of furnishing the letter of credit required by the Development Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Improvements.** The Developer shall design, construct and install, at the Developer's sole cost and expense, the infrastructure improvements for Phase 2A of the Development (the "Phase 2A Improvements"), as set forth on Exhibit A attached hereto and incorporated herein by reference. The Phase 2A Improvements shall be installed, constructed and completed in accordance with the requirements of the Development Agreement, pursuant to plans and specifications approved by the Village and pursuant to all applicable federal, state and local laws and ordinances.
2. **Escrow Sum.** To secure the satisfactory installation, construction and completion of the Phase 2A Improvements and the other obligations of the Developer under the Development Agreement and this Agreement with respect thereto, the Developer shall, concurrent with the execution and delivery of this Agreement, deposit with the Escrow Agent the sum of One Hundred Fifteen Thousand and 00/100 Dollars (\$115,000.00) (the "Escrow Sum"). The Village and the Developer acknowledge and agree that the deposit of the Escrow Sum hereunder is in lieu of and supplants the requirement in the Development Agreement for the Developer to furnish a letter of credit for the Phase 2A Improvements and, subject to compliance by the Developer of the terms and conditions set forth in this Agreement, the Village hereby waives such letter of credit requirement. The Lender acknowledges and agrees that a portion of the Loan proceeds may be utilized by the Developer for deposit as the Escrow Sum hereunder.
3. **Escrow Account.** Upon the Escrow Agent's receipt of the Escrow Sum, the Escrow Agent agrees to be responsible for holding, investing and disbursing the Escrow Sum, and the Escrow Agent agrees to accept such appointment and hold the Escrow Sum in trust, subject, however, to the terms and conditions of this Agreement. The Escrow Agent shall place the Escrow Sum in an account with a federally insured bank at interest. All interest earned upon the Escrow Sum shall be added to and included in the principal sum of the Escrow Sum and be the property and income of the Developer. The Village or the Developer may, from time to time, request written verification of the amount in the escrow account from the Escrow Agent. The Escrow Agent will provide said verification within five (5) days after receipt of a request therefor. The escrow account may also be audited during the term of this Agreement at the cost and discretion of the Village.
4. **Additional Sums.** If, at any time, the Escrow Sum herein provided is reasonably determined by the Village to be insufficient to complete the Phase 2A Improvements, the Village will deliver written notice to the Developer of such determination and instruct the Developer to deposit with the Escrow Agent an additional sum, in an amount reasonably determined by the Village to be sufficient to complete the Phase 2A Improvements. The Developer will promptly deposit with the Escrow Agent such additional sum, but in no event later than ten (10) days after receipt of notice from the Village. The additional sum so deposited shall be subject to the terms of this Agreement and this Agreement shall be deemed amended to include said additional sum as part of the Escrow Sum hereunder.
5. **Time to Complete Improvements.** Unless otherwise agreed by the parties or extended by the Village, the Developer shall complete all the Phase 2A Improvements within two (2) years after the Effective Date of this Agreement. The Village may, in its sole discretion, extend the time to complete all or any portion of the Phase 2A Improvements.
6. **Completion and Acceptance of Improvements.** Upon completion of the Phase 2A Improvements, or any portion thereof, the Developer may submit to the Village (with a copy to the Escrow Agent) a written request of all or a portion of the Escrow Sum or notice of completed work (the "Escrow

Release Request”), which includes an updated calculation of the reduced Escrow Sum. Within twenty (20) days after receipt of the Escrow Release Request, the Village shall conduct such inspections as are customary and/or required in order to determine whether the Phase 2A Improvements were completed in accordance with the requirements of the Development Agreement and this Agreement and, if so, shall so certify in writing to the Developer and the Escrow Agent and shall direct the Escrow Agent to release the portion of the Escrow Sum described in the Escrow Release Request. Approval or acceptance of any Phase 2A Improvements and/or release of the Escrow Sum, or any portion thereof, does not constitute a waiver by the Village of any rights it may have on account of any defect in or failure of the Phase 2A Improvements that is discovered or which occurs after approval, certification and/or acceptance. Approval, certification and/or acceptance shall not constitute acceptance of the Phase 2A Improvements by the Village for dedication purposes.

7. **Construction Lien Search.** Prior to release of the Escrow Sum to the Developer, the Escrow Agent shall separately determine if any construction liens have been filed against the Development in the Office of the Register of Deeds for Dane County, Wisconsin. If an intervening construction lien is discovered, the Escrow Agent will promptly notice each of the Village and the Developer and shall continue to hold the Escrow Sum pursuant to the terms and conditions of this Agreement until the construction lien is removed, or unless and until otherwise mutually agreed and instructed by the Village and the Developer.
8. **Release of Escrow Sum.** After receiving a copy of the certification from the Village that all, or a portion of, the Phase 2A Improvements were completed in accordance with applicable requirements and accepted by the Village, the Escrow Agent will promptly acquire lien waivers and disburse and release the requested portion of the Escrow Sum (and any accrued interest or earnings thereon) to the parties identified by the Developer in the Escrow Release Request, but in no event later than five (5) days after receipt of the certification from the Village.
9. **Events of Default.** The following conditions, occurrences or actions will constitute an “Event of Default” by the Developer under this Agreement, provided that the Village has delivered written notice to the Developer of such default and the Developer has failed to cure the default within thirty (30) days after receipt of notice from the Village thereof:
 - a. The Developer’s failure to complete all the Phase 2 Improvements in accordance with the requirements set forth in this Agreement within the time provided herein;
 - b. The Developer’s failure to provide an additional Escrow Sum as required by this Agreement;
 - c. The Developer’s failure or refusal to correct the defective construction of any Phase 2A Improvement within any period of time designated or specified for correction;
 - d. The Developer’s insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the Village may immediately declare a default without prior written notification to the Developer;

e. Notification to the Village, by any lender with a lien on the Development, of a default on an obligation, the Village may immediately declare a default without the prior notification to the Developer; or

f. Initiation of any foreclosure action of any lien or initiation of a mechanics lien procedure against the Development in lieu of foreclosure, the Village may immediately declare a default without prior notification to the Developer.

10. Disbursement of Escrow Sum upon Default. If an Event of Default by the Developer shall occur pursuant to the terms of this Agreement, the Village may appropriate or draw funds from the Escrow Sum in order to ensure the satisfactory completion of the Phase 2A Improvements by giving written notice to the Escrow Agent (with a copy to the Developer) specifying such Event of Default and instructing the Escrow Agent to release such portion of the Escrow Sum to the Village for the stated purpose. Upon receipt of such notice, the Escrow Agent shall release the requested portion of the Escrow Sum to the Village within five days without condition, limitation, restriction or confirmation from Developer or Lender. To ensure the satisfactory completion of the Phase 2A Improvements, the Village may complete the Phase 2A Improvements itself or it may contract with a third party for completion. The Developer grants to the Village, its successors, assigns, agents, contractors, subcontractors and employees, a nonexclusive right and easement to enter the Development for the purposes of constructing, reconstructing, maintaining and/or repairing such Phase 2A Improvements.

11. Reliance by Escrow Agent. In performing its duties hereunder, the Escrow Agent shall be entitled to rely, in good faith, on written notice or direction received from either of the Village or the Developer and without duty of inquiry as to authenticity of signature or authority of the person or persons acting or purporting to act on behalf of either of them. The Escrow Agent shall not be liable for acts or omissions taken in good faith and in conformance with the terms of this Agreement. Prior to any disbursement of the Escrow Sum, the Escrow Agent shall be entitled to collect its reasonable out-of-pocket expenses incurred by the Escrow Agent in accordance with this Agreement. Except for such out-of-pocket expenses, the Escrow Agent acknowledges that it will not charge a fee for serving as the holder of the Escrow Sum under this Agreement.

12. Notices. All notices or directions desired or required to be given under this Agreement shall be in writing, personally delivered or sent by certified mail, return receipt requested, commercial overnight courier, or electronic transmission, and directed as follows:

If to the Village: Village of Windsor
Attn: Village Clerk
4084 Mueller Road
DeForest, WI 53532
Email: [_____]

If to the Developer: Windsor Crossing, LLC
Attn: David M. Jenkins
161 Horizon Drive, Suite 101A
Verona, Wisconsin 53593
Email: dmj@forwarddevgroup.com

If to the Lender: McFarland State Bank
 Attn: James Walker
 5990 Highway 51
 McFarland, WI 53558
 Email: [_____]

If to the Escrow Agent: First American Title Insurance Company
 Attn: Cathleen Heath
 10 W. Mifflin St., Ste 302
 Madison, WI 53703
 Email: [_____]

Notices or demands personally delivered shall be deemed received when given. Notices or demands sent by certified mail shall be deemed received three (3) business days after deposit with the U.S. Postal Service. Notices or demands sent by electronic transmission shall be deemed received when given, if prior to 5:00 pm, recipient's local time, on a business day, otherwise on the next occurring business day. Notices or demands sent by commercial overnight courier shall be deemed received on the next business day following deposit.

13. **No Waiver.** No waiver of any provision of this Agreement by the Village will be deemed to constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by the Village, the Developer and the Escrow Agent; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Village's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.
14. **Third Party Rights.** This Agreement is not executed for the benefit of materialmen, laborers, or others providing work, services or materials to the Developer and/or the Property or for the benefit of the owners, purchasers or users of the Property. No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.
15. **Governing Law.** This Agreement and the performance thereof shall be governed, interpreted, and construed by the laws of the State of Wisconsin. Any litigation concerning this Agreement shall be conducted in the courts located in Dane County, Wisconsin, and the parties hereto agree to the venue and personal jurisdiction of these courts.
16. **Assignment.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors in interest and/or the legal representatives of the respective parties hereto. Notwithstanding the foregoing, neither this Agreement nor any of the rights or obligations hereunder shall be assigned or transferred by any party without the prior written consent of all other parties hereto.
17. **Recording.** In the event the Village elects to record this Agreement or a memorandum thereof among the land records of Dane County, Wisconsin, the parties hereto agree to execute a memorandum of Agreement, and all costs of recording this Agreement or memorandum thereof shall be paid by the Village.

18. Counterparts. All parties agree that this Agreement may be signed in one or more counterparts, all of which when taken together, shall constitute one and the same instrument. The parties agree that signed electronic transmissions of this Agreement shall be valid and binding.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement effective as of the Effective Date.

VILLAGE OF WINDSOR

By: Robert E. Wipperfurth
Name: Robert E. Wipperfurth
Title: Village President

WINDSOR CROSSING, LLC

By: David M. Jenkins
Name: David M. Jenkins
Title: Manager

MCFARLAND STATE BANK

By: James E. Walker
Name: James E. Walker
Title: E. V. P.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: Catherine Heath
Name: Catherine Heath
Title: Underwriting Counsel

