
ENCROACHMENT AGREEMENT

THIS AGREEMENT (“Agreement”) is made this _____ day of _____, 20___, by and between the **CITY OF RAMSEY**, a municipal corporation under the laws of the State of Minnesota (“City”), and **Douglas F. and Vicky A. Foyt**, husband and wife, and their successors and assigns (“Landowner”).

RECITALS:

WHEREAS, Landowner is the fee owner of the real property located at 5581 148th Lane NW, Ramsey, Minnesota and legally described as follows:

Lot 4, Block 1, Ramsey Commons 2nd Addition, Anoka County, Minnesota.

(“Property”); and

WHEREAS, the City currently has Drainage and Utility Easements (“Easements”) over, under and across a portion of the Property, as dedicated to the public pursuant to the Plat known as “Ramsey Commons 2nd Addition” recorded in the Office of the County Recorder, Anoka County, Minnesota, which Easements are shown on Exhibit “A” attached hereto and made a part hereof; and

WHEREAS, the Property has an existing attached garage (“Garage”) with a driveway extension (the “Driveway Extension”) along the west wall of said Garage; and

WHEREAS, the Driveway Extension was installed by the Landowner in 2004, predating any permit requirements of the City, is partially located within the Easements along the western boundary of the Property, and does not meet the required setback from the westerly boundary of the Property; and

WHEREAS, Landowner was granted a Variance from the City per Resolution #15-11-271 to encroach upon the required driveway setback for properties in the R-1 Residential District, contingent upon the Landowner upgrading the surface to comply with City Code Section 117-111 (R-1 Residential District) and executing an Encroachment Agreement with the City to address the portion of the Driveway Extension that encroaches four (4) feet into the Easements located along the westerly boundary of the Property, extending from the rear wall of the attached garage on the Property south as depicted on Exhibit "A".

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

1. The City hereby approves an encroachment on and over the Easements by Landowner for the purposes of maintaining the Driveway Extension over that part of the Easements as shown in Exhibit "A" subject to the terms of this Agreement. Landowner shall not encroach upon the Easements greater than what is shown on Exhibit "A."

2. Nothing in this Agreement shall be deemed a waiver or abandonment of the City's rights under the Easements.

3. Landowner shall be responsible for all costs relating to use, maintenance and repair of the Driveway Extension.

4. Landowner agrees to maintain positive drainage on the Property and existing grades along the western line of the Property so as not to negatively impact property to the west.

5. Landowner agrees that if the City, during its normal construction, reconstruction, maintenance and/or repair of the public utilities of the City located within the Easements including, but not limited to, watermain, sanitary sewer and/or storm sewer systems, or as needed to address drainage issues, deems it necessary and expedient to excavate within the Easements,

Landowner shall be responsible for removing, reconstructing and/or repairing the Driveway Extension and the City's only obligation shall be to fill the excavated area and level the same to the grade that it was prior to the installation of the Driveway Extension. Notwithstanding the above, in the event the City finds it is necessary to completely and totally restore easement area, the landowner agrees to remove the Driveway Extension that has been placed in the Easements. Landowner will promptly comply with said removal request at his/her expense and will remove the Driveway Extension within sixty (60) days of the written request by the City.

6. In the event that Landowner fails to take any action required in this Agreement and the City is required to repair, reconstruct or take other actions to maintain the City's utilities, as a result of the Landowner's use and maintenance of the Driveway Extension, the City may take any and all actions permitted by law to collect the costs of those repairs and the City may further levy an assessment against the Property for all costs incurred by the City. Landowner waives any and all rights to challenge or appeal the assessment.

7. Landowner and their successors and assigns do hereby agree to defend, indemnify, and hold the City harmless from any and all costs and expenses, all claims and liability, including attorney's fees, relating to or arising from granting the Landowner permission to encroach on the Easements for the maintenance, use, and operation of the Driveway Extension, including third party claims against flooding issues that may occur due to filling within the Easements.

8. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following:

TO CITY:

Jo Thieling, City Clerk
City of Ramsey
7550 Sunwood Drive NW
Ramsey, MN 55303

TO LANDOWNER: Douglas F. and Vicky A. Foyt
5581 148th Lane NW
Ramsey, MN 55303

or to any successors or assigns of the Landowner or City, or any future address of the Landowner or City, if Landowner or City gives the other party notice of said change of address as provided pursuant to the provision for notice herein.

8. This Agreement shall be recorded against the title to the Property.

CITY OF RAMSEY

By: _____
Sarah Strommen, Mayor

By: _____
Jo Thieling, City Clerk

STATE OF MINNESOTA)
)ss.
COUNTY OF ANOKA)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Sarah Strommen and Jo Thieling, respectively the Mayor and City Clerk of the City of Ramsey, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

Notary Public

LANDOWNER:

By: _____
Douglas F. Foyt

By: _____
Vicky A. Foyt

STATE OF MINNESOTA)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Douglas F. and Vicky A. Foyt, husband and wife.

Notary Public

Drafted by:
City of Ramsey
7550 Sunwood Dr NW
Ramsey, MN 55303

Reviewed by:
Ratwik, Roszak & Maloney, P.A.
730 Second Ave. S., Suite 300
Minneapolis, MN 55402

EXHIBIT "A"

Site Plan

**CAINE & ASSOCIATES
LAND SURVEYORS, INC.**

17720 Highway 65 N.E. - Ham Lake, Minnesota 55304
434-7646

CERTIFICATE OF SURVEY FOR: Preferred Builders

DESCRIBED AS: Lot 4, Block 1, RAMSEY COMMONS 2ND ADDITION, according to the recorded plat thereof, Anoka County, Minnesota.

