

THE CITY OF

Troy Klecker
Community Development Director



OWATONNA

540 West Hills Circle
Owatonna, MN 55060-4794
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DATE: July 31, 2020
TO: Mayor and City Council
FROM: Community Development Dept. - Troy Klecker
SUBJECT: Eastgate Apartments

Purpose:

City Council to approve the Subordination Agreement and an Access and Temporary Construction Easement for the development of Eastgate Apartments.

Background:

The City has been working with LWO Limited Partnership #116 on the development of a 36 unit workforce housing project on Cherry Street, next to Domino's Pizza. The development agreement and the purchase agreement have been approved by the City Council. The subordination agreement was requested by Wells Fargo as they are financing the project. Under this agreement, the rights of the City under the Development Agreements be subordinated to the Mortgage. The access and temporary construction easement allows our property to be used during and after construction of the project.

Budget Impact:

There is no budget impact with the signing of these agreements.

Staff Recommendation:

Staff recommends approval of these agreements for development of the Eastgate Apartments.

**SUBORDINATION OF
DEVELOPMENT AGREEMENTS**

THIS SUBORDINATION OF DEVELOPMENT AGREEMENTS (this “**Agreement**”), is made and entered into as of the [___] day of [____], 2020, by and between the CITY OF OWATONNA, a Minnesota municipal corporation (the “**City**”), LWO LIMITED PARTNERSHIP #116, a Minnesota limited partnership (the “**Developer**”), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (the “**Lender**”).

W I T N E S S E T H:

WHEREAS, the City and the Developer have entered into: (i) that certain Purchase Agreement dated as of [____], as the same may be amended or modified from time to time (the “**Purchase Agreement**”), pertaining to the purchase by Developer of certain real property located in Owatonna, Steele County, Minnesota, legally described on Exhibit A attached hereto (the “**Property**”), and (ii) that certain Development Agreement dated as of [____], as the same may be amended or modified from time to time (the “**Development Contract**,” and together with the Purchase Agreement, the “**Development Agreements**”), pertaining to the development by the Developer of a multifamily affordable housing project on the Property (the “**Project**”); and

WHEREAS, in order to provide funds for the acquisition and construction of the Project by the Developer, the Lender is providing a \$[____] multiple advance construction loan (the “**Bank Loan**”), pursuant to the terms of that certain Building Loan Agreement dated as of [____, 2020] (the “**Loan Agreement**”), by and between the Developer and the Lender; and

WHEREAS, the Bank Loan is secured by, among other things, that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement encumbering the Project dated as of [____, 2020] (the “**Construction Mortgage**”), executed by the Developer in favor of the Lender and filed of record in the office of the Steele County Recorder on _____ as Document No. _____; and

WHEREAS, the Lender and Developer have also entered into a Commitment Agreement for Fixed Rate Permanent Mortgage Loan dated [____, 2020] (the “**Permanent Financing Commitment**”), pursuant to which Lender has agreed to make a permanent mortgage loan in the

approximate amount of \$[_____] upon repayment of the Bank Loan, which permanent loan will also be secured by a mortgage instrument encumbering the Project (the “**Permanent Loan Mortgage**” and together with the Construction Mortgage, the “**Mortgage**”); and

WHEREAS, the Lender has required, as an express condition to disbursement of the Bank Loan, that the rights of the City under the Development Agreements be subordinated to the Mortgage, and that the City agree to certain other matters, all as more fully contained herein.

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

1. The City hereby consents and agrees to the terms and conditions of this Agreement. The City further represents and warrant to the Lender that to the best of its knowledge neither the City nor the Developer is in default under the Development Agreements and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date hereof.
2. The City agrees to provide the Lender with copies of any notice of default given under the Development Agreements, and that the Lender shall have the right, but not the obligation, to cure any such default on behalf of the Developer within a period of at least [ninety (90) days] from the date the notice has been received by the Lender.
3. In accordance with Section 5.5 of the Development Contract, the City hereby agrees that all of their rights under the Development Agreements shall be subject and subordinate to the Mortgage.
4. The parties hereto agree that no change or amendment shall be made to the terms of the Development Agreements without the prior written consent of the Lender.
5. This Agreement can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by the Lender. A waiver by the Lender shall be effective only in a specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Lender’s rights or remedies hereunder. All rights and remedies of the Lender shall be cumulative and shall be exercised singularly or concurrently, at the Lender’s option, and any exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.
6. No provision of this Agreement shall be deemed or construed to alter, amend or modify, in any way, the rights and obligations of the City contained in the Development Agreements.
7. Any notice, request, demand or other communication hereunder shall be deemed duly given if delivered or postage prepaid, certified or registered, addressed to the party as set forth below:

If to the City:

City of Owatonna, Minnesota
540 West Hills Circle
Owatonna, Minnesota 55060
Attn: City Administrator

If to the Developer:

LWO Limited Partnership #116
1600 University Avenue, #212
St. Paul, MN 55104

With a copy to:

Winthrop & Weinstine, P.A.
225 South 6th Street, Suite 3500
Minneapolis, MN 55402
Attn: John Nolde

And to:

Wells Fargo Affordable Housing Community Development
MAC D1053-170
One Wells Fargo Center, 301 South College Street
17th Floor
Charlotte, NC 28288-0173
Attn: Director of Asset Management

If to the Lender:

Wells Fargo Bank, National Association
Community Lending and Investments
3030 Nicollet Avenue, Suite 200
Minneapolis, MN 55408
Attn: Kent A. Paulson

8. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

No further text on this page.

IN WITNESS WHEREOF, the parties hereto have made and entered into this Agreement as of the day and year first above written.

“CITY”

CITY OF OWATONNA, MINNESOTA

By _____
Name Thomas A. Kuntz
Its Mayor

By _____
Name Kris M. Busse
Its City Administrator

STATE OF MINNESOTA)
) ss
COUNTY OF STEELE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020 by____
_____ and _____, the _____ and ____
_____ of the City of Owatonna, Minnesota, a municipal corporation
organized and existing under the laws of the State of Minnesota, on behalf of said City.

Notary Public

“DEVELOPER”

LWO LIMITED PARTNERSHIP #116,
a Minnesota limited partnership

By: #116 GP, LLC
Its: General Partner

By: _____
Name: Lawrence W. Olson
Title: Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____ 2020, by Lawrence W. Olson, the Chief Manager of #116 GP, LLC, a Minnesota limited liability company, the general partner of LWO Limited Partnership #116, a Minnesota limited partnership, for and on behalf of said partnership.

Notary Public

EXHIBIT A

All that certain real property located in the County of Steele, State of Minnesota, described as follows:

[to be inserted]