

[Reserved for Recording Data]

ACCESS AND TEMPORARY CONSTRUCTION EASEMENT

This Reciprocal Access Easement (“*Agreement*”) is made effective as of [_____, 2020], by the City of Owatonna, Minnesota, a Minnesota municipal corporation (“*Parcel A Owner*”) and LWO Limited Partnership #116, a Minnesota limited partnership (“*Parcel B Owner*”).

RECITALS:

- A. Parcel A Owner is the fee owner of certain real property located in Steele County, Owatonna, Minnesota and legally described on Exhibit A attached hereto (“*Parcel A*”).
- B. Parcel B Owner is the fee owner of certain real property located in Steele County, Owatonna, Minnesota, Minnesota and legally described on Exhibit B attached hereto (“*Parcel B*”).
- C. Parcel B Owner is developing Parcel B to build a multifamily housing development (the “*Project*”).
- D. Parcel A Owner and Parcel B Owner (collectively, the “*Owners*”) desire to create an area over and across Parcel B to allow for access to and from Parcel A.

NOW, THEREFORE, in consideration of the Recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owners, for themselves, their successors and assigns, agree, covenant and promise as follows:

1. **Grant of Access Easement.** Subject to the terms and conditions of this Agreement, the Parcel B Owner hereby grants and conveys to Parcel A Owner, a non-exclusive access easement over the area depicted on Exhibit C attached hereto (“*Access Easement Area*”) for the benefit and non-exclusive use by the Parcel A Owner, their respective agents, assigns, invitees,

licensees, and guests (“*Access Easement*”). Each of the Owners can use the Access Easement Area to provide additional access to Parcel A.

2. **Grant of Temporary Construction Easement.** Subject to the terms and conditions of this Agreement, Parcel A Owner, grants for the benefit of Parcel B Owner, its contractors, subcontractors, agents, successors and assigns (collectively, the “*Grantee Parties*”), a non-exclusive temporary, appurtenant easement (“*Temporary Construction Easement*”) over, across, upon and under the Parcel A (“*Temporary Construction Easement Area*” and, together with the Access Easement Area, the “*Easement Areas*”) for the purposes of completing the Project. The Temporary Construction Easement includes, but is not limited to the right of the Parcel B Owner and the Grantee Parties to enter upon Parcel A, changing topography and landscaping of Parcel A and to store and stage at Parcel A construction materials, tools and machinery, at all times for all purposes related to the Project. Grantee shall have the right to use Parcel A without cost or expense to Grantor. For the duration of the Temporary Construction Easement Term (as defined herein), Parcel B Owner shall mow the lawn on Parcel and keep Parcel A free of construction trash related to the Project. The Temporary Construction Easement shall terminate upon the earlier of: (i) Parcel B Owner provides written notice to Parcel A Owner of the termination of the Temporary Construction Easement, or (ii) December 31, 2023 (the “*Temporary Construction Easement Term*”). Upon the expiration of the Temporary Construction Easement Term, each Owner’s rights and obligations under this Section 2 shall terminate.

3. **No Obstruction.** The Owners agree to not obstruct the respective Easement Areas in any way that would block or otherwise affect the other Owner’s reasonable use of the respective Easement Area.

4. **Indemnification.** Parcel B Owner agrees to indemnify, defend and hold harmless Parcel A Owner from any loss, claims, damages, actions, lawsuits, costs or expenses related to Parcel B Owner’s use of the Easement Area.

Parcel A Owner agrees to indemnify, defend and hold harmless Parcel B Owner from any loss, claims, damages, actions, lawsuits, costs or expenses related to Parcel A Owner’s use of the Easement Area.

5. **Notices.** All notices or written requests provided for in this Agreement shall be in writing and shall be delivered (i) by facsimile transmission, or (ii) by personal delivery, or (iii) by depositing same with a nationally recognized courier for delivery on the next business day, or (iv) by depositing such notice in the United States mail, certified, return receipt requested, postage prepaid, addressed to the party to receive the notice or request at the following addresses:

Parcel A Owner: City of Owatonna
540 West Hills Circle
Owatonna, MN 55060
Attn: Kris Busse

Parcel B Owner: LWO Limited Partnership #116
1600 University Ave. #212
St. Paul, MN 55104

Attn: Lawrence W. Olson

Changes of addresses, fax numbers, or the identities of the persons who should receive the notices and requests shall be automatically made upon the written request of the party seeking the change sent in the manner set forth above.

6. **No Right in General Public and Termination.** Nothing herein contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Parcel A or the Parcel B to the general public, it being understood and agreed that the Easement Area is for the benefit of the Owners and their respective invitees and guests. Notwithstanding anything to the contrary herein, Parcel B Owner and its successor or assigns shall have the right, in its sole and absolute discretion, to unilaterally terminate the Access Easement by filing a termination of the Access Easement in the public records of Steele County, Minnesota. Upon Parcel B Owner filing such termination notice and the expiration of the Temporary Construction Easement Term, this Agreement shall terminate. Parcel A Owner, hereby covenants and agrees that it has and will maintain other means of access to Parcel A.

7. **Covenants to Run with Land.** Subject to the terms and conditions of this Agreement, the Owners acknowledge and agree that the Easements set forth herein shall run with the property and shall be binding on all current and future parties having any right, title or interest in the same, provided, however, that the Temporary Construction Easement should expire as provided in Section 2..

8. **Miscellaneous.** Any waiver by any party of any default of the other party hereunder shall not affect or impair any right arising from any subsequent default. If any clause, provision or portion of this Agreement is deemed to be illegal, invalid or unenforceable under present or future laws, then the remainder of the Agreement shall remain unaffected, but the illegal, invalid or unenforceable provision shall be modified in such a way that effectuates the intention of this Agreement, but complies with all applicable laws. The caption of each paragraph of this Agreement is for convenience only and shall not be considered in the interpretation or construction of any provision of this Agreement. Unless otherwise noted herein, this Agreement and any of the rights, licenses and easements created hereby may not be modified or terminated except by a written instrument executed by all parties with a property interest in Parcel A and Parcel B. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

*[Remainder of Page Left Intentionally Blank.
Signature Page to Follow.]*

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the day and year first written above.

PARCEL A OWNER:

CITY OF OWATONNA, MINNESOTA

By: _____

Name: Thomas A. Kuntz

Its: Mayor

By: _____

Name: Kris M. Busse

Its: City Administrator

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, the _____ and _____, the _____ 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

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the day and year first written above.

PARCEL B OWNER:

LWO LIMITED PARTNERSHIP #116, a
Minnesota limited partnership

By: #116 GP, LLC
Its: General Partner

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

STATE OF _____)
) ss.
COUNTY OF _____)

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

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Winthrop & Weinstine, P.A. (PKM)
225 South Sixth Street
Suite 3500
Minneapolis, Minnesota 55402

EXHIBIT A

LEGAL DESCRIPTION OF PARCEL A

EXHIBIT B

LEGAL DESCRIPTION OF PARCEL B

EXHIBIT C

DEPICTION OF ACCESS EASEMENT AREA

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